

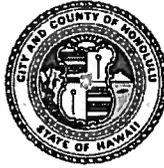
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KIRK CALDWELL  
MAYOR

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AMENDED AGENDA  
Honolulu Ethics Commission  
**January 21, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

- I. CALL TO ORDER
  - A. Introduction of Commissioners, Victoria Marks and Allene Suemori, and Legal Clerk I, Kristine Bigornia.
  
- II. For Action: Request for a Motion to Approve the Minutes of the Open Session of the November 27, 2014 Meeting.
  
- III. OLD BUSINESS
  - A. Confirming the date and time for the February 18 and March 18, 2015 meetings and setting the April and May 2015 meetings.
  
- IV. NEW BUSINESS
  - A. For Discussion: Administrative News
    1. Complaints and requests for advice statistics through last month.
    2. Website statistics.
    3. Status of Fiscal Year 2015-2016 Operating Budget.
    4. Status of the Reallocation of the Investigator II to an Investigator III Position.

5. Report on Board and Commission Members' Mandatory Ethics Training.
  6. Report on Mandatory Annual Financial Disclosures from City Officers and Mandatory Lobbyist Registrations and Annual Reports.
  7. Miscellaneous Matters Affecting Staff.
- B. For Action: Nominations and Election of the Chair and Vice Chair for 2015.
- C. For Discussion: News Release Policy.

V. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Session of November 27, 2014 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8));
- B. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8));
- C. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8));
- D. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8));
- E. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8)); and

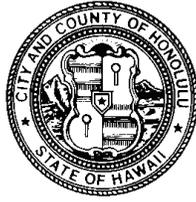
- F. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8)).

VI. ADJOURNMENT

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

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: January 21, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael A. Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A.S. DeCaires, Investigator  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Catherine Maki, Administrative Service Officer, Department of the  
Corporation Counsel (COR)  
Noel T. Ono, Assistant Director (DHR)  
Lila T. Tom, Division Chief, Classification & Pay (DHR)  
Gwynne Inamasu, Recruitment Section Head, Employment &  
Personnel Services (DHR)  
Jennifer Tobin, Branch Chief, Benefits, Research & Transaction  
Branch (DHR)  
George Hurd, Hawaii News Now  
Rick Daysog, Hawaii News Now

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

**I. CALL TO ORDER**

The 485th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at approximately 11:40 a.m. by Chair Chen.

The Commission had before it the EDLC's Memorandum regarding the Agenda Items for the January 21, 2015 Meeting, Open Session, dated January 16, 2015.

## **II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE NOVEMBER 21, 2014 MEETING**

**Commissioner Lilly moved that the Minutes be accepted. Commissioner Silva seconded the motion. The Commissioners voted unanimously to approve the Minutes.**

## **III. OLD BUSINESS**

The Commissioners agreed that the next meeting date would occur on Wednesday, February 18, 2015. The Commissioners further confirmed tentative meeting dates for the following: Wednesday, March 18, 2015; Wednesday April 22, 2015; and Wednesday, May 20, 2015; all at 11:30 a.m.

## **IV. NEW BUSINESS**

### A. For Discussion: Administrative News.

1. Complaints and requests for advice statistics through last month. The EDLC stated that the net change was to reduce the outstanding workload by 29 cases. Over a 2-month period, staff worked on reducing backlog, with about 70 pending.

2. Status of Fiscal Year 2015 – 2016 Operating Budget. For the new Commissioners, the EDLC gave a brief background on the issues. The EDLC expressed that the EC has been chronically underfunded in light of its workload and the needed resource increase has been denied by the Department of Fiscal Services (BFS) and the Managing Director (MD). The budget process has become cumbersome, and because of the need to repeatedly communicate with the Department of Human Resources (DHR), BFS and the Department of Corporation Counsel (COR) on the budget, it reduced his ability to do substantive work on legal issues. For example, the EDLC approved the raise of the ALC's salary in July 2014, but still has no answer from the departments regarding its approval. Things take time in this bureaucracy, but will try to work in a more streamlined way with COR, DHR and BFS.

For FY16, we asked for a number of positions, none of which were allowed by BFS. The EDLC appealed the request for the second investigator position, which is the most critical personnel issue, and this was again denied by the MD. The salaries for the EDLC and ALC were taken under advisement and we hope to hear by the end of the month and will bring results back in the next meeting. We were allowed to have sufficient funds in order to actually pay the rent for the office of our Investigator. Another budget option is to present our request or modified request to the Council in March.

3. Status of the Reallocation of the Investigator II to III Position. The EDLC stated that both COR and DHR are still in the process of the reallocating this position, and this quarter

may be Letha DeCaires' last contract. DHR and COR are requiring the EC try to fill the Investigator position with a permanent employee rather than the contract approach. Staff has relied on her excellent work, but we are required by City's rules and laws to attempt to fill the position rather than use someone on a Personal Services Contract. Staff plans to have this permanent position filled by a qualified candidate, but if staff cannot find a qualified candidate, we would enter into another 89-day contract with Ms. DeCaires. The EDLC further stated that we actually lost 4 out of 18 months, when she did not have a contract as a result of delays by COR and DHR.

Commission Lilly asked the EDLC to explain the effectiveness of Ms. DeCaires' work, especially to the new Commissioners. She is a retired HPD Captain and has been an outstanding investigator with the Ethics Commission.

The EDLC explained that she was able to review, investigate and close cases whether or not there was sufficient evidence of wrong doing present thorough and effective investigative reports on all cases. In addition, Ms. DeCaires was able to find evidence of serious misconduct in several cases, including the Romy Cachola case. She closed about 100 cases within the first year. Because of her HPD training and her skill and personality, she had great rapport with the subjects, witnesses, and union agents to fairly, efficiently and promptly obtain the information needed to determine misconduct. In turn, her work product and ideas were invaluable to the attorneys. Ms. DeCaires handles cases regarding high-level city officials, the most complex facts and allegations of serious misconduct.

The EDLC further stated that Ms. DeCaires has a workload four times the size of the workloads of similar administrative investigators at the AG's office, Police Commission, Equal Opportunity Office and the Professional Standards Office at HPD. In each of those agencies they use investigators to handle an average of 25 administrative cases per year, whereas the Commission had 90-100 in each of the last 5 years. While analyzing each case, she helped staff determine which were the most important and should have the highest priority.

The EDLC further stated that he will be working with DHR on obtaining a list of potential candidates.

Assistant DHR Director, Noel Ono, explained that DHR's position is not a reflection on Ms. DeCaires and he knows that she is highly qualified and doing a very good job. The position is a civil service position and can only be held for one year. If it was a budgeted contract then a PSC contract can be budgeted on a temporary basis, but because it is a civil service position and exempt, the position needs to be filled. The EDLC agreed. Assistant DHR Director Ono further stated that he will submit a list of potential candidates. He further stated that in our process of trying to find the best qualified person, if we show an effort and circumstances show another 89-day contract is warranted, the EC could submit our request to COR and the MD. Assistant DHR Director Ono stated that there should be a permanent position in order to secure pay and cost stability.

The EDLC asked if he should have asked for a contract position instead of a civil service position, and if we did that there would still be a limitation of a one-year contract.

Lila Tom of DHR responded that for contract positions, it would have to fall within the charter provisions of what's allowed and depends on what the rationale would be for the creation of that contract position, but for the most part it would be limited to that one-year limitation.

Ms. Tom continued that normally personal services contracts are for temporary situations where the need is critical. In this situation, since there is a position now, the focus is to filling that established position so you no longer need a temporary position. Ms. Tom also confirmed that the reallocation of the position will be forthcoming. The EDLC thanked Ms. Tom.

Commissioner Yuen stated that Ms. DeCaires' effective work has been a "plus" and resulted in savings to the City.

4. Report on Board and Commission Members' Mandatory Ethics Training. The EDLC explained the status of the December and January training sessions. A total of 83 officials have attended the sessions, including Commissioner Lilly and Commissioner Amano. The ethics training session with the Liquor Commission will be put on DVD. The DVD will be available to any new board or commission member, so they may comply with the training law.

The EDLC explained that the duration of the training is about 60-90 minutes. Staff suggests that the Commission members review the training DVD, and in one of the regular meetings we can discuss questions specific to Ethics Commission members.

Chair Chen asked the EDLC how long should they anticipate for the training in the regular meeting, and the EDLC responded about a half hour.

All Commissioners agreed to view the DVD and then have a short training for issues related to their specific position as an EC member. This will occur at a regular meeting, hopefully in March.

5. Report on Mandatory Annual Financial Disclosure from City Officers and Lobbyist Reports. There are about 600 officials who must file financial disclosures, and about 100 lobbyists who file annual reports. A lobbyist is one who for pay attempts to influence the policymaking decisions of the administration or the council. Each lobbyist must submit a report of its expenses in the preceding year related to lobbying for each entity or company they lobbied for.

B. For Action: Nominations and Election of Chair and Vice Chair for 2015.

The ALC explained the process of the nomination by reciting the Ethics Rules of Procedures Section 1.19, which requires voting by secret ballot. Each Commissioner had two slips of paper, one for Chair (gold form) and the other for Vice Chair (green form), with each Commissioner's name.

After the Commission voted, the gold form slips were passed to Investigator DeCaires, who announced the new elected Chair of the Commission. Acting Chair, Katy Chen,

was elected as the new chairwoman of the Commission with 5 out of 7 votes among the Commissioners. The ALC congratulated Commissioner Chen, and she accepted.

The Commission then voted for Vice Chair (green form), excluding Chair Chen. Commissioner Michael Lilly, was elected as the new Vice Chair, with 4 out of 7 among the Commissioners. The ALC congratulated Michael Lilly, and he accepted.

C. For Discussion: News Release Policy.

The EDLC stated that he put together a basic News Release Policy and asked the Commission to comment with questions. The EDLC then recited the draft “Policy and Procedure Regarding News Releases” from the Open Memo.

Chair Chen asked if there were any questions. Commissioner Lilly asked if the EDLC is proposing a resolution, and the EDLC confirmed and asked if the Commission wanted a discussion.

Chair Chen stated that it was not a formal draft, and the EDLC agreed, but would put something together in a more formal draft, and didn’t know if they wanted to add, remove or modify the policy. Commissioner Lilly then stated that it could be revised at any time, and the EDLC confirmed.

Commissioner Amano asked if COR and the administration and cabinet should be included as recipients of the news release, and the EDLC confirmed they do and will receive the news releases.

Chair Chen stated that it is not listed on the agenda as an action item. The EDLC thinks having the item on for “action” is not necessary, but and Deputy Corporation Counsel Geoffrey Kam disagreed. Chair Chen instructed The EDLC to prepare a formal draft of the policy for the Commission to review and to vote on in the next meeting.

Commissioner Amano appreciated the draft, but also needed time to think about the purposes of the news release, so it covers the kinds of things to issue in a news release form. She further stated that the EDLC gave an example, and would like to comment on other examples. The EDLC responded that the past releases were focused on the issuance of advisory opinions, there were a few regarding bills, and one on budget. He also stated that what news may be released should be broad so that the Commission would have some latitude in what to give to the public.

**Chair Chen asked for a motion to exit Open Session and to go into executive session. Commissioner Yuen so moved and Commissioner Suemori seconded. The motion passed unanimously.**

**Commissioner Yuen left the meeting at 12:26 p.m.**

## V. EXECUTIVE SESSION SUMMARY

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the November 21, 2014 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission approved and unanimously passed the Minutes.**

- B. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Four (4) Commissioners were in favor and two (2) Commissioners abstained.**

- C. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

- D. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

- E. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

- F. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

**VI. ADJOURNMENT**

**Chair Chen asked for a motion to go into Executive Session. Commissioner Lilly so moved and Commissioner Silva seconded. The motion passed unanimously.**

The meeting adjourned at approximately 12:45 p.m.

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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2015 FEB 11 PM 3:16

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Honolulu Ethics Commission  
February 18, 2015 – 11:30 am  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

- I. CALL TO ORDER
- II. For Action: Request for a Motion to Approve the Minutes of the Open Session of the January 21, 2015 Meeting.
- III. OLD BUSINESS
  - A. Confirming the date and time for the March 18, April 22, and May 20, 2015 meetings and setting a meeting during the week of June 22 – 26, 2015.
- IV. NEW BUSINESS
  - A. For Discussion: Administrative News
    1. Complaints and requests for advice statistics through last month.
    2. Website statistics.
    3. Status of Fiscal Year 2015-2016 Operating Budget.
  - B. For Action: Request for a Motion to Establish a Permitted Interaction Group under HRS Sec. 92-2.5(b)(2) to Present, Discuss or Negotiate with Representatives of the Administration the Decisions of the Ethics Commission Regarding the Salaries of the Associate Legal Counsel and Executive Director/Legal Counsel for Fiscal Years 2015 and 2016 and Other Related Issues.

- C. For Action: Request for a Motion to Approve and Adopt a News Release Policy.
- D. For Action: Request for Formal Advisory Opinion Regarding the Use of City Resources for “Keep Hawaii’s Heroes” Petition

V. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission’s attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Session of January 21, 2015 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8)); and
- B. For Action: Approval of Stipulation to Settle Notice of Alleged Violations of Former City Officer (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8)).

VI. ADJOURNMENT

**Formatted Transcription of the February 18, 2015**

**Honolulu Ethics Commission (EC) Meeting**

Present :

Katy Chen, Esq., Chair, EC  
Michael Lilly, Esq., Vice Chair, EC  
Hon. Riki Amano (ret.), Commissioner, EC  
Hon. Victoria Marks (ret.), Commissioner, EC  
Hon. Allene Suemori (ret.), Commissioner, EC  
Stephen Silva, Commissioner, EC  
Stanford Yuen, Commissioner, EC  
Chuck Totto, Executive Director and Legal Counsel (EDLC), Ethics Commission  
Laurie Wong, Associate Legal Counsel (ALC), Ethics Commission  
Letha De Caires, Investigator, Ethics Commission  
Lisa Parker, Legal Clerk, Ethics Commission  
Geoffrey Kam, Deputy Corporation Counsel  
Carolee Kubo, Director, Department of Human Resources  
Noel Ono, Deputy Director, Department of Human Resources  
Gwynne Inamasu, Department of Human Resources  
Lila Tom, Department of Human Resources  
Jenny Tobin, Department of Human Resources  
Donna Leong, Corporation Counsel  
Ember Shinn, Managing Director  
Ray Soon, Chief of Staff, Office of the Mayor  
Al Frenzel, Member of the Public  
Jack Defeo, Member of the Public  
Patricia Beekman (phonetic), Member of the Public

Transcriber – Laura Okimoto

I. CALL TO ORDER

II. APPROVAL OF MINUTES

**Commissioner Yuen moved to approve the minutes for the January 21, 2015 Meeting. Vice Chair Lilly seconded the vote. All were in favor.**

III. OLD BUSINESS

The following dates and times were confirmed for future meetings:

March 18, 2015  
April 22, 2015  
May 13, 2015  
June 24, 2015

#### IV. NEW BUSINESS

**The Commission moved to enter into Executive session based on Attorney-Client privilege.**

Redacted Discussion during Executive Session.

**Vice Chair Lilly moved to enter into Open session. Commissioner Marks seconded the Motion. Motion was unanimously approved.**

BACK IN OPEN SESSION (Due to the guests present, the agenda items were taken out of order.)

KATY CHEN - proceeding to open session agenda item 4B, request for motion to establish a Permitted Interaction Group under HRS section 92-2.5(b)(2). To present, discuss or negotiate regarding salaries of counsel at the Ethics Commission. At this time, Ms. Shinn, I believe you requested to speak.

EMBER SHINN - I was expecting to speak on item number A3 on the budget.

KATY CHEN - you're correct, so we're on IV, A3.

#### **IV.A.3 – For Discussion: Administrative News Status of Fiscal Year 2015-2016 Operating Budget.**

EMBER SHINN - thank you for allowing me to speak. The reason that I asked to come before you today is to talk about what we've done on the salaries for the Executive Director and the Assistant Legal Counsel is to give you the courtesy of my thoughts on what kinds of decisions, my decision making process. I wasn't sure what the outcome of my analysis would be but I knew that I had to make it by January 30<sup>th</sup> which was the deadline when we close the budget.

When this issue first came to my attention was about September when Mister Totto sent me an email asking me to intercede in a difference of opinion between Corporation Counsel and himself over a salary increase that he had decided to give to the Assistant Legal Counsel. At that time I bumped it over to BFS to look at it and give me some advice on what they thought about some of the issues and they never responded. So it came to a head during the budget process.

The budget process began in about late November and went through December where I met with all the departments and Mr. Totto had the ability like all the departments to present information and appeals about his budget. That's when he made his case about the issues with respect to his salary as well as the Assistant Legal Counsel's salary. There were other issues involving other staff members as well but I didn't feel

that was squarely in front of me and that was something that I asked him to work out between HR and Mr. Totto. That's the background on why I'm here.

My decision ultimately affected the way that you all have made decisions in the past. It's like you come to me to intercede, you ask me to make a decision, I make a decision and it's going to be something that is quite different from the way that you have operated in the past. Because my decision was so different from the way you've operated on salaries in the past, that's why I asked for the courtesy of giving you the benefit of my thought process on this issue.

Initially I sent Mr. Totto an email and then I formalized it in a memo in preparation for today's meeting. When Mr. Totto graciously allowed me to come on the agenda, he asked me to provide him all the details and background information. I provided this memo but a lot of the information that I also relied on was from my discussions with the Human Resources people. And that's why we brought all of our Human Resources people here so that you can ask them questions directly.

From the Corporation Counsel, I relied on her for factual information, not for legal advice. She did not advise me legally. I made all my decisions on my own but I subsequently learned afterwards that she was giving advice also to HR, and that they relied on a lot of the background information and historical information of how the Ethics Commission and the charter provisions that I relied upon had evolved. That information was alluded to me in my discussions with HR but I did not have the benefit of that full analysis until subsequent to my writing the email to Mr. Totto. But they had the benefit of that wisdom in giving me advice as to how the city operated with respect to other people.

The long and the short of it is for the Executive Director's salary, that was a very straight forward analysis, the charter is very clear that the Ethics Commission sets the salary by ordinance of the Executive Director and Chief Legal Counsel. And the ordinance says specifically that that position shall be set at the EM-7 range and EM-7 is excluded managerial. That's very clear. So within that range the Ethics Commission is free to set his salary and the only restriction on that is the same restriction that applies to every single other department in the city and that is that the mayor has the final decision on budget and allotting of funds. The mayor submits his proposed budget, the counsel appropriates the money and the mayor has the final decision making on allotting the money.

That makes sense because there has to be one person with oversight as to everything that's going on in the city. There has to be one person who understands all the financial and fiscal issues that affect every single department in the city. So that is the only caveat. I don't know if that's ever been exercised nor will it ever be exercised. But in the event that you decide to do something crazy and outrageous, which I doubt that would happen, it is obviously the last check and balance in the process.

The analysis on the Assistant Legal Counsel's position was a little bit more challenging for me. Part of it was because of the back and forth, the facts were a little convoluted, there was so much retroactive action and I got hung up on the issue that Mr. Totto brought up during our budget hearings as well as in some of the correspondence that was going back and forth between him and Corp. and then BFS, and perhaps others. And that was the use of salary savings as a means of giving staff raises. So I want to come back to that because in the end that didn't factor in with my analysis but I would like to comment on that.

My analysis was pretty straight forward. I think all of you are attorneys, I'm an attorney and it's like the rule of thumb of statutory construction as you read it, and you interpret it and if there's language that's in another statute that is more specific than the general then the specific controls over the general. So I applied those issues and in the charter it said the Ethics Commission can set the salary of the Executive Director. It can appoint staff. It does not say it can set the salary of staff. It does say that the staff shall be part of the classification plan. It does say that the staff will be exempt from civil service.

In the ordinance it's very consistent with the charter and that also says that the Ethics Commission can appoint staff. Again it is silent on whether or not the commission can set the salaries. So as I understood the history, at least the short history, with respect to this particular position during the Caldwell administration, I did not choose to look back on this although HR did. I chose only to look at the two years of our administration and our decisions cause I can't guess at what people before me did. As I understood it, there were issues, there were actions taken by this commission to provide raises for the Assistant Legal Counsel and I then believe Mr. Totto told me during the budget hearing that he had decided that he had the authority to make the decision on the staff salaries and so he made the decision effective for July 1, 2014. Subsequently he asked for that ratification of that decision in a commission meeting in October.

Those are the two factors I looked at and in the end I concluded that the specific provision that allows the mayor under charter provision 3-115, 6-1103, 6-1109, to set the salaries to establish a classification and pay plan controlled in the absence of language, charter or ordinance that gave the Ethics Commission the authority to set salaries for staff. Therefore, the mayor's directive was the controlling document that would determine the salary for the commission staff.

KATY CHEN - what about the specific language in the Ethics Commission's rules and procedure, rule 1.13D which says the legal counsel can fix the compensation of the staff.

EMBER SHINN - I suspect that I didn't look at that.

KATY CHEN - and that seems specific, very specific.

MICHAEL LILLY - and that has force of effect law.

EMBER SHINN - no, I don't think so, I don't think it can trump the charter.

MICHAEL LILLY - if it's consistent with the charter.

EMBER SHINN - it is not consistent with the charter, commissioner.

KATY CHEN - it says in absence of the laws what you just said with the charter so if this is specific...

EMBER SHINN - no, because the charter specifically gives the mayor the authority to establish salaries and the classification plan. I do not think an administrative rule can ever trump a charter provision.

MICHAEL LILLY - I have a email from DHR in November 2010, from Jenny Tobin (phonetic) to Mr. Totto and copy to the director. It's for the salary for the associate legal director stating the commission may provide a change in pay whenever it elects to provided the new pay is on one step in the SR-23 range. That we have the authority to do that.

EMBER SHINN - I can't respond to that. I said can only do -- look at this, what I looked at for this administration and when called upon to make this decision, that is the decision I made. I don't believe that administrative rule can ever trump the charter provision.

MICHAEL LILLY - administrative rule is considered a rule of law that's been properly enacted. Donna Leong was here in November 2013 before this commission and she said in response to a question that I asked about our authority with respect to the associate legal counsel salaries, she said that we were empowered, that she totally understands that under the charter that Corporation Counsel, the chief legal officer for the city that the commission is empowered to set the director's salary and that we delegate it to the executive director the authority to set the associate legal counsel's salary. And that according to Ms. Leong, she understood that we had that authority under the charter.

EMBER SHINN - with all due respect to Corporation Counsel I disagree. I was managing director at the time and I disagree.

MICHAEL LILLY - but she's the legal officer for the city.

EMBER SHINN - I made the administrative decision because I disagree. I think the charter is very clear.

MICHAEL LILLY - the Corporation Counsel is the chief legal officer of the city, is the one that interprets the law for the city. The city has to rely upon and follow the law as

interpreted by its chief legal officer. And you're saying you disagreeing with Ms. Leong's interpretation of the law.

EMBER SHINN - I don't know what Ms. Leong said in November because I was here in November.

MICHAEL LILLY - It's memorialized in our minutes.

EMBER SHINN - I was here in November and Ms. Leong was I think taking care of her grandchild in November.

MICHAEL LILLY - she was here on November 4, 2013, before this commission.

EMBER SHINN - maybe she can respond to it herself.

MICHAEL LILLY - also Nelson Koyanagi, Director of Budget and Fiscal Services in a memo of September 2013 said we recognize that the salaries of the executive director and associate legal counsel are under the purview of the Ethics Commission. We also asked specifically because your memo states that we couldn't use savings for the salary increases. I got a memo from Ms. Leong in January 2014 that said that we could approve the use of savings for salaries for the executive director and the associate legal counsel.

EMBER SHINN - I made the final decision on budget.

MICHAEL LILLY - I think the Ethics Commission makes the final decision on salaries of its staff.

KATY CHEN - I believe Ms. Leong said she wanted to respond.

DONNA LEONG - In the Fall of 2013 when this whole issue about the salaries of the various staff members of the Ethics Commission was first being discussed, it was my first (inaudible) into the issue. Based on the advice of the people with whom I conferred, it was the best information and best opinion that I had at the time.

Since the Fall of 2013 when I first appeared before this commission, I feel I've become more knowledgeable about the process. I have totally understood that consistent with my comments to the commission at the time, that I was simply implementing the guidelines provided to me by the Department of Budget and Fiscal Services. I've now also come to realize I was also implementing the guidelines provided to me by the Department of Human Resources. Since that time, I've also become more knowledgeable that ultimately it is the mayor who establishes the budget and the positions in the city to support the city services.

So I have looked at Ms. Shinn's memo to Mr. Totto, I have looked at much more carefully the provisions of the charter, the provisions of the ordinance and I asked

former Deputy Corporation Counsel Diane Kawauchi to provide me with the in depth analysis with regard to the charter's directives about the salaries of the Ethics Commission because this issue has been such a hot issue since the Fall of 2013.

In response to a recent request by the Department of Human Resources, I've issued an opinion to DHR Director Carolee Kubo that sets out the ultimate authority of the mayor, acting through his appointees to implement the operating budget for the city. Based on all of that charter commission history, which will include an analysis of the various request made by Executive Director Totto, throughout the course of the past several years with regard to the salaries of the Ethics Commission staff, I believe that Ms. Shinn's conclusion is correct, that my opinion provided in the Fall of 2013 is incorrect with regard to the salaries and I do not dispute Ms. Shinn's analysis at this time.

RIKI AMANO - Ms. Leong, may I ask you if there are any other departments or commissions that are having similar struggles?

EMBER SHINN - may I respond? for purposes of this analysis I did look at other comparable entities. As you know, in the city government the Police Commission, the Fire Commission, the Liquor Commission, the Neighborhood Board Commission and the Ethics Commission. The Police Commission does not have the authority to set the salary of the police chief and the deputies because that's set by the salary commission. The staff of the Police Commission are civil service.

The Fire Commission is similar. They do not have the authority to set the salary of the chief or the deputies because that's set by the salary commission. They have a half-time secretary but that is contract position.

The Neighborhood Board Commission is a mayor's appointee and they have no authority to hire or appoint the staff and that's set by charter. They don't have the authority to set the salary.

The Liquor Commission was an anomaly because that commission does set the salary of the director and their deputy director. When we researched it, I discovered the authority for that commission is set by state law, HRS. That specifically provides the Liquor Commission with the authority to set the salaries for the two positions. The rest of the staff of the Liquor Commission are civil service, and that is administratively assigned to BFS.

Those are the other commissions that I looked at and so this is the only one that can set the salary of their executive director and as you know the charter specifically says they may appoint staff. But it's silent on whether they have the authority to set salary.

MICHAEL LILLY - Ms. Leong, you sent us a memo last September which was part of the basis on which we took action with respect to salaries. It wasn't just 2013, it was into the last Fall of 2014 that we were relying upon emails, memos from Budget and Finance, DHR and you. But end of September none of the issues regarding the salaries

and the increases that we approved were ever issued. Everybody was aware of what we were allowed to do and what we ultimately did (inaudible). And that was in part on memos we got from you. It was also predicated on our own rules that were (inaudible) pursuant to rule making. Until that rule is ruled invalid, it has a force in effect of law.

EMBER SHINN - Vice Chair, I have to take responsibility ultimately for all the confusion, misdirection and all of the different conflicting responses that we've given. I can't explain it nor defend it because they were conflicting and I total agree that we've muddled through all of this.

When Mr. Totto came to me in September I wanted to punt on this as well because no one wants to deal with an unpleasant issue of people's salaries. This is actually the only one where I've actually had to deal with someone's salary because we have ten thousand employees in the city and we have a two billion dollar budget and everything is pretty much set by other kinds of rules. And you are the anomaly.

So in September I punted it over to BFS because I didn't even know at that point what you made. I didn't know what Mr. Totto or the assistant legal counsel made. I said tell me, give me their payroll history, figure this out and advise me. It just didn't happen before the budget session began in December when I met with them. So I apologize for that. I have to take the responsibility, had I stepped in definitively at the appropriate time when all of these things were percolating and actually read the charter, read the ordinance like I did in January in order to make this final decision and to try and make the right decision for once and for all and moving forward so that we wouldn't have any more of this controversy. I really tried to make the right definitive decision and to move forward. And so I take that total responsibility for not stepping in at an earlier time.

MICHAEL LILLY - you're saying conflicting opinions. We don't have any conflicting opinions until we got your memo. Up till then, the memos from the Corporation Counsel, DHR, Budget and Finance confirmed that we have that authority. So it wasn't any conflicting authority. We acted accordingly with our own rules to approve the salary increases and we are an anomaly. We're an anomaly because we're independent agency.

The reason that we're independent agency is because we can't be subject to the kinds of control that other agencies are subject to because of the kind of sensitive things that we do, investigating ethics violations by employees of the city. That's why I say we have the independent authority to set salaries as it said in our rules so that we are independent.

Now, is that a runaway authority? no. Obviously we have to go within certain ranges which we followed. Mr. Totto worked with Corporation Counsel, Budget and Finance and DHR to come up with the appropriate salaries for the staff and then we approved it. It's not a wild decision by the commission, it was well grounded in looking at salaries of comparable people in other departments. It's not out of the ball park, its right within the range and it was a decision that we made.

Back on my point, the reason we have this authority is so that we're not subject to the kinds of control the other agencies have to be subject to because we have to be independent because of the nature of the investigations we undertake.

EMBER SHINN - Mr. Lilly, I have a healthy respect for the work and the mission of the Ethics Commission and you do have to be independent to be able to conduct the investigatory charge, that part of your mission. You cannot be independent for purposes of budget and fiscal.

The Ethics Commission of all groups, you are charged with looking at government corruption. Government corruption festers when there is no check and balance system, unfettered authority. You may call it independent authority but I call it unfettered authority, only leads to the potential of government corruption. Of all things the Ethics Commission needs to understand that.

The fiscal part of the, the budget part of it, the salary part of it is specifically reserved to the mayor. The only exception was the charter provision that allowed the executive director's salary to be set by the commission. But everything else has to be part of rules, there has to be a check and balance system. I'm not saying that you will act crazy, but I am saying that for the other staff members, there has to be a check and balance system. Because to use salary savings, which we've never allowed in this administration the use of salary savings, allows your administrative people to make decisions on using their budget in a way that it was not intended.

We budget salaries based upon what the expected salaries for the positions that you've asked for. You've asked for positions which we agreed to based upon your staffing needs and of course no one ever gets all they want. And then to use salary savings from unfilled positions in the face of your concerns that you don't have enough staff would allow for that type of unfettered decision making. Because then you could use salary savings for purposes of giving people who are charged with the responsibility of filling vacancies that authority. I just don't think that we can do that. We don't allow salary savings to be used in that capacity.

MICHAEL LILLY - we didn't do it in a vacuum, Ms. Shinn. Donna Leong wrote a memo to Chuck in January 2014, copied to you, Nelson Koyanagi, Carolee Kubo, Jennifer Tobin, Lyla Tom and Pamela Fong. So every person that would have a say in what budgeting, what we can do with our budget saying that the commission could use salary savings (\$5,697) to further increase the EDLC and ALC salaries for fiscal year 2014.

STEPHEN SILVA - we're trashing this stuff around for months. What are we talking about dollar wise where the difference in pay is. Look at all the staff we have, look at all the paper work we have, we spent more already on this problem than the raise in salary compensate. Logically, we're wasting a lot of time on not only four thousand dollars. Is it worth it? It's a waste of time and effort.

VICTORIA MARKS - why wasn't the executive director for the Ethics Commission included in the salary commission employees.

EMBER SHINN - historically why wasn't it, I don't have the answer to that.

VICTORIA MARKS - my guess is because this commission set the salary for its executive director.

DONNA LEONG - historically when you go back when I was first was with the city, 35 years ago, the legal counsel to the Ethics Commission (before they became independent), initially that legal counsel was a special deputy corporation counsel. The salary commission establishes my salary, the first deputy's salary, and then wages for the deputies.

RIKI AMANO - Ms. Shinn, do you have any recommendations for how we can go forward now?

EMBER SHINN - we made the decision from an administrative standpoint. Obviously not everyone is happy with that decision. It's really the assistant legal counsel's position that's at issue. Part of it was the issue as to what that position's salary would be in the FY16 budget. So I've made that decision that that will be covered under section 4 of the mayor's directive which covers exempt, excluded employees. And that position will be treated in the same way so the next salary increase for that position is in parity with bargaining unit 13, and that will be in January where they're entitled to a 3.5 percent increase. So everyone in that category 4 of the mayor's directive will be treated in the same way.

That is how we budgeted, there is no decision the way I've interpreted the charter, the ordinance and the mayor's directive, there's no decision for the commission to make because it'll be automatically made in accordance with the mayor's directive until the charter is amended to address (inaudible).

With respect to the executive director's salary, we actually made his salary retroactive to when it was given. So our recommendation was to raise salary because you actually made the appropriate decision way back when and it just never got into the computer and it was never processed. That was a mistake on our part and it should've been done. So I directed his salary will get retroactive to July 1, 2014 and going forward it will be up to you. Hopefully you will make the decision relatively quickly before the budget of July 1 begins.

We have built in to the budget a four percent increase which is about the amount of money that we are putting in for excluded managerial employees into our budget and it does not mean that that position will get that raise. It will be up to you to make that determination as to what raise you want to give the executive director. And if you gave the executive director more than four percent and if it was still reasonable, then the money would have to come out of your budget (salary money or expense money).

DONNA LEONG - but the caution that we Corp. has provided to the executive director is that if you use salary savings, because you do not fill the investigator's position, then should you need those funds for whatever comes up later in the fiscal year, you will not have it available to you to fund that investigation. That would be my only caution.

Just to correct a little bit of what Ms. Shinn said, and that is the executive director asked Corp. not to fund his raise until the associate legal counsel's raise had been funded. Which is why his raise had not been implemented.

ALLENE SUEMORI - are we not discussing about a philosophical perspective on budget and government and what's independent and what's unfettered and is it the position that the mayor may or may not have limited control over his budget with the Ethics Commission?

DONNA LEONG - Commissioner Suemori, so yes, ultimately that is the whole point of this discussion. And the memo that Commissioner Lilly refers to which was dated September or October, which was distributed to the commissioners, and again it's very bad memo with a lot of attachments. We've looked at the history of the charter provisions with regard to the Ethics Commission.

It is entirely about the mayor's power and authority for ultimate control over the funding of the city's business and (inaudible) through the budget ordinances and implementation of that budget ordinance which necessarily means the amount of money that each agency, each commission gets for its business and also the controls that the mayor sets forth for the agencies through the mayor's directive with regard to the budget. It is ultimately about that and I totally understand the constitutional mandate for the independence of the Ethics Commission and by taking the actions that the mayor takes with regard to the budget and implementation thereof it is not an attempt in any way to control that independence of the commission. It is simply recognition of the structure of government and the ultimate responsibility of the mayor to control the city (inaudible).

STEPHEN SILVA - I'm not a lawyer, just a simple minded tax payer. It bothered me to hear this kind of comments at the highest level in the city government where we had acted in good faith, you had made comments or written some (inaudible) and you refer to your statement because of new found information. That applies to everything. Tomorrow you're going to have new found information. So where is the trust, there's some credibility problem here and then maybe dealing with integrity also. Because now what you're saying is today you decided on this, tomorrow you may have new information and we may approach it from a different direction. So that bothers me.

**IV.B. – For Action: Request for a Motion to Establish a Permitted Interaction Group under HRS Sec. 92-2.5(b)(2)**

KATY CHEN - moving onto IV B on the agenda. For action: request for **motion to establish a Permitted Interaction Group (PIG)**. Mr. Tutto, do you want to comment on that?

CHUCK TOTTO - basically the **request coming from staff was to set a permitted interaction group of fewer commissioners in order to deal with this particular issue that we've just spent a fair amount of time on**. The two aspects are the salary of the ALC and the salary of the EDLC. Also it is important to review the authority of the Ethics Commission to set salaries for its legal staff. The purpose of putting together a PIG, is in order to allow people to have discussions with members of the administration. Whether that's the former managing director Ms. Shinn or new managing director of the mayor.

The purpose was to weigh some of the problems that have been discussed and see if some discussion could occur as opposed to simply having Ms. Shinn state what her position is and the commission state what its position is. So there is a draft of the resolution which basically lays out that this would be a group that could present, discuss or negotiate with representatives of the administration regarding the authority of the commission. Not only does it include the items that we've talked about so far and the history, but it also looks at what may be a longer term issue, which is to develop a solution to the pay disparity between commission attorneys and the deputies at Corp. and at the Prosecuting Attorney's office. And now I understand that also includes the office of Council Services, so that the commission can establish salaries that will be attracted to keeping good legal team on board.

One of the things we didn't mention was the problem that if we make the associate legal counsel an SR-26 just like any other person who's in civil service, and she's not a civil servant, she does not have the protections of civil service. She is in without a bargaining unit contract or anything that protects her. So she has the lower salary that is given to an SR-26 and no protection that an SR-26 would have.

The difficulty with that is, the commission may be aware, is that you end up having not only the disparity that we've already seen between the Ethics Commission attorneys and the attorneys at Corporation Counsel or the Prosecutor's Office, but then we have even a further one which is illustrated by the fact that the highest salary an SR-26 attorney can earn is about \$85,000, and the salary commission has said an attorney with ten years relevant experience at Corporation Counsel would be entitled to \$98,800. Now I'm not suggesting that's what they get paid, but you can see that there is a huge disparity.

If our process or our structure ends up being the lowest one on the totem pole between the Attorney General's office, Corporation Counsel and other government lawyers, we will end up in a situation where the associate legal counsel will be a revolving door. The pay will be so low that only brand new attorneys or first year attorneys who want to get a foot in the door for government lawyering will come in and they'll need a lot of training. That will take more time away from the EDLC's job, ultimately this will cause the door to

revolve as soon as someone who is in government as an ALC sees a better opportunity, which will be many, then they'll be likely to leave.

I don't know if either Corp. or Ms. Shinn want to comment on that but that's the bottom line is to see if we can't come up with some long term and short term resolution of the various issues that's been brought up.

EMBER SHINN - I think there's two facets of this, one is process and that's what my decision was based on process, and that's the mayor's directive governing salary. The charter and ordinance are very clear that says that the staff positions are part of the classification plan. The first one is process and that's what I looked at. What process determines what the salary will be for the ALC position.

The second part of it is whether the classification of this position is appropriate. I specifically said in my memo that I did not look at that because to the extent that Mr. Totto's legitimate concern, every responsible administrator wants to hold staff and keep and recruit good staff, has exactly the same concern. I hear it all the time from every one of my directors. I can't pay this person enough money to keep good staff because our salaries are so low. So it's a totally legitimate concern. That classification issue is something that has to be determined because salary is connected to classification and the charter is really clear that all staff positions in the commission are part of the classification. I want HR to respond to this because I've consulted with them on this and they are better equipped to address the classification aspect of it.

VICTORIA MARKS - the issue was establishing a PIG.

MICHAEL LILLY - I would like to have two motions. **I'd like a motion that the commission reaffirms its position that it has the authority to set salaries and set forth in its adopted rules. We disagree with the actions taken.**

Secondly, **that we move to establish this PIG.** So one, we voice our position on what has happened and secondly then we can undertake this PIG to do whatever it might be able to do. That is my recommendation.

EMBER SHINN - the administration people are happy to meet with the commission without being part of the PIG. We're talking about process and classification. We're not talking about people.

MICHAEL LILLY - the PIG is just a way in which you can have a smaller group, sit down and discuss the issues.

KATY CHEN - are you making a formal motion then?

**MICHAEL LILLY - I move that we reaffirm, that we have the authority under our rules and under the authority that we can provide up until now and past practice to set salaries. And we disagree with the action taken.**

KATY CHEN - let's vote on that first. All in favor? Is that four in favor? Or...

LAURIE WONG - we do a roll call?

KATY CHEN - we need to clarify. Do you want to make your motion louder?

**MICHAEL LILLY - I move that the commission reaffirm its decisions on salaries, that its position is that it has the authority under the advice we've been given, our past practice and our adopted rules to set salaries.**

RIKI AMANO - I'd like to call for discussion. I have looked at and I don't feel comfortable supporting a motion like that without my own eyes upon the actual language. So if it comes to the vote, I'm going to go against it.

ALLENE SUEMORI - me too, because I'm just definitely not ready to vote on that. But (inaudible) until I'm ready. You guys are way ahead so this is the way it is. You've heard my side of my question.

VICTORIA MARKS - I wouldn't vote against but I would abstain.

KATY CHEN - so you put forth the motion, it was seconded. So we're in the middle of taking a vote.

VICTORIA MARKS - we're in the middle of discussion.

KATY CHEN - so we should take a vote, all in favor, I...

**LAURIE WONG - can we do a roll call?**

**MICHAEL LILLY - so four in favor, two no's and one abstain.**

**LAURIE WONG - Vice Chair Lilly, who else?**

**KATY CHEN - right, and Chair Chen, Commissioner Yuen and Commissioner Silva are "Ayes."**

**ALLENE SUEMORI - I vote no.**

**LAURIE WONG - Commissioner Marks abstains.**

**KATY CHEN - then there is the second motion to establish a Permitted Interaction Group.**

RIKI AMANO - I would like to hear Ms. Shinn's point of view.

EMBER SHINN - I would suggest that you ask the HR people to review this position for classification purposes before you find the necessity for PIG. Could very well be that they would agree that this is warranted at a higher level of classification than it is now. As far as I know, unless I'm wrong, has this been done? Do you know?

LILA TOM - we classified the position.

EMBER SHINN - initially in 2010.

LILA TOM - Lila Tom, Division Chief of Classification and DHR, when the position was created in 2010, I did assess the classification. Per charter we have to compare it with other civil service classes. That's what the classified plan is. In doing so we compared it -- we didn't have very many classes within the City and County to compare with so primarily it was classes in the Judiciary that we found that were the most comparable. At that time we found that the SR-26 level was appropriate. We just determined the SR.

As far as the rates attached to the (inaudible) that is all decided through collective bargaining. In relative terms of complexity we found that it was most comparable to attorney type positions in the Judiciary that were classified an SR-26.

Should there be significant changes particularly in the responsibilities and we'll look at it pretty much in scope, nature, complexity. If there have been significant changes a revised position description can be done and we would then again review it and classify it and see if it's still appropriate at the SR-26 level.

MICHAEL LILLY - what kind of timing are we talking about would it take to get to the end of that decision.

LILA TOM - the classification review? It depends on how long it would take to get the position description, granted let's say if it comes in within a week, I would say give us a month to do a thorough review because often times it will include talking to people and auditing people, and particularly it's another jurisdiction that we would compare with.

ALLENE SUEMORI - can we defer this for two months?

VICTORIA MARKS - we're in discussion. I would do things more quickly than not. You also have fiscal year budget coming up.

CHUCK TOTTO - also, did you request to do that back in mid-November for the ALC position? We were in meeting with Mr. Ono, Ms. Kubo, yourself and my understanding was that...

LILA TOM - I didn't get an official revised position description to review.

CHUCK TOTTO - in fact, you didn't ask for one. You simply said that you folks were going to start taking a look at that and to see whether or not the SR-26 position was appropriate.

LILA TOM - what I would look at then would be what we have on file as far as what the official position description was. And in terms of that we thought it was appropriate.

CHUCK TOTTO - then why didn't you let us know because that was the other thing you were going to do is to let us know. I'm sorry to call you on this but...

LILA TOM - oh, no, but I wasn't aware that it was an official request to reply. The only way that we give a formal decision is if we get a formal request which comes out through Corporation Counsel to us.

MICHAEL LILLY - so you're saying you have to do a formal request to you to reclassify the ALC position.

LILA TOM - yes, that's the process we have (inaudible).

VICTORIA MARKS - can you take this as a formal request.

NOEL ONO - can I ask for clarification what meeting you talking about. I'm not...

CHUCK TOTTO - November meeting at Corporation Counsel's large conference room with you...

NOEL ONO - that's the one we were discussing something else though and this came up. I just want to clarify which meeting. Chuck, I'm not attacking, I'm just asking you what meeting so it's clear in our mind where we were and what the discussion was about.

CHUCK TOTTO - but didn't you folks have the ball on your court?

NOEL ONO - it starts with a revised job description. We went through this for the investigator. Did you submit a revised job description reflecting what the changes our in the job we can review it. Nothing's changed, that's the process.

MICHAEL LILLY - as I understand it's not just us asking you here. You need to have the back up.

LILA TOM - well, it starts with that official document which is a revised position description. That's the process.

NOEL ONO - so Chuck, you can go ahead and send us a revised and we'll give it top priority. If we dropped the ball we apologize. I thought since you've (inaudible) for a long time you were aware of the process.

VICTORIA MARKS - to ask you to do a review, can you consider this a specific request and do you need anything else from the commission or commission staff to get that started?

DONNA LEONG - may I first say that the person who was speaking behind me is Deputy Director of Department of Human Resources Noel Ono. And I would like to respond by saying that Corporation Counsel's administrative services officer and I spent a lot of time supporting your executive director in a lot of different ways.

Most recently, one of them was to reclassify your investigator position from an Investigator II to III. Mr. Tutto knows that what is required in order for that reclassification consideration, which is what Ms. Tom is referring to and what Deputy Director Ono is referring to is a revised position description based upon which Ms. Tom can conduct the review and diligence that she is just mentioning which requires conversations with others and audit and so forth and so on. Which is why it's way beyond my pay scale in so far as knowledge about HR pay classification, etc...

So, the first order of business and for Corp. I will take your request as the official request, however, for the record we require a revised position description from Mr. Tutto.

KATY CHEN - so the motion to establish a Permitted Interaction Group, it talks about and discussing and negotiating with administration regarding your salaries and other related issues, it sounds like this would fall under the purview of the Permitted Interaction Group as stated here in this motion.

LILA TOM - we just require the revised position description and then it can get the whole ball rolling and then we basically turn it over to DHR and they do their thing because they are the experts. That's one of the key things that I've learned since the Fall of 2013. I'm just implementing...

ALLENE SUEMORI - Commissioner Marks, wouldn't you think that we get through faster if we did (?) have PIG and just let them do their job and come back. And maybe we'll tell them to come back in a month. Why go through a PIG just to get to the same goal that we're trying to get to this way. So let's defer the motion...

VICTORIA MARKS - I didn't make the motion.

MICHAEL LILLY - would a PIG slow it up?

ALLENE SUEMORI - it seems to me that while we're waiting for the PIG, they're going to stop. So if want to stop them, up to you.

KATY CHEN - I disagree, I don't think a PIG would stop them. What I'm trying to say is it seems like that's the topic within the PIG. And it seems like the PIG actually has topics beyond just that particular issue. That's what my understanding how the PIG is. My understanding of what is being proposed here is beyond just that particular issue.

CHUCK TOTTO - I think you might be assuming that there's going to be some change or position from DHR and the administration. But if there isn't and they say no, SR-26 is the right place for this...

ALLENE SUEMORI - then it would be the next step would be a PIG.

CHUCK TOTTO - I think then you've lost a month.

KATY CHEN - I also think that my understanding of this proposed PIG is that it's more than just this particular issue, is that not correct?

CHUCK TOTTO - yes, the other thing is to look at the overall view. Commissioner Marks hit the nail on the head, salary commission. I don't know why we weren't included in the salary commission either. But maybe that's more appropriate place. Unfortunately, that will require a charter amendment according Corporation Counsel and I agree with them. A lot of these issues would dissipate because of that but that is one of the long standing issues.

KATY CHEN - so there's more than just this issue. So for that reasons, I just want to make sure that we're clear on it, if we were to establish a PIG, we're just discussing other things as well.

RIKI AMANO - I think I heard Ms. Shinn say we don't need something like this to open up discussions about broad issues relating to salary and I think that would be an appropriate way to proceed quickly. I also think that this particular drafting sets out too much detail. I think if you're going to set a group of people out there and talk about these things that I would rather have it more open ended so that everything can be discussed and all alternatives can be reviewed. So I wouldn't support this as it is currently (inaudible).

CHUCK TOTTO - I tried to make it specific so that the issues would be clear. It does say the group may take any action reasonable to present, discuss or negotiate the salary issues described above. Number four talks about the more general or generic issue regarding salary commission or other options. The purpose of making it specific was so everybody knew...

VICTORIA MARKS - I have a general question. Can any one of these commissioners on the Ethics Commission go and talk to HR about options, go and talk to Budget and

Finance, talk to Ms. Shinn, Managing Director? Can two of us go do that or is that a violation of such.

GEOFFREY KAM - two would be the problem. To some extent you can talk one on one but at this point, given the situation it might actually be the safest way for you all to go.

MICHAEL LILLY - if we do a PIG, it can be simultaneous with his request for a classification change. You wouldn't hold it up pending the PIG?

LILA TOM - my action would be just dependent on when I receive a revised PD.

MICHAEL LILLY - because let's say he submits the formal request with the documentation and let's say for argument sake at the end of that in a month she gets a step up SR and that may actually eliminate a good part of the PIG, then that's all I would do. We might have some issues in the PIG but it would eliminate some portion of it. But it wouldn't hold up your review of the request.

LILA TOM - no.

MICHAEL LILLY - so the PIG is a way in which we can have meetings and not (inaudible).

GEOFFREY KAM - right, it's something less than a full meeting.

NOEL ONO - just so that you guys understand how this classification system work...I don't want the commission to have certain expectations that something's going to happen. For Lila's group to make any change in the classification, essentially Mr. Totto is going to submit a position description that reflects a change in duties, change in complexity or that kind of thing. If the position description does not reflect that, our decision is going to be no change in the SR-26. That's the parameter we have to work under.

Chuck is going to have to show that there's been a substantive change in the job.

LILA TOM - she's an associate legal counsel, we would look at a new class...

NOEL ONO - so we have to see something that breaks her out of her existing classification. Without that, then it's going to come back no change. And that's how it is for every classification or PD that comes before us. So I wanted you to understand that that's how it's going to work. We can give it a priority, we'll ask them to expedite it as quickly as possible and we apologize, Chuck, if you were under the misunderstanding that (inaudible). It starts with the revised position description. It has to come in, we cannot take any action. We can talk informally but unless something officially comes into Lila's group, they can't move on it.

KATY CHEN - whatever the decision of classification, it is highly unlikely that it would be subject to negotiations anyway, right? it's unlikely that the mayor or mayor's representative will...

VICTORIA MARKS - it's a classification decision.

KATY CHEN - right, If we get into the business of second guessing HR, we run into a whole mess of trouble.

CAROLEE KUBO - Chuck sent me a memo and he had some questions about the investigator position and it deals with classification also.

KATY CHEN - if you can please just respond to Mr. Totto directly on that. I don't think that's relevant to this discussion.

NOEL ONO - this material is important that you review because in here it addresses some of the concerns and issues that Ms. Shinn and Ms. Leong have raised regarding the bigger problem. You all need to look at this because this address not only the investigator situation but also matter of whether Ethics has the right to determine salary (inaudible).

KATY CHEN - right now we're having a discussion about whether to establish this FIG. So I understand that there's people waiting so we need to move forward.

DONNA LEONG - would it be okay for DHR to just submit their document to you for consideration so that they can present their concerns. I think that's what you're asking, and it deals with classification.

CAROLEE KUBO - of the investigator, yes. So it's all built into the Ethics Commission and we have some documents with some historical information for all of you so you see the whole picture.

KATY CHEN - yes, you can submit it. Is there any further discussion on establishing a FIG.

RIKI AMANO - in view of Mr. Kam's comments, I will support this entity, this group, but I would **ask that we amend the (inaudible) to exclude all the specifics so that the entity can go forward and talk about all the issues. I don't think it's appropriate to put in all the details into the resolution.**

VICTORIA MARKS - like the numbers.

RIKI AMANO - yes, if you could just (inaudible) with the last (inaudible) for **where it says be it resolve, and regarding the authority of the commission to set the salaries and other (inaudible) of the commissions, associate legal counsel and**

executive director of legal counsel period. And then you go right down to (inaudible) further resolve. Just exclude all the details.

MICHAEL LILLY - I'm happy to amend it to be consistent with what the judge (inaudible).

KATY CHEN - all in favor.

Unanimous – Aye.

KATY CHEN - so now we'll make another motion based on the amendment. All in favor.

Unanimous – Aye.

KATY CHEN - that was unanimous.

RIKI AMANO - I want to thank all of the counties HR folks and Ms. Leong and particularly Ms. Shinn for coming here to the commission. It clarified a lot (inaudible) but it also demonstrates a willingness to try to work with us. I hope that you got the same in return because that's what we want. We all want the same thing. Also we want a healthy and strong Ethics Commission which will help everyone.

KATY CHEN - moving on to item 4.

**IV.D – For Action: Request for Formal Advisory Opinion Regarding the Use of City Resources for “Keep Hawaii’s Heroes” Petition**

KATY CHEN - (inaudible) fact that there are people waiting to speak with us, I'm going to move to item number 4D, request for formal advisory opinion regarding the use of city resources for Keep Hawaii's Heroes Petition.

LAURIE WONG - so I did submit an attorney/client privilege document. If you folks have any questions about it, if you want to discuss the (inaudible) issues in that memo we can go into executive session. If you have no questions, we have several speakers, a Mr. Al Frenzel is here. He requested the formal advisory opinion. I believe there's other members of his group here and also Mr. Ray Soon is here representing the Office of the Mayor.

AL FRENZEL - the issue here that I have in regards to the mayor's use of city resources has to do with whether or not the Hawaii's Heroes program with the chamber of commerce is in fact a community wide benefit. Because I think that's what the decision relies on whether its community wide benefit. To me that term is self-explanatory.

When I throw a net over the community and it encompasses most of the community, maybe a couple fish sneak out of the net, that's okay. But generally speaking the wide

net would include the bulk of the community. I would submit that Keep Hawaii's Heroes program was not for the benefit of the whole community, if the mayor had just spent a little bit more time looking at the issue.

I want to talk about one of the primary reasons the Chamber of Commerce, being a business oriented entity whose sponsored this drive is for financial reasons. I want to talk about some of the financial reasons why I don't think this is a community benefit.

First of all, I want to use the chambers numbers, they've thrown out 14.7 billion is the contribution of the military and implied that that is part of the Hawaii's Heroes program. But in fact, in reality this is the totally DOD contribution and the Army's contribution is very small, only 1.3 billion. Even the chamber will agree and they use these numbers that only 16% of this 1.3 million (phonetic) actually gets spent in the local economy. So the Chamber of Commerce's website would brag that 208 million would be spent locally and that the City and County receives 9 million in GET. That's not a lot to brag about. 9 million in GET is pocket change.

The chamber wouldn't even argue that this 208 gets spent on a multiplier factor. For fairness, the 208 is real money, it's not small potatoes. But it's not 1.3 which is what the mayor and other people will throw around. And it's definitely not the 14.7. So that's what I call the green or the good part of the Hawaii's Heroes program.

If I had gone to the mayor said, Mr. Mayor, I can take 5.1% of the Oahu population and have them disappear, and that means they won't be on our city streets, they won't be using our schools, they won't be using our parks and our city and state services, and say 49,000 people are just going to disappear and they're not going to wind up on the employment lines. These 49,000 people don't pay Hawaii State taxes. And all these people that live on base, which is 38,000 of them don't pay property taxes, and they don't contribute to the GET. So I can take 5.1% of the population and save all those city and state county services and they don't even vote locally. So you're not even losing voters.

If I took that option to the mayor and said that I could that, he'd probably hug me and say that's a miracle. But the fact that it's associated with the Chamber of Commerce and the Army campaign makes it so much different. I'm not coming from an anti-Army position, I'm retired Army Colonel 27 years. I see this as a good thing for the Army to not be on Oahu because they have to downsize. So when I look strategically across United States where they can downsize, this is the best place.

So my issue isn't about anti-Army or we're not supporting the Army if we don't support Keep Hawaii's Heroes. So let's talk about the negative aspect...

MICHAEL LILLY - the issue for this commission is whether the mayor's use of city funds would somehow violate some ethical rule or law or ordinance or charter, something like that. Whether or not your position has merit on the facts, that's not an issue for this commission.

The question for us is and which what I would ask you is what ethical rule, law or ordinance would say that the mayor can't do that. Because that's the only thing that we could pass on.

AL FRENZEL - that's what I brought up at the beginning is that the only issue that the mayor could use to justify using City and County resources for a private endeavor is that a decision was made based on legislation that this falls within this campaign falls in a community wide benefit.

So I'm arguing that the issue is not community wide benefit. And I've discussed what the positive aspects of the campaign are but I want to discuss the negative aspects of the campaign to illustrate why not everybody in the community that we threw this wide net across actually benefit.

I'd like to go from the standpoint of City and County and State government taxes. Remember, this is a potential opportunity if 5.1% of Oahu's population to return to the mainland. Well, if you take what it cost to fund 5.1% of the population in just City and County and State services, that's 539 million dollars, that's real money. That's also subject to a multiplier effect. If you ever take money out of the economy through taxes, you're taking money that can be spent over and over and over again. So it's much more than 539. And if you talk about the city's 2 billion dollar budget and you take 5.1% of that budget away, that's a 110 million dollars that we spend on people that live here that remember, don't pay state taxes, don't pay property taxes, don't pay much GET, etc...

So total in government services they cost us 649 million dollars without reimbursement. The Department of Education's numbers will tell you, if you look at the website that 28,000 Department of Defense students are in Hawaii's DOE school. 28,000 federal students. Remember, they're not paying state income taxes, the majority of them. Yet it cost \$13,000 per year per student to educate them. Now the federal government recognizes that and they give each one of the states a little bit of money, they call it impact aide.

Of the 364 million it cost us to train the military's and federal government's children, the Feds give us 41 million. Leaving you and I, tax payers, to pay for the balance of that cost. It's not cheap to send people to school in Hawaii and we are subsidizing it as Oahu citizens and state citizens.

So if the Army (inaudible) that only contributes 9 million in GET were to disappear, we would save 126 million alone in what we spend just to education these students in our schools. I'm not denying that they shouldn't get the education, I would argue that there should be more of an impact aide figure.

My argument overall is that there are cost to the Army being here and when you throw the net over the community and you look at the good and the bad financially, it is not a community wide benefit.

And finally if you look at what the people believe, because you have to ask the opinion of the people whether or not the Army is a benefit. Two questions were posed in June 30<sup>th</sup> to the Star Advertiser and then on February 15<sup>th</sup> of the Star Advertiser. It had to do with the public opinion on “are you happy that the Army’s here”. Even one question alleges the 1.4 billion dollars that I mentioned earlier that isn’t even a true number.

As you can see on both questions, at least a third of the population that reads the Star Advertiser in Hawaii aren’t that enamored with having the Army here and see that there’s some benefits to that. So I would use this as further argument that the mayor’s decision to use the community wide benefit clause in legislation to allow government resources to be used for private purposes is unethical.

RAY SOON - so the issue is at a high enough level that he asked me to come. I’m really not going to argue the points. I think the law is fairly clear. If the mayor determines that it’s a community wide benefit that he has the authority to make the determination. I would say it’s used judiciously over a two year term that we’ve been in office (inaudible) 33 times. It’s for things as narrow (phonetic) as Korean Festival, the Marathon, for a variety of festivals and events that are very specific to a small slice of the population often, does not touch everybody in the entire community but it is clearly a benefit to go.

Having said that, I really think that he had the authority to make that determination. Let me talk a little bit about some of the reasons that he did. I’m not prepared with charts to argue those. We’re talking about losing 20,000 troops, 30,000 members of their families as well. Following 9-11, 10,000 troops at one point were deployed to Afghanistan and Iraq. That had a devastating effect on that community (Schofield). (Inaudible) 75% of the businesses were closed for some period of time. Some for a month, some for a few months and we lost a lot of local businesses in Wahiawa and Mililani area.

The impact is not just to the troops on the base. It’s not just removing those people. It’s removing the business that live off of that population, but it’s also (inaudible) community relationships that have been built. Yes, the military kids go to public schools and the local kids go to those public schools as well. And the families mix and they get to know each other. Lots of stories that one could tell, I don’t have any data or statistics about it but if you look at the pain that occurred during that period, you can see that. And that was only 10,000. That’s wasn’t 50,000 people. The impact on the community surrounding the bases of Mililani, Wahiawa, Kunai, perhaps all the way down to upper Waipahu would be significantly affected. So that’s a large part of why the mayor made that decision. And the number of 1.3 billion dollars impact was not (inaudible) and it came from work that was done by fairly reputable people.

We feel strongly that the effort was justified in that we raised over 42,000 signatures in support of keeping the troops here in Hawaii. I’m not sure how many that the opposition

raised. I would submit that that was a pretty strong endorsement. I'm mainly here more to answer questions.

PATRICIA BEEKMAN (phonetic) - I feel strongly that it was an unethical decision on the mayor's part. He knew about the potential benefits if the Army were to leave. There's a good chance if the Army leaves that the state will get Schofield Barracks and some other military property such as Makua Valley, Kolekole Pass, the Army reservation in Dillingham, the assets on the bases such as the housing which a lot of it is brand new and the facilities there. The list would be a wonderful benefit to the people of Hawaii and yet the mayor, his personal opinion is up to him but he went over the line when he decided to use city facilities. That's just outrageous.

For example he had the city satellite halls with posters there and under the poster it said go to counter 14 or whatever to sign the petition to keep Hawaii's heroes which is the Chamber of Commerce initiative. At Blaisdell Center which is county property they had petition signing. This is how they get a lot of 40,000 signatures. Then the mayor's representative went to all the neighborhood boards and told the people there about the petition and told them that they could sign it. That's about 36 different neighborhood boards. I was astounded that something called Ethics Commission could endorse that and say that it was an ethical decision to allow the mayor to do that, to use city property on a public issue.

JACK DE FEO - I want to reiterate that had we been given the same opportunity that was afforded to the Chamber of Commerce, I'm sure the poll that was run by the Star Advertiser would've been in favor of what we propose as a community wide benefit package for all of us here in state of Hawaii. It was short sighted on the mayor's decision to fund the Chamber of Commerce by not reaching out to the community to say let's give both side pro and con, an opportunity to voice what their concerns are.

It was one sided, it was not an even playing field and absolutely without any reasonable doubt, was a conflict of interest and at the same time a serious ethical violation. We were not afforded the same benefits that the Chamber of Commerce was given when they were funded to run their campaign to support Hawaii's Heroes.

We just primarily on a grass roots effort, we achieve 35% who favor Army downsizing. When the poll of Star Advertiser came out, 65% were in favor. Had we received that funding, I can guarantee you those numbers would be in our favor. Was not a level playing field. The opportunity to voice our concerns we were shut down. Had we done what the Chamber of Commerce did, we would've been arrested.

They were given special privileges, we were excluded and there's no doubt at all whatsoever that the mayor's decision was in ethical violation. When we speak of community wide benefits, just that terminology, words are very specific, and as an attorney, you know that words are very powerful. How you choose to use those words when you mention community wide, it's inclusive. The opposite took place.

I'm a member of the community. The majority of us who live here are members of the community. Only Wahiawa was given special treatment. Why? I'll leave you with that, thank you.

KATY CHEN - thank you, is there anyone else? At this time I think we should move into executive session.

CHUCK TOTTO - would that be in order to discuss the legal memorandum from the associate legal counsel?

**KATY CHEN - yes. Could I have a motion to move into Executive Session? May I have a second.**

**Commissioner Yuen moved to enter into Executive Session. Commissioner Silva seconded the Motion. All were in favor.**

LAURIE WONG - will everyone who has opinions in regard to item 4D will you be sticking around?

RAY SOON - if we're needed.

LAURIE WONG - there might be additional factual questions.

Chair Katy Chen left the meeting at approximately 2:10 pm.

Executive Session discussion redacted regarding Items IV.D and V.B.

**Commissioner Silva moved to approve the Settlement Stipulation for Agenda Item V.B. Commissioner Yuen seconded the motion. All were in favor.**

**Commissioner Lilly moved to go back into Open Session. Commissioner Marks seconded the Motion. All were in favor.**

MICHAEL LILLY - all I have to do is report that **in executive session we approved the stipulation to settle the Notice of Alleged Violations of former city officer under item V.B. of the agenda.**

Do we have a motion on the request for formal advisory opinion regarding use of city resources for Keep Hawaii Heroes petition?

VICTORIA MARKS - do we know if the people left?

CHUCK TOTTO - they're not here.

MICHAEL LILLY - do we have a motion?

**Commissioner Silva moved to approve formal advisory opinion regarding use of city resources for Keep Hawaii Heroes petition. Commissioner Amano seconded the Motion. All were in favor.**

VICTORIA MARKS - we should have the record also reflect that Commissioner Suemori had to leave.

CHUCK TOTTO - that should be noted at the time she left (1:30 pm).

**VICTORIA MARKS - I move to go into executive session to approve the executive session minutes.**

**Commissioner Silva seconded the Motion. All were in favor.**

Executive Session discussion redacted.

**Commissioner Amano moved to approve the minutes as amended. Commissioner Silva seconded the Motion. All were in favor.**

**Commissioner Marks moved to return to Open Session. Commissioner Amano seconded the Motion. All were in favor.**

RIKI AMANO - who's going to be on the PIG, probably something we should discuss.

CHUCK TOTTO - it's important just so we don't get confused, so you don't mix and match. Should be three people or less, whoever you decide, it could be one person. Maximum is three.

VICTORIA MARKS - I have thoughts about it, but I don't have the time to be on it.

CHUCK TOTTO - I want a sane voice to talk with them because I don't know how far we'll get with this review of the position, etc... We've talked about that for two years with them and it so far has gone nowhere.

VICTORIA MARKS - well, let me make this suggestion. You have to do a position description, I think you ought to talk to -- my guess is on the SR-26 they looked at law clerks at the Judiciary but you also have staff attorneys.

CHUCK TOTTO - my understanding was they looked at staff attorneys.

VICTORIA MARKS - well, there might be levels of staff attorneys.

CHUCK TOTTO - there are, I know there's at least a SR-28. The other thing we're going to do, if you don't mind me talking a little bit about this because I think it helps. I think we need to have -- well, as I mentioned, the staff can communicate with the commission members with the PIG about this anytime.

One of the things we looked at before was to actually take some of the things I do and shift them to Laurie. That way I can't diminish my position too much because then I'll fall out of my position. But on the other hand there's so much work that we do now and the difficulty of the level of work. And we may go back to doing that. Because as Noel Ono said, if you just leave it the same nothing much is going to change.

VICTORIA MARKS - the other thing is you have to get both the SR-26, like law clerk, and then the staff attorney if there's a SR-28 to see where the differences are. My other suggestion is you should go to disciplinary counsel and see the way they describe the positions there and look at what their pay ranges are and things like that. You might also want to look at the State Ethics Counsel and see those things as well. So you can look at what the pay ranges are and what their job descriptions are.

I'm guessing is the other thing you're going to bump up against, which is going to be a (inaudible) is that you've got this leap frog thing. Are you going to leap above Corp Counsel folks and things like that. Because you can cause problems for Corp Counsel. I'm all for raising the sea level so everybody's boat goes up but you can't create a problem for Donna.

CHUCK TOTTO - that brings me back to wanting to make the charter change. Philosophically it's the cleanest way to do this. But whether or not it can be done is a matter of practicality.

VICTORIA MARKS - I think you have to go a step at a time and if you're going to do a charter change and this is maybe part of the reason you look at a PIG. If you're going to do a charter change, where do you want to change the charter. Do you want to do it for salary, commission or something else.

CHUCK TOTTO - I've mapped out that language but the issue is the problem with any charter commission there's always a limited number of charter amendments that they can accept. At some point the vote just gets worn down by how many different issues there are. I appreciate those comments. I think this is a good way to start looking at it.

VICTORIA MARKS - I'm sure there's Ethics Commission group -- a national group.

CHUCK TOTTO - it's a pitiful thing but there is.

VICTORIA MARKS - they must have some statistics or something.

CHUCK TOTTO - I've looked at that for the last 15 years.

VICTORIA MARKS - like National Center of State Courts, when the Judiciary tried to get a raise you really have to do a job of selling whatever it is you're trying to do.

CHUCK TOTTO - my concern was we're all operating under what I thought a set of rules everybody knew, including most of the people in here who had advised us. So there are ups and downs for each approach and we'll see what DHR will do for us this time.

RIKI AMANO - I volunteer.

MICHAEL LILLY - so we're going to have two members.

LAURIE WONG - I thought it was vice chair Lilly.

MICHAEL LILLY - I'll be on it.

RIKI AMANO - all I want to see is clarity. That we don't have -- we have something smooth going on, something that we can rely on, they can rely on, even if it has to be the nature of a recommendation that (inaudible).

CHUCK TOTTO - if she would've asked...

VICTORIA MARKS - I think you have to have a different point of view. I would say you shouldn't be expecting them to ask anything. I think that the first move for you is your job is to make it as easy as pie whenever you deal with the administration. And that means point by point by point, lay out your position. You may think that you've done it, but they don't see it that way. So your side may need to be bolstered.

CHUCK TOTTO - I'll do what I can, but if they're going to come back with something that is completely out of left field, I won't know how to deal with it.

VICTORIA MARKS - I understand how that can be real frustrating and I think Mike made it pretty clear.

MICHAEL LILLY - what I've read and for the last three years we've been dealing with this. And I read what DHR and what Donna Leong had said and for them to come in here and say we changed our mind.

VICTORIA MARKS - that was a surprise.

RIKI AMANO - that didn't help, totally understand.

STEPHEN SILVA - one point that I remember one of the first meetings we had with her, I'm new to this. And so she had all her staff and she kept turning to them for answers.

MICHAEL LILLY - she had all the budget people here, she had all the personnel people.

CHUCK TOTTO - there's a thick memo in here from Donna Leong to Carolee Kubo about the authority of the mayor over salaries and positions of the employees of the

Ethics Commission. It's dated February 13<sup>th</sup>, and we'll send you copies. I haven't looked at it at all, I don't know what's in here. I assume it would be a lot of what was said.

RIKI AMANO - my thinking on this is that there was miscommunication and when they switched gears like that, we can't do anything. We relied on it, it is what it is but the process -- that's why we focus on the process, this process, having this meeting with them coming here. Ember's background is in legislative analysis. She's the statute person, that's why she reads it that way.

I think when she said, this is my thinking, I didn't ask for (inaudible) opinion, I thought it was my call. Whether I agree or don't agree, I got it. And we don't any longer have to sort of assess a bad motive on her part or on the mayor's part, or on Donna's part, anybody's part. We hear what she said -- she said it -- Donna said what she said, the guy Ono he's got his own thing going. That's all we need, we just need to have it on the table. I don't want to be looking behind every door for who's out to get us.

CHUCK TOTTO - the consistency is absolutely critical.

RIKI AMANO - I like that we were open enough to have that conversation. And Mike, you know, to say what you said, I like that too because that's where you're coming from, it's honest.

CHUCK TOTTO - I think it also showed them -- I have the sense that maybe they thought we just kind of grabbing numbers out of the sky. And no, there was a method to the madness here and this is how it was. I think the other lesson here is that in government, the left hand and right hand usually don't know what's going on. The left hand at DHR and BFS and Corp. did not know that the right hand at the MD's was going to go a 180 degrees.

RIKI AMANO - and we're not the first or the last people to be caught (inaudible).

CHUCK TOTTO - I talked to Don Pacarro at the Liquor Commission and I asked what's going on with your stuff and he's going oh...

RIKI AMANO - I think (inaudible) suggestions are really born of her years with government. That's who she comes from because she's been here too. But that's the way you survive, right.

STANFORD YUEN - the concern that I have is I understand where they're coming from. And there's always a reason for people changing their mind. But the concern that I have is how binding will their comments be from here on.

CHUCK TOTTO - that's a really good point because we were operating under one set of assumptions and rules which had been going okay. It would've been interesting to be a fly on the wall with DHR employee saying well, wait, we told um before this. I'm not

considering a law suit. But the way it was done is kind of like wait, you're taking away a pay raise.

VICTORIA MARKS - that was the other question I was going to raise. I didn't think you could reduce someone's pay if they're -- at least in state level unless you reduced everybody's.

CHUCK TOTTO - I haven't looked at that and Laurie and I have talked about this a lot and we both really don't want to be rocking that boat. It doesn't do much good for anybody. We're hoping the PIG will be able to either recreate the position or...

RIKI AMANO - as commissioner, I feel a responsibility to be able to retain good people, have a strong Ethics Commission Director and Counsel. From a management point of view, you have to pay them the right amount. So we have an interest in that. We should advocate for them in the appropriate way. I don't know how to what degree we can rely on anything. But I'm hoping that the communications will lead us to something that would be more reliable than we've had in the past.

MICHAEL LILLY - (inaudible) you might be successful in reclass. You got a lot of work to do because she said that you get it to her in a week or two, she could have it done in a month.

LAURIE WONG - even if there's a reclassification, that still doesn't address the issue -- just still in the future that the only time whoever is in this position will ever get raises depending on bargaining unit 13. It's not subject to the delegation of the EDLC.

RIKI AMANO - your position and his position are two different. So it's like the judges we're in the same boat until it got thrown into the salary commission. And that's probably where you need to go. It's probably (inaudible) down the road. But your position is going to get locked into Bargaining Unit 13. It's not unusual, it's the way it is.

VICTORIA MARKS - that's why you need to look at disciplinary counsel and the different levels with staff attorneys.

RIKI AMANO - before we leave can I just for the record offer our Congratulations to our Commissioner Yuen for his recognition as the Distinguished Alumnus at the University of Hawaii.

**Commissioner Marks moved to adjourn the meeting. Commissioner Silva seconded the motion. All were in favor.**

The meeting adjourned at approximately 2:30pm.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

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CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

KIRK CALDWELL  
MAYOR



**AGENDA**

Honolulu Ethics Commission  
**March 18, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

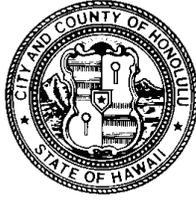
- I. CALL TO ORDER
  
- II. For Discussion: Status of the Minutes of the Open Session of the February 18, 2015 Meeting.
  
- III. OLD BUSINESS
  - A. Confirming the date and time for the April 22, May 13, and June 24, 2015 meetings and setting a meeting during the week of July 20 – 24, 2015.
  
- IV. NEW BUSINESS
  - A. For Discussion: Administrative News
    - 1. Complaints and requests for advice statistics through last month.
    - 2. Website statistics.
    - 3. Report of Permitted Interaction Group Activities Regarding Commission Lawyers' Salaries.
    - 4. Budget Briefing to the City Council.
    - 5. Report on Filling the Investigator III Position.

- B. For Action: Request for Motion to Approve and Adopt Staff's Proposed News Release Policy.
  - C. For Action: Request for Motion to Approve and Adopt Staff's Proposed Formal Advisory Opinion Regarding the Use of City Resources for "Save Our Heroes" Petition.
  - D. For Action: Request for a Motion to Approve and Adopt Staff's Proposed Guidelines on City Support of Credit Unions whose Membership Includes City Employees.
- V. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)
- A. For Discussion: Status of the Minutes of the Executive Session of February 18, 2015 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
  - B. For Action: Request of a City Department Asking the Ethics Commission to Remove and Replace a Commission Staff Member in any Investigation of the Department or its Personnel. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

VI. ADJOURNMENT

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

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Formatted Transcribed Meeting

Date and Place: March 18, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael A. Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A. S. DeCaires, Investigator  
Lisa P. Parker, Legal Clerk III  
Kristine I. Bigornia, Legal Clerk I  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Donna Y. L. Leong, Corporation Counsel  
Catherine Maki, Administrative Service Officer, (COR)  
Noel T. Ono, Assistant Director (DHR)  
Lila T. Tom, Division Chief, Classification & Pay (DHR)  
Jennifer Tobin, Branch Chief, Benefits, Research & Technician  
Branch (DHR)  
Vera Onouye, Division Chief, Employment and Personnel  
Services

[REDACTED]

Absent: Hon. Victoria Marks (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner

Transcriber: Gloria C. Takara

## **I. CALL TO ORDER**

## **II. FOR DISCUSSION: Status of the Minutes of the Open Session of the February 18, 2015 (being transcribed and formatted)**

## **III. OLD BUSINESS**

### **A. Confirming the date and time for the April 22, May 13, and June 24, 2015 meetings and setting a meeting during the week of July 20, 2015.**

Chairwoman: [...] 11:30, is that still good for everyone?

Ms. Amano: May I suggest that we defer this matter to when the other two Commissioners can be here as well?

Chairwoman: Okay.

Ms. Amano: Because they need to check their calendars and like everybody else. Because especially we're going to discuss a new meeting date in July which they know nothing about. And, I would recommend that we pick dates that can go as far to the end of the year as possible.

Chairwoman: Okay.

Ms. Amano: So, if we just defer it, then we can see—

Chairwoman: Well, let's just do April 22<sup>nd</sup>.

Mr. Lilly: Yeah. The ones that have already been set, I think—

Ms. Amano: They're set already.

Mr. Lilly: Yeah, but just reconfirming it.

Ms. Amano: I'm good.

Chairwoman: All right. So, no issues on April 22<sup>nd</sup>; reconfirming May 13<sup>th</sup>, and reconfirming June 24<sup>th</sup>. So, we'll defer—

Mr. Totto: Is it June 22?

Chairwoman: It's stated June 24<sup>th</sup> here.

Mr. Lilly: I have it down as June 24<sup>th</sup>.

Mr. Totto: Yeah, thanks.

Chairwoman: Okay. So, we'll defer the July date. Okay. So, going into new business, Administrative News.

#### **IV. NEW BUSINESS - A. For Discussion: Administrative News (1-2)**

Mr. Totto: Yeah. Let me start with the note on the complaints requiring investigation. Based on the number we've received so far in this fiscal year, fiscal '15, we anticipate having 125 cases, complaints filed that require investigation. This is the highest number we've ever had. It's 40% over the average for the last five years. It's 16% over last year's number. So, again it shows you the popularity of the Commission for taking a look at potential ethics violations. But it will require a lot of work by staff and any other resources we can garnish [sic]. But, I did just want to talk about that—garner, excuse me, not garnish.

The website's statistics have to be updated. I was unable to get the update and so the next item is the status of the Permitted Interaction Group Regarding Commission Lawyers' Salaries. So, I'll leave that to Vice Chair Lilly and Commissioner Amano.

#### **IV. NEW BUSINESS - Administrative News 3 – Report of Permitted Interaction Group Activities re Commission Lawyers' Salaries**

Mr. Lilly: You have your email handy. We had a real productive meeting with Donna Leong.

Ms. Amano: I can summarize from my notes. I guess, taking them in two parts with regard to the Assistant salary, I guess, this has already been for the budget for this coming year. And, I'm not sure what happened at the meeting that you had with the County Counsel. So—

Mr. Totto: Nothing. I mean, there was no change.

Ms. Amano: I don't know if you addressed that or not?

Mr. Totto: No, we didn't.

Ms. Amano: Oh, okay, because we thought you might.

Mr. Totto: No.

Ms. Amano: Okay. So, that's where it is, but with regard to your own salary, you know, our thinking—First of all, Ms. Leong thought that there might be an easier way to take care of this matter by way of delegation from Mayor to the Ethics Commission subject to the budget. And, so, I think the Commission has to discuss whether you want to go that route, you want to go that route temporarily, you want to go to charter amendment route, which would—There is some ideas about to go forward there. So, I think, that's what the Commission has kind of decide, and also Ms. Leong was kind enough to offer a Sunshine Law training to the entire Commission if we chose to undergo that. So, those are the three essential pieces.

Mr. Lilly: I might add that Ms. Leong was working on an opinion that I haven't seen yet. I don't know if it's ready, but the expected outcome was that she would inform the Mayor that he had the authority to delegate to the Commission the authority to set. We have authority to set your salary anyway, but that's within the charter, but to also set Ms. Wong's salary, so subject to the budgetary constraints.

So, I'm going to be interested from Ms. Leong what the status of that is and we think that if it's appropriate that separate from that, we should consider going to the City, particularly to see Mr. Soon, perhaps Commissioner Amano might do that to see if we could get a charter amendment so that Council would be under the salary Commission. But we would need to have the City back that. And, I understand that there's maybe some receptivity to that. So, that's sort of the next step should we do that.

Ms. Amano: So, I was hoping that we could, the group could get some direction from the Commission today and if you want to pursue it, we'll go forward and meet with Mr. Soon.

Mr. Lilly: So, on the first—Ms. Leong do you have any update on your suggestion?

Ms. Leong: Thank you, Vice Chair Lilly.

Mr. Lilly: And, I do want to say we had a very cordial meeting. It was very productive from my standpoint, and I think we covered a lot of items and learned a great deal. I'm still learning about personnel.

Ms. Leong: For the record, Donna Leong Corporation Counsel. I want to thank Vice Chair Lilly and Commissioner Amano for meeting with me and taking the time to discuss this issue with me. I just wanted to maybe embellish on some of the things that Commissioner Lilly and Amano said.

With regret the opinion of Corporation Counsel about the setting of salaries, the Ethics Commission staff is not quite ready. However, the primary analysis has been done, and we will be issuing an opinion to all interested department agencies and the Commission to the effect that it is the Mayor as the appointing authority of the employees of the City, who has authority to set the salaries of the Ethic Commission's staff.

I'm cognizant of the charter gives the City Council the authority to set the salary of the executive director of the Commission and in an ordinance the Commission—the City Council has asked the Commission to set the specific salary, so that's how the executive director's salary is set.

As I mentioned to you, I have heard that there was a brief conversation between Chief of Staff, Roy Soon, and executive director Totto with regard to a potential way to address the setting of the salaries. I have heard that—it was reported to me that Chief of Staff, Staff Soon had suggested a Salary Commission might be setting the salary that would be charter amendment. In discussing this with the Chief of Staff he clarified that he would not reference the Salary Commission. He did say, however, that the Charter Commission amendment might have to be requested in order to change that structure. And, I would say that is a potential mechanism by which the Ethics Commission could be give the authority to set the salaries of the Ethics Commission step. However, as I discussed with you a way that would be, in my mind, easier is, would be for the Mayor to delegate to the Ethics Commission his authority to set the salaries of the Ethics Commission's step. He does that in other situations such as, for example, for the deputies corporation counsel, he delegates to me the authority to set their salaries, and he could do that the same subject to budget restrictions. It's also to budget restrictions as I set forth in my (inaudible) memo to the Commission. But it's subject to the budget restrictions. He does that in the Mayor's directive that is issued to the (inaudible) June of each year.

So, that would be, in my mind, easier and it would affect, it could be effective, commence July 1<sup>st</sup> of this year, which is the next fiscal year.

The Charter Commission has met once, I believe they are meeting again today, their second meeting. Their meetings will not conclude and the recommendations to the Office of Elections will not be submitted until August of 2016. So, any charter amendment would be voted—proposal would be voted upon in the General Election in November of 2016, which means that amendment would not be effective until the following—I don't know because with that General Election or, you know, January 1<sup>st</sup> of 2017. I think it depends on the language of the charter amendment. They may not make it effective until the following fiscal year because it's difficult mid-stream in a fiscal year to change methodology.

So, all due respect to the Chief of Staff, I would suggest that the Mayor's directive might be faster, easier, it doesn't require the election of a General Election to affect that change. I will inform you he has authorized me to do so that I spoke with the Mayor about this concept, about delegating to the Ethics Commission through the Mayor's directive commencing the next fiscal year, the authority to set the salaries of the Ethics Commission's staff, and he is willing to consider that.

Can I ask you when you—you say step, are you including the exec?

Ms. Amano: That's entirely separate.

Ms. Leong: Right. Because under the charter.

Ms. Amano: Right.

Ms. Leong: That authority is given to the City Council which is then by ordinance delegated to (inaudible)—

Ms. Amano: Okay.

Ms. Leong: Classification. I mean the excluded—It would probably be the excluded exempt employees currently just Roy's position.

Ms. Amano: So, when he says staff, are you including or not including Kurt?

Ms. Leong: I am including Kurt.

Ms. Amano: Okay. That's all I needed.

Ms. Leong: And, in fact, the other staff people, except for your PSC contract are civil service.

Ms. Amano: Yeah.

Ms. Leong: So, his directive does not touch that because that's covered by collective bargaining.

Ms. Amano: Okay.

Ms. Leong: So, we're basically talking about excluded exempt employees not including Mr. Tutto, as executive director.

Ms. Amano: Understand.

Ms. Leong: That would be covered by the Mayor's directive.

Chairwoman: And, how long would be the directive be in effect? Like, is it for one fiscal year and it has to be addressed again or what?

Ms. Leong: The directive is about four, five pages long. And, so it covers excluded exempt employees and there are a whole bunch of different excluded exempt employees which I'm so glad that human resources department is here because they could explain to you all the different categories of excluded exempt. In my cute little world, it's the deputies, the deputies corporation counsel, and it is different from every fiscal year because it is basically the document based upon which he measures HR and budget. These are the budget restrictions and the HR—

Chairwoman: So, every year the Ethics Commission would have to get a new directive from the Mayor?

Ms. Leong: As I do.

Chairwoman: And, if the Mayor doesn't give the directive—

Ms. Leong: He retains the authority to set the salaries because he is the appointing authority. So, that would be my suggestion. As I said, the Mayor is willing to do this. He would—he has authorized me to tell you that he is willing to

do that. So, that's an alternative to the charter amendment that had been suggested to.

Mr. Lilly: I appreciate that because, I think if the Mayor does that, as you know we passed a resolution last time, that it is our position that we have the authority to set the salaries, and so if the Mayor does delegate that setting salaries of staff to the Commission, then it avoids any kind of conflict between how we view our authority and some people in administration view it. So, I think it's a positive and constructive thing if he does that, then we don't have to address the conflict of how we view it.

The second part of it is really should be pursued the charter amendments so the staff is under the Salary Commission and really, I think we need to make a decision at one time, or we could do it today, whether we want to pursue that.

Ms. Leong: My (inaudible), even Commissioner Stephen Silva wanted to say something.

Mr. Silva: The way it's set now, if it's going to be an annual thing, we're going to go through this battle over and over again?

Mr. Lilly: Whether it's a battle or not, that remains to be seen. But—

Mr. Silva: I know. Could we do it both ways? Put the Mayor's thing down now and put the charter one in second, put two requests—

Mr. Lilly: Yeah. That's the idea—

Mr. Silva: And then by the 16<sup>th</sup> it'll become—hopefully—

Mr. Lilly: Right, exactly.

Ms. Leong: Let me say, you know, as my authority that's delegated to me by the Mayor is subject to budget restrictions, so would the Ethics Commission.

Ms. Amano: Yeah.

Ms. Leong: They're all subject—So, you know, you would be given certain parameters as I am, and we are subject to that.

Mr. Lilly: So, that's how we view it, Commissioner Silva—

Mr. Silva: Yeah.

Mr. Lilly: We like the idea—I mean, I like the idea that the Mayor may delegate to us, so that avoids any kind of conflict in our resolution—

Mr. Silva: For now—

Mr. Lilly: For now. But should we pursue the charter amendment, that's the issue, and would you like to address that?

Mr. Totto: Yeah, if I could. I think it's a good idea to pursue the charter amendment because one of the problems, we have a pricing, a significant pricing differential between the associated legal counsel as an SR-26 whose top pay is set now about \$85,000. She's not at that, but that's the top pay you can reach and significantly below what an (inaudible) corporation counsel deputies make. So, it's apples and oranges. We go the Salary Commission and presumably that can be removed. It'll be apples and apples. I think it's—So, for the ALC position, I think it's appropriate to focus on the Salary Commission. As for the EDLC position, I think it's also appropriate to focus on a charter amendment for the Salary Commission. Because I've been here 15 years. My salary has never been easy to determine. I'm supposed to be on a range, the EM-7 range, which I think if I recall is about \$90-140,000 range, and personally I felt that I should be within reasonable range of what other attorneys in the City are doing at my responsibility level and so on for what they're getting paid because to me it makes a lot of sense to have an attorney, even though I do a lot of management administration who I'm the one attorney outside of the normal scope of attorneys, except for maybe for Lynn, but she's civil service. Sorry to pick on you and that makes all the difference in the world because I believe it is a civil service position. Is that correct?

So, for sake of uniformity, and also I've never had an easy time trying to get pay increases and it's also very difficult. If my range is higher than what the directors get, it really doesn't make sense to have me on range like that. I say why not—I should be in with all the rest of the lawyers.

So, Salary Commission, I think would be good for both the ALC position and my position. So, the type of language we probably put is, you know—It's easy to make an amendment along those lines, to cover the attorneys that work in the this office.

The idea about the short-term asking for the Mayor to do the delegation, if I heard Ms. Leong correctly, she said that could be effective July 1, I would ask that could it be effective earlier than that because we will have this fiscal year '15 situation where—I'm speaking out for in the ALC position, where we file it all the directions that were given. We complied with every request. We went through every step that we were aware of at the time and the Commission, at least from certainly from the ALC and the EDLC's point of view, the Commission had apparent authority to increase our salary yet and to use fiscal year '15 savings to do that. So, anything—

(pause)

Jack of all trades, master of—I can at least (inaudible) off the floor—

Ms. Leong: You're a young man.

Mr. Totto: I'll need a massage later, but—

Mr. Lilly: Is that a possibility, Ms. Leong?

Ms. Leong: I thought about that, and the reason I didn't suggest that because it seemed to me that the executive assistant to the Mayor's letter to the Ethics Commission and her appearance at the last meeting is basically the position of the Mayor. She acted on his behalf with his authority. She fully understood the situation and is apprised of the various Commission meetings on the subject what had happened, and it just seemed to me she had waived the whole thing and it was basically the budgetary restriction that she imposed on the Commission.

You know, if the Commission had unlimited funds and she might have made a different decision, but weighing everything it seems to me on that behalf of the Mayor, she already made the decision.

Ms. Amano: Can I ask when the revised position description for Laurie has been done?

Mr. Totto: No, it has not. It's still the ALC, Associated Legal Counsel. Because at this point, according to Ember Shinn's memo it wouldn't make any difference. She could be the associate or assistant director of the Commission and that would be an EM position according to the memo as I read it, Ember Shinn's memo, that would mean she have to go in to whatever the entry level step is and that she would only be allowed to have

increases equal to and at the same time as other EM, whatever she said, unless an EM-3 would be allowed. So, I don't think there's anything to gain there.

Ms. Leong: Correct. I thought heard HR say that there is something to gain.

Mr. Totto: If they would like to explain that, I'm not sure—

Mr. Lilly: That's how I heard it that if we submitted a revised position description that showed that her responsibilities were higher—

Mr. Totto: Right.

Mr. Lilly: ...that she could be reclassified at a higher level.

Mr. Totto: Correct. If she's reclassified at a higher level, my understanding is that if it is entry level, she go in at \$75,000, which is less than she's paid now. And, I've asked this, an email to DHR, and I haven't had any responses, so maybe you all can fill us in.

Mr. Ono: Just to clarify, I think at the last meeting when we talked about, remember I came up and said a few words. Chuck talked about the revision of the position description. That is a process so you would write the job description and send it to us and we classify it. But, you know, there's problems with the process in that, first of all, you have to change in the job of what she's doing now and based on her current job description and we have to show a change. The change has to be a substantive one where she no longer means the concept of the class, but working at a higher, perhaps greater scope of complexity in the job. ‘

Now, but then, you know, like Chuck explained the SR, there's limited— You're looking really beyond, looking at a bay as comfortable as doing an attorney kind of thing, it's really not going to address it. The payroll will then kick in even if we were classification division, Lila, then deem that it is higher then it currently is, including the SR. Now, it's an not automatic thing where it would be an EM. We will still have to determine whether it would be an EM.

And, again, it will automatically kick in as to what compensation actually going to pay. So, if your intent is really to compensate Ms. Wong at a higher salary (inaudible) to other attorneys, then this process may not necessarily work. And, that's thing, there is a process, but it doesn't always

work to what you want. And, that's why I kind of try to caution you that, just because we're talking about (inaudible) job description, it's not an automatic thing—even she gets it, the money making (inaudible) of the raise, so you're still a little setback to square one, you're all going to be unhappy of how the process works, you're not going to be happy. So, I think—

Mr. Totto: I'll call you then.

Mr. Ono: Then I'm not going to be happy. But, you know, there is a process and, you know, we're always willing to discuss it. We've had these conversations with Mr. Totto.

Mr. Totto: Yeah. And they're doing a good job of showing me how—You know, again, it is apples and oranges, and the best thing to do is try to get them to the coverage by the Salary Commission, I think, and be treated as the attorneys in the City and, you know, go from there. I agree with Deputy Director Ono, but there is a difficulty. Number one, you don't know what the process is going to come out, if it's an equation that they have to work on and it's highly dependent on what we put on that description and justify to the staff of DHR and then we still may end up where she's an SR-28 or EM-3 or whatever, where the salaries are still not the same as they are for the attorneys, for the deputy corp counsel and deputy prosecuting attorneys and even the Office of Counsel Services.

Mr. Ono: I don't think that—by adding, prior higher level duties to Ms. Wong, it's—could be taking away from perhaps Mr. Totto's duties or—essentially you have a small organization, so if you take away too much duties from the boss position, it could seriously potentially impact him and we may knock him down to EM-5.

Ms. Tom: Noel Ono did not discuss this with me, okay.

Mr. Ono: No. I'm just telling how it works. That's generally how classification works. So, not that it's going to happen, of course, because I probably need Ms. (inaudible) position to do that. You know, theoretically if you do remove duties from the boss level and you take away some of the decision making or some of those kind of thing, it could impact. I mean, that's the kind of thing we look at, all the different practice, not that it would happen here, but, you know—

Ms. Leong: So, Commission, really, if I may, just couple things occurred to me. One, is I just think that just from the general personnel perspective—And, Noel can tell me I'm totally wrong in this because like you I'm so totally learning the City personnel stuff, but it seems to me a dangerous precedent to change a position description in order to retroactively justify a salary increase, just dangerous from a personnel perspective, not even talking about any particular person. Just on policy basis.

The other point I'd like to make is as the executive assistant to the Mayor, stated in her memo, she is not thinking appropriate comparison to compare the salaries of the legal staff here and I'm taking out the executive director's authority because that's not comparable to deputy corporation counsel, just legal. But it's not appropriate to compare with the deputies because if you were to that truly, you would have to understand, and I feel I'm restating what I said back in November of 2014. You would have to understand my thought process, my methodology in adjusting the salaries of the deputies at corp. And, they would have to show the comparison between who they are, what they do, what my organization is, all the stuff that they deal with and compare it against the—

Mr. Lilly: We did some of that.

Mr. Lilly: Mr. Tutto did that. We did that.

Mr. Lilly: But we analyzed that. We compared, we analyzed and we came to a decision in this Commission as to her salary based on an assessment that was predicated on information that we got from the City.

Mr. Lilly: He had a great deal of information. This wasn't done in a vacuum— This Commission didn't do it in a vacuum. We assessed a great of information that Mr. Tutto had acquired to compare the level of work that our associate legal counsel did compared it with other attorneys.

Mr. Tutto: So it's clear. I'm not suggesting that we are going to burn dog every attorney, corporation counsel. I look at it more like corporation counsel, Office of Counsel Services, the prosecuting attorney, they all have very different jobs that they do for the City, but they are legal jobs. You might say, well, Office of Counsel Services only deals, you know, only drafts resolutions and bills. They don't really do much in a way of giving advice or they certainly don't litigate anything or go to administrative hearings. Each one is different. And, I would foresee that our office would be looked at as we don't have to be identical. Just like the prosecutor's office. I

know of, at least, traditionally, I don't know about Keith Kaneshiro, but I know Carlisle, they would bring deputies in regardless of experience, they bring in pretty much at the same price, at a low rate. I shouldn't say price, at the same salary and then as they advance and if they advance in their skills and expertise and move higher into different types of cases that they've tried, their salaries went along with that.

And, so there were different ways that each area sets things up. But I was hoping that within the budget range that the Commission would have the authority to determine the appropriate salaries for the ALC and for myself and who knows if we ever get another attorney.

Mr. Lilly: Unfortunately, it's kind of moot because we have two different opinions about that. One, is Ms. Shinn's and one is this Commission.

Mr. Totto: I'd like to address what Ms. Leong said. You recall that Ms. Shinn stated she did not look at anything that occurred before the Caldwell administration. That's January of 2013. And half of the time we were working under directions from corporation counsel and from the Department of Human Resources at that point, and, again, that just goes back to say. I think it's a reasonable request to ask the Mayor if he would also delegate to this Commission a review of Ms. Wong's salary. Because I really think it's unfair should reduce her salary at the same time, the corporation counsel, the Office of Counsel Services and the prosecuting attorney's office deputies are all getting increases. I mean, we're going in the opposite direction. But, you know, I can be as compassion as I want to about this, it's up to the Commission whether you think it's appropriate to at least ask the Mayor to look at that. Because I really don't think Ms. Shinn was fully informed.

Mr. Ono: I agree with that.

Mr. Totto: I think at this point, if the Commission wants to give some direction to the group, they can do that or if it wants to rely on the two Commissioners having heard the discussion. You know, it's really up to them if they would like specific direction or just kind of a general—

**Mr. Silva: Well, I think we can resolve that we ask that he include in his delegation authority for this past fiscal year. That's my motion we request that he include in the delegation this fiscal year.**

**Chairwoman: Is there a second?**

**Mr. Lilly: I second.**

**Chairwoman: All in favor?**

**All present Commissioners except for Amano: Aye.**

**Chairwoman: Did you vote?**

**Ms. Amano: No. Did you hear me vote?**

**Chairwoman: No. I just want to make sure.**

Ms. Amano: Seems to me the resolution already gives the authority to do what we need to do. The question is does the Commission want to do that? Because I hear what the corp counsel has already done. I hear what the Mayor is offered through her effective July 1<sup>st</sup>. I mean, if we want to support the idea our exec is proposing, then we should just go talk to the Mayor here and just tell this is what we want and see if he is going to say yes or no. That's what it is. I mean, it's not fast.

Mr. Lilly: Well, the resolution does, I mean, it makes that request.

Ms. Amano: The resolution—

Mr. Lilly: The resolution that just actually got passed that request that he include that as part of—Because he hasn't done it yet. And, Ms. Leong hasn't actually sent her opinion up, I gather, although there's been some informal discussion.

Ms. Amano: Well, what is your motion?

**Ms. Lilly: My motion is in that in process, that the Mayor be requested to include in that delegation for next year authority for this year. That's a request from the Commission.**

Ms. Amano: So, if we pass this motion, then who does what?

Mr. Lilly: It's a resolution from the Commission that would be delivered, right?

Mr. Tutto: Yeah. It would be for the group to determine on how to deliver that, and I think one of the ways is, like you said, ask the Mayor if he'll do that.

Ms. Amano: I think it's faster and effective if we go and talk to the Mayor under the resolution that was already establishing our group. So, we have the authority from what I can read, and—

Chairwoman: I think we'll just clarify in what the Commission is asking—

Ms. Amano: No, no, we're not. I just ask what the motion was and you said the motion would effectively be x, y, z, so that tells me that there's a document that comes out and get sent to the Mayor versus you and me making an appointment with the Mayor right now and going to talk with him about including—

Mr. Lilly: But now we can go, if that's the way you want to do it, have you and me do it as part of the (inaudible)?

Ms. Amano: Yeah.

Mr. Lilly: You and I can go to the Mayor, we could go see Mr. Soon, which may be just as effective and—

Ms. Amano: I think (inaudible)—

Mr. Lilly: And convey to Mr. Soon that our Commission has requested that the Mayor delegate for this year.

Ms. Amano: Okay.

Mr. Lilly: I mean, without this resolution, we don't have a directive from the Commission, if we want this year included.

Chairwoman: Ms. Leong only talked about last year, not this year. So, the resolution passed to have a request for this year. And we're going to have a discussion about how we want to do it if we can do it in the form of, as you just said, approaching with you two Commissioners, as part of the (inaudible).

Mr. Lilly: And, I'm happy to go meet with the Mayor with you on this issue.

Ms. Silva: Might speed up the process.

Mr. Lilly: So, we need a resolution if they meet with the Mayor on that issue.

Mr. Totto: You can leave it to the discretion of the—I hate to use that term—

Mr. Lilly: I know—

Mr. Totto: Keep calling it the (inaudible).

Chairwoman: So, we're also accepting, sorry, the Commission has to agree that—  
So, all we did was discussed the current year as part of next year, at the  
same time, an agreement next year's directive and then (inaudible) Salary  
Commission.

Mr. Lilly: Well, that's a step. Do we want to request a charter amendment be  
made to include staff as part of the Salary Commission.

Mr. Totto: I don't think you need to have that today. I mean, you have it as a  
talking point already.

Mr. Lilly: So, we got plenty of time.

Mr. Totto: Plenty of time, and I think it's appropriate to talk—for the group to  
talk to whomever they think is good for that.

Mr. Lilly: Okay.

Mr. Totto: And, you folks will let me know, we'll put it in the agenda for next  
meeting or whatever and then or we can give a little bit more information  
about what kind of change will have to occur in the charter and, you know,  
that type of thing.

Mr. Lilly: Okay. Are we done with that—

Chairwoman: So, that vote, Commissioner Amano has to record, yes or—

**Ms. Amano: Abstain.**

Chairwoman: Okay.

Mr. Lilly: Okay.

Ms. Amano: We'll wait for the resolution then before I call to make the  
appointment?

Mr. Lilly: Well, we don't have to. You and I can talk about it with the Mayor. I don't think we have to (inaudible). It'll be in the minutes. But it was passed, so—

Ms. Amano: Okay.

Mr. Lilly: We have people here waiting on the executive action. Do we need to go into executive session. Is that what the [REDACTED] department was here for executive—

Mr. Totto: Yes.

Mr. Lilly: Do we want to go into executive session, so they can move—How's your time?

Mr. Totto: If I can I just—

Mr. Lilly: You're okay? We don't want to hold you up—

Mr. Totto: Search for the investigator—

Mr. Lilly: Well, I didn't know if you guys were here for that. Oh, they're here for No. 5. Okay, okay.

Mr. Totto: Yeah.

Chairwoman: Okay. So, should I just skip to No. 5, then?

Mr. Silva: Yeah.

Mr. Totto: Yes.

#### **IV. NEW BUSINESS - For Discussion: Administrative News (5) Report on Filling Investigator III Position**

Chairwoman: Okay. The part on filling the Investigator III position.

Mr. Totto: And, I appreciate the DHR folks being here. And, also before we move off the issue about the attorneys' salaries, I really appreciate both the Chair, Vice Chair's work and Commissioner Amano's work in this because it takes a lot of time, it takes a lot of grace to work on these tough issues

with the administration. I really appreciate it both personally and as head of the office.

Ms. Amano: It was extremely difficult to meet with Ms. Leong. I can't tell you how difficult it was.

Mr. Totto: Okay. Now, onto Item 5, report on filling Investigator III position, and I do have a report on—So, just to remind us of background, on January 9<sup>th</sup>, DHR had sent a memo through corp explaining personal service's contract position should be only for a year for the charter and requesting us to immediately start recruiting to fill the position Investigator III with a permanent employee. At the end of January DHR was good enough to send us 47 applications for Investigator III that they had collected from a year prior. I reviewed the applications to determine whether the candidates had experience and skill in investigating allegations of employee's misconduct. Unfortunately, only three had that experience. So, I also examined for overall investigative experience. This resulted in ten potential candidates out of that group.

Because the applications were a year old, we asked the ten applicants whether they were still interested in working for the City, would they be interested in coming to work in our position and we told them about the job duties, class specifications and pay and so on. Five responded that they were interested. And, they sent us updated resumes, letter of interest and investigative report writing samples. Of the three who had experience that I mentioned before, with employee investigations, one of them withdrew at that point because he felt he wanted to stay at his current position.

Ms. Amano: So, were all three in the five?

Mr. Totto: Yes. All three were in the five.

Ms. Amano: Okay.

Mr. Totto: So, we're down to four, four candidates. And, we also been advertised on Craig's list, Hawaii Jobs Engine, the Commission's Facebook page, another Facebook page frequented by investigators and former HPD officers. This just trying to see if we could shake the tree a little bit more and see what we might be able to find. We also sent notices and the information about the job to the Police Commission, the Liquor Commission, the prosecutor's office, because they have an investigative division, and the investigative division of the attorney general's office.

Each office said they would post the notice, and we used word of mouth. These efforts produced another ten candidates, unfortunately, none of them had the experience or skill to be put on the top finalists group.

Of the four candidates, the mainland candidate withdrew just before it was for interview. He said for the money offered, he couldn't see, he couldn't justify relocating to Hawaii. So, he left it at that point. And, unfortunately, he was one of the ones who had employee investigation experience because he had been in the police department where he worked in internal investigations, internal affairs and investigations for some time.

The interview panel, so we still have the three candidates and the interview panel consisted of Laurie Wong, myself and Dan Hanagami, who is a former HPD major, and he's the chief special agent of the AG's investigation division. We conducted in depth interviews, each was at least an hour long, one of them longer—

Ms. Amano: This is for three people?

Mr. Totto: Yeah. For the three candidates. Again, only one of those three candidates, only one of them was on the prior—

Ms. Amano: I guess, my point is that nothing shook out of the woods from all the other—

Mr. Totto: I mean, we got ten more people applying, but some were young attorneys that type of thing, people really didn't have the background.

So, unfortunately, the highest scoring candidate had a 63% grade, where we had asked for 80% as the threshold but a common threshold is 70%, wasn't close. So, what we did is we each of us independently wrote up our, did our scoring and then we basically added the three together and divided by three and that's what we ended up. That was the highest grade.

One of the most disconcerting things was none of the applicants, even the one who said he had done prior employee investigations, had even a basic knowledge of employee's rights or the principle of just cause. And, those are really critical—when you're undertaking investigations, not only employees, but any government official. I'm sure DHR can confirm, understanding what the union contracts require and being sensitive to those as we conduct an investigation really important.

The other thing you might be involved isn't something that somebody can just learn. This Investigative III position is for someone who can handle the most complex cases independently and should understand the basic principles of just cause and, you know, an employee rights.

So, my next point here is you will—I plan to write to DHR and put this in writing for them because the alternative we have now is to request perhaps a recertification so we can use a personal service's contract for some period in the future. One idea that we're bouncing around, but have to talk to HR about is, I think putting together another applicant list. I don't know when they do that. I don't if it's based on demand or if there's a cycle. But we certainly work with them about how we could do that.

I think overall, Chief Hanagami was very helpful in this. His experience—I can't remember how long he's been at the AG's but quite a while. I think he has 50 investigators at the AG's. Only three of those 50 are civil service employees. And, I asked him about that and he said well because everybody who has experience in investigating an employee conduct issues is probably coming out of HPD because they did internal affairs there. Now, they have other skills besides that because it a tour of duty if you will. And they may also very good at homicides or drug related offenses or who knows because the AG has very broad powers in broad areas if they get involved in it. But the difficulty is we end up with a really small applicant pool, if you remove HPD, those are folks that need to be on personal service contracts on the 89-day hires. And, there's really not—Okay. I'll turn it over in a minute to Ms. Onouye, but that's what we found in our review.

I know that compliance and ethics industry is growing but not in Hawaii very fast, and frankly, I know HECO investigator who came from the FBI was paid almost twice the salary offer for this position. I know, government is going to be able to match private. But I wanted to give you a little bit more background about what we were finding.

Ms. Onouye: I'm the, I guess, Division Chief for the Employment and Personnel Services Division. We're tasked with recruiting for civil service positions—Oh, Vera Onouye with the Department of Human Resources. Yes. I just wanted to let you know that the applicants that we have sent over to Mr. Totto were candidates for civil service positions and we referred them to his exact position just by way to provide him with some place to start with, I guess, give him an opportunity to have folks that have been found to be qualified for investigative positions, but it wasn't

specifically necessarily for employee investigations, but they had been qualified and found qualified established to the eligible list for Investigative III jobs.

I'm sad that it didn't work out, they weren't able to find somebody that was to your liking. What we tell the departments and this happens, and it happens with us sometimes is well, we're looking for somebody that has this level of experience because we want them to hit the ground running. And, ideally, you know, we would want to find those guys. But we don't always find them. And what we do for ourselves as well as what we tell other departments to do, in the event we can't find somebody at that level you want, possibly consider a lower level position, and for some of our City agencies, they want this level of—say an engineer and only this level, and sometimes they'll go for five years without finding someone. What we have been telling the department to do and we do this ourselves is downgrade the positions to a lower level position for which more people will be found qualified and train them. And, I don't know if that will work in your situation. You sound like you have a heavy case load that it could possibly work where you can't find the population of folks that are qualified at this Investigative III level, possibly you might find them at a II or I level.

Chairwoman: Okay, thank you. I'm (inaudible) Commissioner Yuen has to leave shortly before 1. I'm sorry?

Ms. Onouye: Can I say one more thing?

Chairwoman: Okay.

Ms. Onouye: You know, as far as the Investigative III listing, we don't recruit for every year and there's no like single kind of recruitment for it. We do recruit on as a needed basis and Chuck so happens be so lucky that we have a recruitment that's ongoing right now. It will be closing tomorrow actually, but the examiners will still have to go through the list to determine the qualified candidates.

Mr. Tutto: How many?

Ms. Onouye: Oh, gosh, they're so busy right now. I can't even venture a guess.

Mr. Tutto: Range of time maybe?

Ms. Onouye: Hopefully within 60 days. I don't know, probably be faster than that, but I can't venture a guess at this point.

Mr. Lilly: Should we continue on a personal service contract until we find someone that's qualified?

Chairwoman: I guess, we can't find anyone. But the difficulty will be still finding somebody free of personal service's contract.

Mr. Lilly: Okay.

Chairwoman: Commissioner Silva?

Mr. Silva: Yeah. I got a question. Regarding that extension, okay, and you were talking about training somebody for the job. I think it would be ideally if we could get the extension because we're asking for another investigator and trainees at a lower level person while the higher level person can be doing the training. Because these guys can't do the training. You know what I mean, we cannot come in with the lower level person expect to resolve or solve complaints, not at a lower level. Not the way things are coming right now.

Ms. Onouye: Not right away.

Mr. Silva: I beg your pardon?

Ms. Onouye: Not right away, but eventually they work up to the –

Mr. Silva: Yeah. If you can get a lower level one working with a higher level and that higher level one can train the lower level one and eventually we can get off this contract business that's causing the problem.

Mr. Tutto: It's kind of Catch-22 in that we can have one or the other. We can't have both.

Mr. Silva: Well, how we can get—If we can't find somebody at the level III sounds like it's pretty impossible at this point. You know we're going have to wait 30 to 60 days to try and find somebody, and that list might not work out that either. To get somebody with a higher level to take care of our needs especially when he says we're 40% higher than we were, you know what I mean?

Chairwoman: Okay, thank you very much. Since Commissioner Yuen has to leave shortly, just going to make a suggestion that we move into executive session. **Can I have a motion to move into executive session.**

**Mr. Silva: Second.**

**Chairwoman: Making a motion—**

**Mr. Silva: You're making the motion—**

**Mr. Totto: So move.**

**Mr. Yuen: Second.**

**Chairwoman: All in favor—**

**All Commissioners: Aye.**

Chairwoman: We're now in executive session.

EXECUTIVE SESSION DISCUSSION REGARDING ITEMS V.A AND B  
HAVE BEEN REDACTED.

**Chairwoman: Can I have a motion to move back in to open session, please.**

**Ms. Amano: So moved.**

**Mr. Yuen: Second.**

**Chairwoman: All in favor?**

**All Commissioners: Aye.**

**IV.D. NEW BUSINESS – For Action: Request for a Motion to Approve and Adopt Staff's Proposed Guidelines on City Support of Credit Unions whose Membership Includes City Employees**

Chairwoman: So, the credit union is going to be deferred?

Mr. Totto: Yeah. We can open that up because I don't know—

Chairwoman: So, the credit union coming off?

Mr. Totto: Deferred.

Chairwoman: Deferred, sorry. Okay. So, going to Item 4(B).

**IV.A.4. NEW BUSINESS – For Discussion: Administrative News – Budget Briefing to the City Council**

Mr. Totto: Oh, I'm sorry, if we go to Item 4(A), that's the budget briefing to the City Council. Just very briefly, wanted to say that I gave them—I apologize I should have made copies of the testimony, but it's short. Testimony to Council saying basically what the difference was between our increased budget for fiscal year '16 versus '15 and also that is additional consulting/investigation monies available and then moved on to basically tell them about this growth in complaints requiring investigation and told them that having checked with the Police Commission, HPD's professional services office, that's internal affairs and the AG's investigation division that when those folks do administration investigations, they assign about 25 cases per investigator per year. So, obviously if we have 125 in a year, we're way past being able to do that, so we'll have to take do a lot of triage and prioritizing and so on and send some cases back to the department, whatever we can do. Hoping maybe somebody would take up the idea that council itself would ask us if we could use some help.

The difficulty and, I think I can say this in open discussion is the Chair of the Budget Committee is under investigation, that's in the media, has been in the media, so it would be totally inappropriate for her to say, oh, how about if I gave you couple of investigators, you know.

So, I still have ideas about going and talking to our subject matter Chair who is (inaudible) Ozawa, and I don't know if any of you know him at all, but see what he thinks.

Chairwoman: All right. Thank you.

Ms. Wong: Sorry, I think we forget the summary of the executive session motion that was past. I think we have just general terms.

Chairwoman: Oh, yes. Do I comment in this agenda?

Ms. Wong: I guess, we could just say in general terms that if you look at exec session memo agenda Item 5(B), you could just say that during exec

session the Commission considered that there was a request from the City Department asking the EC to remove and replace the a Commission staff member in an investigation and that the Commission decided not to—

Ms. Amano: Laurie, can I ask you, is this phrased by them or phrased by us? Because they were real specific that is unique to this case.

Mr. Totto: Oh, this is phrased by me because it's got to be in the open. The agenda has to be made public, so that's why I removed the person's name and the department. Again, trying to—always have this balance between confidentiality and also being specific enough so people would know.

Ms. Amano: When it says in any investigation of the department or it's personnel, that seems very, very broad.

Mr. Totto: No. That is in both letters.

Ms. Amano: And that's what they said?

Ms. Totto: Yes.

Ms. Amano: But, I thought he said it was specifically to this case.

Mr. Totto: No. Actually, both [REDACTED] letter and [REDACTED] letter does say that. I can find the language if you're interested. Because I looked at very particularly.

Ms. Amano: Well, could I just say that I thought our decision was specific to this case and these circumstances. I don't think we made—

Mr. Totto: And, I think that's appropriate to have it focused on what the discussion was about because there might be somebody at [REDACTED] who is her best friend in the world and, you know, who owes her \$500 or something, I don't know.

Mr. Lilly: I say **with respect to 5(B) that the request that of a City department asking the Ethics Commission to remove and replace the Commission's staff member in any investigation, department or its personnel was denied.**

Mr. Totto: Or under the circumstances presented, would that help?

Ms. Amano: I think it was considered and denied.

Mr. Lilly: Yeah, **considered and denied. I agree with the phrase under the circumstances the case was considered and denied.**

**IV.B. – NEW BUSINESS - For Action: Request for Motion to Approve and Adopt Staff’s Proposed News Release Policy.**

Chairwoman: Okay. So, moving on to Item 4(B) for action of request for motion to approve and adopt staff’s proposed news release policy. Everyone got a copy of that proposed news release policy which was based on wording in a previous proposal that the Commission reviewed. Is there any questions on that?

Ms. Amano: I was thinking that a policy should also address the kinds of things that would be subject to a news release or a press release and ours doesn’t say that. It does address process, but it doesn’t say these are the kinds of things would be (inaudible).

Mr. Totto: I left it general just because I didn’t know really necessarily. I could flush out to some degree by saying.

Chairwoman: We want the policy to apply in every instance? Any particular instances?

Ms. Amano: Give guidance as to what’s going to be released by press release or not. Specifically, let’s say we have a rather detailed opinion, lengthy. We want to issue that by way of (inaudible). It’s simple enough to say that the Ethics Commission issues this opinion versus something more elaborate since it’s already referring to an experience.

So, I don’t know, but that’s what I’m thinking. I don’t mean to belabor this meeting.

Chairwoman: I don’t quite understand what you’re saying (inaudible). You want the policy to articulate a particular example on how news release would like?

Ms. Amano: Well, for instance the very first paragraph says that the purpose of the news release is to summarize and communicate to the public important positions or actions taken by the Commission as well as the impact on the

public and integrity of the City government and City officials. That's very, very broad. But, I don't know.

In your mind, what is the purpose of news release?

Chairwoman: Unless to summarize that the cases that come out of the Commission and be able to articulate it in layman's term to the public so they can understand it.

Ms. Amano: So, that's something I would disagree with because an opinion has to stand for itself. And if it's not simple enough in layman's term, we didn't write it well. We need to write it in a way that is understood by everyone. From the opinion itself. And when we're are interpreting our stuff, then you're sending out perhaps two messages. We hope they don't, but it's one more thing that be interpreted.

Chairwoman: I think they had that discussion and the problem is that the media doesn't read the entire opinion and that when you issue a news release it's an opportunity to be able educate the media on the content of what's in the opinion knowing that they're not going to read the whole thing.

Mr. Lilly: The opinion just like one of your opinions as a judge. It's got all the analysis, applying the law to the facts in this case and the result. It may be very long opinion and this is an opportunity for the Commission to have a press release that helps the public as well as the media to understand all of that verbiage that it's in the opinion.

Mr. Yuen: Layman's language.

Mr. Lilly: In layman's language, exactly. Because, the reason, we have an opinion, a decision that may affect an individual but it has broad impact on the community, so we want everyone to understand the importance of this. So, our job is to also to educate. So, that's why we do it. That's what we were talking about.

When this all came up we thought this up and so we need to do a policy would help guide counsel in how to draft and distribute press releases.

Ms. Amano: What if our opinions had small summaries done in the way the language that sends that very message and the summary can be repeated in the press release if that's what you mean. But I don't like separating the two pieces.

Chairwoman: Separating, what two pieces?

Mr. Amano: Well, a summary done by—an opinion done by us. One official and one is not official. If there's interpretation issues. If you make it part of the opinion, to me it's cleaner.

I'm also not crazy about long opinions, but—

Chairwoman: So, you want the news release to state the former summary articulated in opinion?

Ms. Amano: Well, if you feel the need to educate the public because they're not going to read the formal opinion that might be one way to do it without having the conflict that I fear.

Mr. Lilly: You know the Department of Justice indicts someone, 57 indictment, they attach a press release. It summarizes the indictment. So, it's intelligible to everybody. I see that in other areas as well. When there's a complex document that's followed by a press release or a complaint that's filed with the press release. If it's a broad public concern. I don't see the press release as being the same thing as the opinion. I see it being more of a settlement, a laymen's settlement. I mean, that's my thought. We may want to defer this to until we have more Commission members here. So, I don't know if you're ready to accept what's been drafted.

Ms. Amano: I think we had further discussion. I'm always ready to accept the (inaudible).

Mr. Lilly: Well, today it has to be 100% of the jury.

Chairwoman: Right. So, there's only four—

Ms. Amano: True. So, perhaps defer would be good.

**Mr. Lilly: Well, why don't we defer to the next meeting.**

**Chairwoman: Okay. All right.**

Mr. Lilly: If you have any thoughts, you could—

Ms. Amano: I go look—

Chairwoman: Yeah, some preferred language we can articulate to—

Mr. Totto: Let me just add, if you look at No. 3, because I think one of the concerns has been who is saying what. What's the Commission saying? What's the Commission staff saying? So, I added that just to make sure that if Commission staff is saying something that is clear, this is Commission staff saying, you know, saying something the news release as opposed to Commission staff coming up with some statements and attributing to the Commission itself. So, I'm trying to—

Ms. Amano: Well, I don't think we would have any—We would not speak—

Mr. Totto: No. But just again to make—Well—

Chairwoman: Being honest, I think if you went to the press you spoke some of the assumption that you're speaking on behalf of the Commission—

Ms. Amano: I agree.

Mr. Totto: Okay.

Chairwoman: The average person isn't going to separate the two.

Ms. Amano: Legally speaking that would have to be the case anyway. That's just my opinion.

Chairwoman: That's true; yeah. Okay. Well, if there's—

Ms. Amano: Deferral would be good, then I would look for a language.

**IV.C. – NEW BUSINESS – For Action: Request for Motion to Approve and Adopt Staff's Proposed Formal Advisory Opinion Regarding the Use of City Resources for "Save our Heroes" Petition**

Chairwoman: Okay. All right. So, moving on to Item 4(C) for action of request for motion to approve and adopt status proposed formal advisory opinion regarding the use of City resources for Save our Hero's Petition. So, the proposed advisory opinion is based on memo from the last time which was considered and approved by the Commission at the last meeting. So, are there any questions to the proposed formal advisory opinion? [no response]

**Can I have a motion to approve and adopt the status proposed formal advisory opinion?**

**Mr. Silva: So moved.**

**Chairwoman: Moved. Can, I have a second?**

**Mr. Lilly: I'll second.**

**Chairwoman: All in favor, say aye.**

**All Commissioners: Aye.**

**Chairwoman: Motion is passed.** So, that concludes today's meeting. Can I have a motion to adjourn. Item 4(D) is being deferred to the following meeting. **Can I have a motion to close today's open session meeting.**

**Mr. Lilly: So moved.**

**Mr. Yuen: Second.**

**Chairwoman: All in favor.**

**All Commissioners: Aye.**

**Chairwoman: So moved.**

**VI. ADJOURNMENT**

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

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MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA

Honolulu Ethics Commission  
**April 22, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

- I. CALL TO ORDER
  
- II. For Discussion: Status of the Minutes of the Open Session of the March 18, 2015 Meeting.
  
- III. OLD BUSINESS
  - A. Confirming the date and time for the May 13, and June 24, 2015 meetings and setting meetings during the week of July 20 – 24 and August 17 - 21, 2015.
  
- IV. NEW BUSINESS
  - A. For Discussion: Administrative News
    - 1. Complaints and requests for advice statistics through last month.
    - 2. Website statistics.
    - 3. Status of Fiscal Year 2016 Budget Request.
    - 4. Status of Investigative Services for the Ethics Commission.

- B. For Discussion: Permitted Interaction Group's Report Regarding Commission Lawyers' Salaries and Recommended Next Steps.
  - C. For Discussion: Staff's Proposed Fiscal Year 2017 Operating Budget for the Ethics Commission.
  - D. For Action: Request for a Motion to Approve and Adopt Staff's Proposed Guidelines on Use of City Resources to Support Certain Federal Credit Unions.
  - E. For Action: Request for Motion to Approve and Adopt a News Release Policy.
- V. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)
- A. For Discussion: Status of the Minutes of the Executive Session of March 18, 2015 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
  - B. For Action: Request for a Motion to Approve and Adopt Staff's Proposed Advisory Opinion No. 2015-2 Regarding Alleged Violations of the City Gift Laws by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

VI. ADJOURNMENT

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU  
Transcribed Formatted Meeting Minutes

Date and Place: April, 22, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael A. Lilly, Esq., Vice Chair  
Stanford Yuen, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret.), Commissioner  
Hon. Allene Suemori (ret.), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A.S. DeCaires, Investigator  
Lisa P. Parker, Legal Clerk III  
Kristine Bigornia, Legal Clerk I  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
Donna Y.L. Leong, Corporation Counsel  
Daniel Hanagami, CFE, Chief Special Agent, Investigations  
Division, Department of the Attorney General, State of Hawaii  
Natalie Iwasa, CPA and Member of the Public

Absent: Stephen Silva, Commissioner

Transcriber: Gloria C. Takara

**I. CALL TO ORDER**

Chairwoman: Welcome everyone. Should we go around and introduce ourselves. I'm  
Katy Chen, Chair, Ethics Commission.

Lilly: Michael Lilly Vice Chair.

Ms. Wong: Laurie Wong, Associate Legal Counsel.

Mr. Totto: Chuck Totto, Executive Director and Legal Counsel.

Suemori: Allene Suemori, Commissioner.

Marks: Vicky Marks, Commissioner.

Amano: Riki Amano, Commissioner.

Yuen: Stanford Yuen, Commissioner.

Deputy Corp Counsel Kam: Geoffrey Kam, Counsel to the Commissioner.

Ms. DeCaires: Letha DeCaires, Investigator for the Commission.

Ms. Bigornia: Kristine Bigornia, Legal Clerk I.

Mr. Hanagami: Dan Hanagami, Chief Special Agent from the Attorney General Office.

Ms. Parker: Lisa Parker, Legal Clerk.

Corp Counsel Leong: Donna Leong, Corporation Counsel.

## **II. FOR DISCUSSION: Status of the Minutes of the Open Session of the March 18, 2015 Meeting.**

Chairwoman: Okay. Thank you. First on the item is the minutes of the open session of March 18<sup>th</sup>, 2015.

Mr. Totto: As with the February meeting in both for the executive session minutes and the open session minutes, we had them transcribed but we not had them reduce to normal minutes for review. And, the reason for that is staff has been up to their eyeballs in other matters. And, so we wanted to make sure that we had the information available should anybody want to look back on what was said or what was concluded, but we don't have them in regular minutes format.

Chairwoman: Okay. So, do you know when we could expect that?

Mr. Totto: No, I don't. I mean, I'm going to very frank with you today because it's— We have so many priorities that may push that down on the ladder. The main thing we want to make sure we got the transcription of what happened.

## **III. OLD BUSINESS – Confirming the date and time for the May, June, July and August Meetings.**

Chairwoman: Okay. All right, so the next item is confirming the dates and times for the May 19<sup>th</sup> meeting and the June 24<sup>th</sup> meeting. Is everyone still available?

Lilly: Is it May 13<sup>th</sup>?

Yuen: Yeah, May 13<sup>th</sup>.

Chairwoman: Is that still good for everyone for 11:30?

Two unknown male voices: Yeah.

Chairwoman: Okay. So, we'll confirm that one. And the next one is June 24th, 11:30.

Lilly: Yeah, I won't be here.

Amano: June 24<sup>th</sup>?

Chairwoman: Do you want to change the date? That's more than a month, right? What about June 17<sup>th</sup>?

Marks: I can't make the 17<sup>th</sup>.

Chairwoman: Okay.

Lilly: Pardon?

Chairwoman: She can't make the 17<sup>th</sup>—

Lilly: Of what July?

Chairwoman: June.

Mr. Totto: They're looking for another possible date for June.

Chairwoman: So, what are that dates that you're—

Lilly: I leave that day. Oh, wait a minute, which day are we talking about?

Chairwoman: June 24<sup>th</sup>, that's a Wednesday.

Mr. Lilly: No, I take it back; I'm sorry. I leave that night, so I'm okay.

Chairwoman: Okay. So, June 24th, 11:30, is that good?

Yuen: Yeah.

Chairwoman: Okay. Let's confirm that. And then looks for a date for July, the week of the 20<sup>th</sup>. That'll be July 22<sup>nd</sup> and, it's still on a Wednesday.

Yuen: Okay.

Chairwoman: Is that good for everyone?

Yuen: Yeah.

Marks: I probably can't make it that day.

Chairwoman: Okay.

Marks: Could make the 23rd, Thursday, but I don't know if everybody else—

Chairwoman: That's good for me too, the 23<sup>rd</sup>.

Suemori: I'm okay with the 23<sup>rd</sup>.

Amano: I'm good.

Yuen: Okay.

Chairwoman: Mike—

Lilly: That works.

Chairwoman: Okay. We'll switch it to July 23<sup>rd</sup>, Thursday, 11:30.

Marks: Thank you.

Chairwoman: And, we've never had issues about getting this room, right?

Ms. Parker: No.

Mr. Totto: We do actually, but if you folks are going to meet, we elbow people out of the way.

Chairwoman: Oh, okay. Okay. So, May 13<sup>th</sup>, June 24<sup>th</sup> and July 23<sup>rd</sup> 11:30—

Mr. Totto: And--

Chairwoman: Oh, sorry—

Mr. Totto: ...August-

Chairwoman: August. They were looking at the 19<sup>th</sup> of August.

Suemori: I'm okay for the 19<sup>th</sup>.

Yuen: Okay.

Amano: Good.

Lilly: I have an arbitration for two weeks there. So, count me out.

Suemori: So, August 19<sup>th</sup>

Chairwoman: Yes. Otherwise, we'd have to go two week away.

Suemori: Okay.

Chairwoman: Okay. 11:30, Wednesday.

Mr. Totto: And, I'll inform, I'll make sure staff informs Commissioner Silva--

Chairwoman: Okay, thank you.

Mr. Totto: ...the dates.

Chairwoman: All right. Let's go onto new business, Administrative News.

#### **IV.A. NEW BUSINESS – For Discussion: Administrative News**

Totto: With your indulgence, I'd like to take a few minutes and talk about just our general workload overview. I think it'll be helpful to Commissioners and give you a little bit more understanding of what we do because you folks see, I would say, the most important 5% of our work.

Chairwoman: Well, let me just preface what prompted this.

Totto: Sure.

Chairwoman: I guess, when I saw the agenda, I saw for both executive session and open session, I just noted that there is just some much administrative matters and virtually no cases, and it's sort of in a trend for a while, and I just ask Chuck to explain why are we so administrative heavy, and not we're not dealing with actual ethics cases, which seems to me why we're really supposed be here.

Totto: Right. I think this will explain part of the reasons—

Chairwoman: Okay.

Totto: ...and happy to have any discussion on it also. So, I'm just going to throw up a few things on the board.

The first thing, I just want you to look at the for tasks that we have, and the first one is training. And, you'll have to excuse my scribbles. But training shifted from being a couple thousand people, a thousand to two thousand City officers and employees a year to 8,500 every two years. And the 8,500 encompasses all City

officers and employees. And, the goal is to do it every two years. The difficulty with that is although the staff doesn't have to go out and do training for each of those groups, we have to select a group training technique. The first time we did it, in fiscal years '13 and '14, it was basically using a DVD, off the shelf, it was kind of white bread, but it did a pretty good job of hitting on municipal ethics issues, and then we also had some follow-up and it was done in a, what we call, a train, trainer approach.

So, training is the first item and then we have request for advice; okay. Now, the vast majority of those are handled by staff because we've got a lot of good opinions and we've got pretty good precedent that covers almost all issues. If it's unusual—If it's a case of first impression or if it's something that's going to effect policy, we bring it to you folks. Like the federal credit union cases that we have later, regarding guidelines.

Now, this stays—I'm going to put 8,500 for the training every two years and then there request for advice is around 300 a year, okay. Now, we rarely write anything more than, very frankly, then a more a page in email. And, the reason for that is the people are asking us just want a concrete, can I, can I not, what do I have to do to make sure that I'm handling this correctly. So, we try to be very concrete also, and no elaborate a whole a lot but we do try to also educate them a little bit about, gift law requires this. And, just the other day, I had to make a guy give back a 50" TV that he won in a drawing, but it was from a vendor that he has to review all the time; to determine whether or not the vendor should get a contract. So—anyway, sometimes we have to be hard noise. Most of it is pretty straight forward.

The third area is what I'll call Legislation and Guidelines. This used to be much more (inaudible). The last few years because of the increasing work load with complaints requiring investigation, we dropped off on this, and we have had couple guidelines come through, notably the one that you will be looking at later today about the credit unions. But the big guidelines such as the proper use of City resources, what's a misuse of City resources and those of types of things. It's been around for a good 10+ plus years and sometimes they're updated.

We like to do a lot more of this though. Guidelines are really important we think not only for the public and our constituents, the City officers and employees, but it's also helpful for us. So, if we have to go back, we'll—what's in the guideline, what can we do, apply the facts to that and it makes it much more straight forward. They're guidelines, they're not rules, so people can diverge from them or come in and say, hey, in my case, I don't think this should be applied this way.

We used to also—The Legislation obviously is mostly at the council. I would say if any one time I have 10 bills or resolutions in my back pocket, but I haven't looked at my back pocket for a couple years, we just haven't had time to do this, but for instance, okay, why we don't actually put in the ordinances what are

examples of the misuse of City property or City position, but we haven't gotten to that. So, this area is really lagging in the last couple of years.

The fourth area is what I call complaints requiring investigation. Now, I just want to give you a little of what this means. All complaints that we receive, and I use the term complaint just generically. You know, somebody calls up and says, you know, I think, so and so is doing this and that and is that right and so on. I don't mean it as a form of (inaudible) or anything, but when we look at the complaints or staff decides to open an investigation into something, the first thing we do is to vet the complaint. Does it actually state something that if it were true, would be a violation of ethics laws. So a lot of times we'll get somebody calling up and asking about what is really a discrimination case.

Now, you can say that because our 11-104 is so broad, we could even handle discrimination or we would have jurisdiction to handle a discrimination case, but we don't take that because we don't have the expertise and the equal opportunity office does, and that's their kuleana, so we let that go. So, you'll see that in any one year where we have maybe a hundred—I'll make this math easy for me. Say, we've to 90 complaints total, but actually we'll drop 30%, so that would bring us down to 60 complaints requiring investigation. Now, as you folks can imagine the level of complain or investigation varies, right? Sometimes it's very straight forward, and we can done with it in, you know, in two hours. And, if that's the case, great. But what we're seeing in the cases in the last two years, is higher and higher levels of complexity. Now, the complexity comes in with a numbers of different things. First of all, the key area is you'll see—We see a lot more cases where multiple witnesses are required for review.

We finished a case regarding a department. It was an old case from 2012. Letha interviewed at least 50 witnesses in that case. Now, our conclusion was we were not going to take it forward, and I don't to say why, but I don't want to get into, unless you folks want to talk about something in exec session, I rather not say or what department it was, but it took an immense amount of talking to different people to actually build picture. And, there were seven boxes filled with materials.

Ms. Parker: Twenty boxes—

Mr. Totto: Twenty boxes; okay. And maybe it was seven once we narrowed it down. So, some cases can be enormous like that and can take hundreds of hours of lawyer and investigative time. Others as I said, somebody sends—here's a copy of the email that was sent and somebody is asking for somebody's political help in a campaign through City email, that's pretty easy to just stop that right there.

So, our job for this is not just—We're not prosecutors. Our job is to clear or correct, and what I mean by that, our philosophy is, and I think our duty is, that if we get information and we conduct an investigation and we don't find that there is

probable cause of a violation, we need to clear that person because sometimes it may be somebody at a very high level where it has gone to the press, not through us, but from somebody else, we need to clear them or maybe just a mid-level supervisor or a low level employee. But, any of you who have ever been investigated or had any matters where your concerned or been in a lawsuit or whatever, you gotta sword dangling over your head, and it's not comfortable, and it can really demoralize people to have to deal with that. So, we try to do the clear or correct as promptly as we can.

Now, the correct part means, well, what if we do find probable cause of a violation? Then we need to go into the formal proceeding, and that's when you folks will see our request to find probable cause, and then we will sent out a notice of alleged violation. And, that really kicks off the formal part of the case. But the investigation is anywhere between 95 and 100% completed at that point.

So, now you probably, well, what's the percentage there. In the last couple of years, I think we've had ten notice of violations. We've had 11 AOs, former advisory opinions that came up regarding claims of violations of the ethics laws. Some were found "yes" and some found "nos" and some were settled. But this is where this complaints requiring investigation is where a lot of times taken up. First of all by the investigator and secondly by the attorneys because we need to keep working with her to evaluate the I information, the evidence she's getting and to also to start looking into types of legal issues, they come up and conduct legal research.

Contested hearings is another area, contested case hearings. And, I apologize for my handwriting. We will probably have four this year, which is relatively high. And, the reason for that is we have at least in—Well, I can only say publicly, we have four matters where we've been unable to settle, and it looks like we will go to hearing. We will try to settle if we can. I mean, you know, if your resource strapped group—that's just another reason to settle, but we try to reach, you know, good accommodations where we can. And, this, of course, mean potentially more work for the Commission, you folks.

I talked a little bit—Now, one thing I have to make a correction. And, I apologize for a math error that I made. In Open 1, you saw an annualized figure that showed that we're going to go up like 118 or 117 complaints regarding investigation this year, that's wrong. It's actually going to be like the 5-year average. It's going to more about 90. I used the wrong multiplier, I apologize, but we won't have another increase over what we've had in the last few years, but nothing is really declining. And, of course, as I mentioned, the complexity of the cases has been increasing. We have a very rough rule of thumb, which is standard, complex and super complex. And, Letha was telling me the other day that everything that she's been looking at the last year is super complex.

So, here we've asked for funding in fiscal year '15, '16. We haven't gotten any. We certainly got Kristie's position, and she's been a great help to us, not only just for doing legal clerk issues, but she's also a wiz at excel, and we do a lot of excel spreadsheet analysis. So, she's been very helpful there. But in terms of the area where we're hurting, we need investigators. We've only got one. Her contract has been problematic for the last couple of times and we have, of course, interviewed a civil service employee, but that didn't go well. There is another list that's going to be produced. It has to go the prosecutors; apparently have first pick. So, I don't know when we will get that list. I would assume maybe sometime in July, might be later than that.

So, we've looked at different things, and we do different issues. Some of these, as I mentioned, some of the minor cases they go back to the department for review and appropriate discipline and usually that's counseling or a letter of reprimand something like that. If the case looks like it's a type of thing where someone is going to likely, if we prevail, they'll likely be suspended without pay or terminated from this point. That will be the Commission's recommendation, then we try to keep those within the Commission, so we can take a look at what the most—how this should be done.

We use staff attorneys. Laurie and I will take a look at cases, not only the initial area where they're vetted to see whether or not they're within our jurisdiction, but we will also take over cases and sometimes investigate. Before Letha came on board we did a lot of our own investigation. The problem with that, it slows everything down. We're not as efficient as Letha and yet also we've been constantly looking at a case for two days and then dropping it because we've got a lot of other stuff to do for a month and coming back to the case and trying to start it up. It's very frustrating and very difficult. We're most useful directing the direction of a case and also legal research and identifying legal issues.

Now, we use private investigative services to the degree that we have funding for that. And, for example, is that I can talk about publicly, we've been given funds to look at the ORI case. Most of you, or some of you probably don't know what that is. I won't go into the details, but we are using a private investigative service for that. Again, limited by funding. Then, we have recently, at the request, of another government agency sent 10 open—well, some were open and some were closed of the 10 cases. Two of the government agency, I would prefer not to say which government agency it is, in open session, because it may compromise their work.

Chairwoman: Okay.

Mr. Totto: I'm sorry?

Chairwoman: I just okay.

Mt. Tutto: Okay, thank you. So, you're wondering why Dan Hanagami, the chief of investigator, Chief Special Agent from the Attorney's General is with us today. And, the reason is because the Attorney's General office and Dan in particular has offered their services, free of charge, to help us handle some of our investigations. And, we've entered into a loose agreement on this. And, I say loose because it's flexible. You know, we're on (inaudible) voyage right now, shake down cruise. We're getting some of the bumps out of the way. But, what we're doing Dan is allowing us to use the AG's investigators for administrative investigations, not criminal, just administrative investigations and for the attorneys and Letha does essentially supervise work. We've sent over, I think, five cases, one of which is already been concluded, and what I wanted to talk to you about—just give you the general approach. Let's see, the Commission may request investigative services from the investigation's division of the AG's on a case-by-case basis. The division expects that to be able to supply investigative services but the work request and the extent of division resources will be up to Dan's discretion. The services provided by the division will not be charged to the Ethics Commission. With his concurrence the EDLC, the ALC and our investigator will be able to direct the specific activities that the special agents. The information will remain confidential pursuant to Chapter 92F of HRS and also the section, ordinances that is applicable to that. They'll be discussing the coordination of case work on a regular basis to ensure we're efficiently and effectively working together. And Doug Chin, the Attorney General, has given us general approval for this arrangement.

So, this is a little experimental at this point, but we hope that it will work. And, I've invited Dan if you folks have any questions or maybe he can just make a small statement about why they think it's important to give us a hand where we're short resources.

Mr. Hanagami: Good morning, Commissioners.

Chairwoman: Good morning.

Mr. Hanagami: When this discussion first came about, this was when David Loui was the Attorney General. And, when Chuck discussed the not enough investigators, myself and Chris Young-Hew was the supervisor deputy Attorney General, met with Chuck and Laurie to discuss the shortage of investigative hours that Chuck has. And, I brought—I discussed it with David Louie, and I explained to him that we as the State agency should offer resources to agencies who does not have it. It's just the type of partnership we do. We support each other in the investigative community. And, David had a strong stance in believing that corruption is at a level, and it might overflow, we should get involved. And, you know he gave his consent to this and when Doug came about, he had the same belief that we should be corruption at a State level. This is why, you know, right now we're getting a request to do an investigation from other state agency. And, you know, extend the resources that we have and the problem is to control it and consider manpower

later. So, these other request coming in from different state agency, we handle it out as partners, and we offer the same thing to Chuck for us to deal with. And, whatever Chuck needs, we will supply the investigative resources. I don't manage anything. Chuck sets out the criteria, what's to be needed for this type of investigative services. My division is empowered to do both administrative and criminal. And, once something like this comes out, firewall comes up, nothing from administrative crossover to any criminal. And, I think—what I explained to Chief Kealoha, I sent him a letter that should criminal investigation comes up during an administrative, he has to make a determination if he's going to conduct or refer it over to us, but there's a process, that's how criminal cases get transferred from a City agency to us. Just as the same matter from Big Island. It's being requested for us to do and there's a process to turn it over.

So, whatever needs that Chuck has, we will try and accommodate him as best as we can.  
Okay.

Chairwoman: Thank you.

Mr. Hanagami: Thank you.

Chairwoman: We appreciate that.

Mr. Totto: Just a couple of things that I want to—We haven't announced as to the departments yet. We wanted to announce it to you folks. But there are couple of things. Obviously, we'll send out an email blast to the agent, department heads, etc. to inform them of this process and as we have been working on a few cases, the two things that are critical that we're making sure done in the introductory phase is when an investigator contacts someone who maybe a witness or a subject in a case, they're given the notes—excuse me, the Notice of Rights and Responsibilities, either for a witness or for subject depending who they are, that we use in our cases, one; and then No. 2, they're also getting a letter, a copy of a letter from me stating that these AG investigators are empowered to conduct an investigation, but if they have any questions, they can call Dan or they can call me. And, you know, I have to say, obviously the AG has a very potent effect, just knowing that somebody is from the AG's. We've had some questions and some comments, but so far has worked relatively well. But, I think next week, early next week, we're going to get together and kind of work through our SOPs, the standard procedure we should be using in each one because we do our investigations a little bit differently then they do their investigations for administrative items. And, so we want to make sure we're doing it in a City way and necessarily in a State way.

Marks: I don't that beggars that can be choosers.

Mr. Totto: No, a helpful beggar.

Mr. Hanagami: We just want to make sure that we do fits into the criteria that Chuck needs because we may do our report writing a little different, but that's for us to do. And to service him, we just want to make sure that whatever criteria, how it's written up, how it's investigated. You know, we deal with the same basic unions at time, you know, we give whatever rights that's needed to the employee. By that time, they know they have their union reps over there. So, you know, it's just that when we, the finish product that goes to Chuck, it has to be in his liking because in his end product, he's going have to discuss it or argue before board or whatever. And, you know, we just want to make sure it's done properly.

Chairwoman: All right, thank you. So, you want to go to the agenda.

Mr. Totto: Yeah.

Chairwoman: Did briefly touch on the complaints and requests.

Mr. Totto: Yeah. So, this was to focus on both Item 1 the complaints and request for advice, and also Item 4, under the Administrative News, the Status of Investigative Services for the Commission. So, I think we can take care of those two at the website. Statistics evident and No. 3 is the stats of fiscal year 2016 budget request. The major issue that we were concerned about is couple of the council members suggested to reduce our investigative and consultant budget significantly, but we were able to get them withdraw that. So, I think they have made an overall \$1,500 reduction, which even for us budget is not going to hurt us too much. Other than that, we're going ahead. We didn't ask them for anything extra and nobody has volunteered to give us anything extra. But at least we're moving along.

Chairwoman: Okay.

Mr. Totto: And that brings me through Item A.

#### **IV.B. NEW BUSINESS – For Discussion: Permitted Interaction group's Report Regarding Commission Lawyers' Salaries and Recommended Next Steps.**

Chairwoman: Okay. So, Item B, Permitted Interaction Group's Report. Is that Mike Lilly? So, Commissioner Lilly and Commissioner Amano. So, which—Are we talking about the meeting with Donna?

Chairwoman: That's Item B. The Report Regarding Commission Lawyer's Salaries and Recommended Next Steps.

Lilly: Well, we had two meetings. We met with Donna Leong and Mayor afterwards. I thought it was a very—I think Rikki has the same feelings. It was very productive. One of the things that Donna was going to be issuing some kind of an opinion to the Mayor that he had authority to delegate to this Commission the

authority to set salaries within the Mayor's budget authority. And, that would avoid sort of the clash that we taken the position by resolution that we have that authority. But if he's delegating that to us, you would have to do it on a yearly basis, then that certainly would be a very productive thing. And, the Mayor when we met with him, he seemed very open to doing that.

Amano: Yes.

Lilly: Seem like that was positive to him.

Amano: Well, it was pretty, I think, affirmative that he was going to do it going forward. We asked him about considering one retroactive year.

Lilly: We wanted to do not just 16, but him also delegate 15 to us well, which would go back to the beginning of 15, back to July. And, there was some discussion about setting precedents and things like that but the sense that we had from the Mayor was that as long it's within the same fiscal year, didn't seem like that was something he couldn't do, that he could have the authority delegated to us retroactively as long as it's within the fiscal year, which this would be. I don't if anything has happened since then. But that was the discussion about that.

He, and we agreed that Chuck salary should be under the Salary Commission.

Amano: That's by Charter.

Lilly: Right. But we have to go through a Charter thing to bring Chuck within the Salary Commission and then there were some discussion between Rikki and me about including the assistant legal counsel. I feel that both should be in the Salary Commission because otherwise the way it is set up now, her position is sort of going to come up against the barrier, and it's not going to have any further ability to advance. And, we've seen it where she's had her salary reduced because of decisions have been made. So, if you put it within the Salary Commission, then they are going to be paid equivalent from other attorneys and other departments of equivalent status.

Amano: I wasn't clear about whether or not the Deputy Corporation Counsel salaries are also part of the Salary Commission. Are all the deputies in your office part of the—

Corp Counsel Leong: You want me to give testimony now?

Amano: No, I just want an answer to the question.

Corp Counsel Leong: Yeah.

Amano: All the deputies?

Corp Counsel Leong: Yes. They're all set by Salary Commission.

Lilly: Yeah. I got the impression that the—And we would need the administrative support of going forward to the Salary Commission, have a chartered amendment. And I got the impression that he's supportive of that. But we need to continue further meetings, perhaps with the managing director to see what the next step is on that.

He also didn't seem to have a problem with the ALC's amount of the salary. We should be able to use the savings within this fiscal year to pay the shortfall for the assistant legal counsel, but the question is going to be what happens in fiscal '16, whether we're going to have enough money in the budget to be able to pay what would be the next increase, come into the next fiscal year. That's pretty much the summary of that. I thought both meetings were very pleasant and very productive as far as I'm concerned. Do you have any more, Rikki?

Amano: So, in short, we have sort of three separate issues. And, I think we also should invite Donna too report, if there's one from the Mayor's decisions on delegating his authority to us. But, to me, I wanted to focus on getting the dollars and seeing what we needed to do to get the dollars to where they're supposed to be.

The second issue is who gets to determine that. And, so that's where it became—The Commission has already decided, no, they can't decide. It's supposed to be the Mayor, blah, blah, blah, whatever it is. And, that's where we are sort of talking about that as well.

And the third issue is going forward, who gets to decide that. And, so the third issue actually to me is the easiest one. And, that is I don't think there's any disagreement that the ELC's salary should be under the Joint Commission. And, I think we can expect to get the Mayor's administration support in our efforts do that. There was no discussion, no disagreement. It was a 100% agreement. There was a discussion about the ELC because I did not enough information about the deputies, but now knowing that all the deputies are under the Joint Commission, I would agree that both ELC and the ACL should be under the Joint Commission. We don't know what the Mayor's position is on that. We do know about the executive but not on the associate. So, that being the case, I would support that. That's the easiest peace.

The middle peace—Well, I think it was problematic, but hopefully with the Mayor's directive, it won't be problematic going forward. If he was delegating to us the ability to make the recommendation subject to the budget. So, that's going forward.

Chairwoman: For fiscal year—

Amano: FY16.

Lilly: 16.

Amano: Yeah. So, I think—And, we're waiting for something in writing. Going backwards FY15, you know, that's where the big hallowballoo is, but to me—So, there's a money issue, you know, which is how much money are talking about. Is there money there? And the other issue is who gets to say what? And, that's a bigger issue because Ember, in her authority as the managing director, whatever authority she was under at the time, made a decision that she made that call and she put a number into that budget space. So, this morning, I've been trying to figure out exactly what was going on, and Mayor did ask us really clearly, "well, what was the salary in chronological order?" And, I couldn't piece it altogether, but Chuck was kind enough this morning to make it clear for me. So, in FY13, I guess, they call it FY14—

Mr. Totto: Right.

Amano: The ALC's salary was \$70,224, then the EC gave a retroactive increase to \$78,996, the difference being \$8,772, which was paid by way FY14 savings, okay. In FY15, the budgeted salary was the new number, which is \$78,996, and there the Commission approved the increase to \$82,140, difference being three thousand somewhat dollars. And, that was also going to be funded by FY15 savings per discussion with the Budget and Finance Committee or office, but the increase has not been paid to date. We're still in FY15. For FY16, we wanted to have a budget—We put into the budget at a certain number was 88 or whatever got denied, something like that. With the 4% increase off the 82 and so that would be consistent with what we thought the deputies were making. However, this is where Ember stepped in and reduced that salary to \$80,378. So, you can see where the numbers are, how it fits in chronologically. I won't go to the explanations because that's too much cumbersome, and honestly it really throws me—I can't figure it out. And, I don't think to date, today, is relevant. I think today what's relevant is how do we take care of these numbers going forward.

So, after that, I don't what else to say. We did ask the Mayor whether or not he could help us get more money, and he was pretty tight about that because there is no more money. And, I think all of the departments have been asked to cut moneys versus increase. That's my recollection of what he said, and we don't have any definitive but my I note that corporation counsel is here, and I don't know if she's here to report.

Chairwoman: Donna, would you like to come forward and—

Amano: And, correct me if I'm wrong, I don't have any—

Corp Counsel Leong: Good afternoon Chair Chen and members of the Commission. Donna Leong Corporation Counsel. Thank you for having me report to you on behalf of the Mayor on this position, I mean on this matter.

I agree with Vice Chair Lilly that my conversation with you, what I call your group. I would've coined a better phrase for the whole City, but with your group as well as the meeting with the Mayor was very amicable. I know the Mayor very much appreciates the time the Commission has spent has been spending on this issue as well as the group meeting with him. I think that my recollection of what happened at the meeting with the Mayor is a little bit different from the group's recollection. I have a letter written to you that summarizes follow-up information with the Mayor. But I'd like to explain to you, I think, what my recollection was and the follow-up with the Mayor after the meeting that the group, and I had over there on April 6<sup>th</sup>. The discussion with the Mayor centered on the salary of the ALC. My recollection was that's all what we talked about. And, I know that none of us had the detailed information about things that had happened since November 13th on the ALC salary for fiscal years '14 and '15. So, none of us had the detailed information there.

What was important, however, to the Mayor was that the ACL be fairly compensated and realizing that there's a lot different methodologies that can be used to determine fair compensation. As a result of the meeting, I do know that as part of the conversation, the question of the salary commission was raised, I distinctly remember that the Mayor, as he sometimes is, became very contemplated. Because on an issue where you are asking for a change to the charter, especially to address one person's salary, you know, that gives you pause. It's not something that you immediately react to and that you can immediately agree to just because we're talking about basically the constitution for the City. So, my recollection is he became contemplated but there was no real response from him on that particular issue. I do think that this Commission—Okay, so Commissioner Amano when you refer to the Joint Commission, I think what you're referring to is the 2-stepp process to get that change effected in the Charter.

Amano: Uh-hmm.

Corp Counsel Leong: One is that the Charter Commission has met maybe two or three times so far, and they've been told by the State Office of Elections to their recommendation on Charter Amendments submitted to the office for publication on the ballot by August 2016. So, they are in the process of gathering recommendation from all comers, people of the City, the agencies, the Council members, whomever. And, I know, they would welcome a request from this Commission for any charter amendment that you might want to request of them. So, that's the first Commission that's meeting. They are currently meeting—

Marks: So, it's August 25th—

Corp Counsel Leong: 16.

Marks: 16?

Corp Counsel Leong: 16, yes. It's a very long process, and it's because after they gather based on the meeting I attended, their inaugural meeting and just hearing things, it's because the—The basic process is they gather a request or suggestions or recommendations. They gather them, they need to consider them and then they go out into the various communities to talk about them, to get comments and so forth. Then they decide what it is that they're going propose. And, I know that in the last Charter Commission, which was 10 years ago, a similar request asking for the salaries of the legal counsel to this Commission was made to the Charter Commission. I don't recall that it was ultimately put on the table or not—

Mr. Totto: No, no.

Corp Counsel Leong: Chuck says, no; okay, so, no. Chuck would know. And, that's what happened to that one. But it's the same process as the one 10 years ago. So, that's the Salary Commission issue.

With regard to the ALC's salary. The two takeaways that I had from the meeting of the Mayor that the group had requested, was No. 1 delegating to the Commission the authority to set the salary of the Associated Legal Counsel, and 2, retroactively adjusting (inaudible) salary for this current fiscal year, 2015, which runs from last July 1<sup>st</sup>, 2014 to June 30, 2015 of this year. So, those were the two tables.

At the meeting I recommended to Mayor that I thought there was a way to delegate that authority to the Commission to set the salary for the ALC, subject to the annual Mayor's directive that comes out, that's applicable to all excluded, exempt employees. Laurie is, the ELC's position is excluded, exempt position, and Mayor agreed to that. And, so (inaudible) will always be in the details.

I looked further and worked with DHR further about we would do this. There is one charter provision that obviously we have to comply with the charter provision and any ordinance provision, and that is the charter provides that any staff position for this Commission must be part of the position classification plan. Now, I'm not a labor and employment expert, so I've gotten a lot of education from the Department of Human Resources over the last few months. And, I understand that typically means that based on the job description that is submitted by either the Commission or Chuck to the DHR, they establish a pay classification, looking at comparable positions throughout the state, and they slot the position into that paid classification. And, in this particular case, the current position is slotted in SR-26. The concept they use—So, DHR informs him, and maybe I think maybe Lyla Tom was here the last time talking about it. It's based

on positions with the state judiciary and other legal positions in the state of Hawaii. So, they've done that comparison research and that's the paid position classification that they have placed the ALC's position. So, that we can't change because it's provided for in the charter.

I did have extensive discussions with DHR about within that charter requirement. Is there a way—You know, that SR-26 position classification, it has different steps with different numbers in it, which I'm worried about in the last few months. So, it does have all these steps with all the different potential salaries. And, I've learned that typically (inaudible) position classification plan, you are targeted in the entry step or the next step and then it's basically a lock step each year, up one grade parity parity with bargaining Unit 13, which is the professional services bargaining unit, Unit 13. So, in this particular case, and it's mentioned in mission's memo, January 30<sup>th</sup>. In this case, if you stuck strictly with the position classification plan the ALC would've gotten a 3.5% increase in January 2016. However, with subsequent discussions with Mayor, he is willing to delegate to this Commission the authority to set that salary within that position classification subject to whatever budgetary restrictions there are stated in the Mayor's directive, which is annual kind of thing. And that's because the City does not have unlimited funds.

Marks: Let me see if I understand you correctly. If the Mayor delegates it to us, he would allow us within the SR-26 to place it within any of those steps subject to funding?

Corp Counsel Leong: That's right and the funding part of will be expressed in that Mayor's directive.

Marks: Okay.

Corp Counsel Leong: So, by way of example, I looked in previous Mayor's directives to see what kind of budgetary restrictions they might have imposed for other positions. One, there was a lump sum set amount increase for another position. There was percentage, maximum increase. So, within that percentage maximum increase, you would be able to set your salary, and that's all the function of—I mean, not just all the—it's a function of a lot of things, you know, that are way beyond—I mean, it has to do with collective bargaining, funds available, the philosophies and values of the budget and fiscal services director, the Mayor's priorities, etc., etc., etc. That's way beyond me. I don't promulgate the Mayor's directive. So, those are basically the two parameters would be applicable to this Commission setting of the salary. So, that's on that point. Did you want to talk about that one before I go into the salary for fiscal year '15? And, that would prospect, so starting with FY16 and the Mayor's directive for FY16 will be issued in June. It's typically issued in the last two weeks of June after the counsel has adopted the executive budget but before the start of the FY year, which is July 1<sup>st</sup>.

So, it's very little time, and it's really a function of the amount of money that we have for salaries and (inaudible).

Chairwoman: So, FY15—

Corp Counsel Leong: That's the next subject.

Chairwoman: Oh—

Amano: So, Chuck does it mean we can change our budget or is it where the budget now is it fixed?

Mr. Totto: Where the budget right now it's fixed. For FY16, if the Commission decided that it wanted to get more than the budgeted amount—

Amano: Yes—

Mr. Totto: ...for Laurie's salary, we would need to find budget savings, my understanding is, and we would work with the fiscal officer to see if there is such. But because it's FY16, we don't know.

Amano: I mean, let's start from the beginning, which is right now the budget's salary is \$80,378 set by Ember.

Mr. Totto: Right.

Amano: But I'm hearing that we can change that number to something in the SR-26 levels.

Mr. Totto: Correct.

Amano: And that's the primary thing—

Mr. Totto: Right—

Amano: ...and as far as funding the money, then we figure that out.

Mr. Totto: Right, exactly.

Amano: Okay.

Mr. Totto: I mean, fiscal has helped us in this area before.

Amano: Yeah, okay.

Marks: I have a question. Is there anything that you need from the Commission or from Chuck to go to the Mayor to make sure that the delegation happens? Is there anything we need to do?

Corp Counsel Leong: I'm going to providing a copy of this letter to the Managing Director, DHR and BFS. So, they will be all apprised of the Mayor's decision on these two issues. I don't see the 80,000 thousand in Ember's memo, but maybe I'm missing it because there's a lot of stuff in here.

Mr. Totto: I don't have that memo with me, but I know it's there.

Corp Counsel Leong: Okay. I'll look for it again.

Mr. Totto: But I apologize.

Corp Counsel Leong: Because I don't see it. The numbers in there?

Mr. Totto: I can't remember if it's the number or—

Corp Counsel Leong: ...the concept?

Mr. Totto: ...or if she's saying 3.5% as of—

Corp Counsel Leong: January 1, 2016—

Mr. Totto: ...January 1, 2016, right.

Corp Counsel Leong: Oh, you must've done a calculation.

Mr. Totto: Actually, I may have just asked Kathy, and she showed me this is the number—

Corp Counsel Leong: Okay.

Mr. Totto: So, I'm not sure if it's on the letter or if it's—Actually, it is in the FY16 budget.

Corp Counsel Leong: Okay. So, there's a difference between the budget that was submitted last Fall that Chuck and I. I mean, I submit for a Corp, and Chuck submits for Ethics, the budget that's submitted to BFS in the Fall and they decide what they want to do with it and then they submit that to Mayor who then submits it to the City Council. I forget when they did that, in January—Oh, I think it was—

Mr. Totto: March—

Corp Counsel Leong: Which March, March 2<sup>nd</sup>, beginning of March, by March 2<sup>nd</sup>. So, he might've done it the last day of February. So, he submits the executive operating budget and the capital budget for the City Council. They are in the process of considering that budget. That budget is just budget. Because as Chuck has said, they're doing whatever they want with it. I mean, you know, they took out this huge chunk of funding from my department. It's okay, I think we'll be okay now. But they took a major portion of funding and they slashed \$4,000 in copying costs. And, I'm not sure why, but anyway I've already testified on it, submitted testimony.

Amano: With the Mayor's directive, does that mean that the Ethics Commission will be doing it's budget without fear of (inaudible) vetoes subject to Council?

Corp Counsel Leong: I can assure you the Mayor would not line item veto this particular issue. It does not rise to the level (inaudible) (inaudible) veto which is a serious (inaudible).

Amano: Yeah. Because the Ethics Commission does need to have a certain degree of autonomy--

Corp Counsel Leong: Understood—

Amano: ...you know, to decide its resources—

Corp Counsel Leong: Right.

Amano: ...in the appropriate place. That's all I'm asking.

Corp Counsel Leong: And, I recall that when Ms. Shinn was here explaining her decision. And, I think it was in February, you know, she explained how every department is not getting what it wants. And, this Commission, like really the Council because they don't even get what they want. I don't get what I want. Everybody is subject to—

Amano: You know, I mean, that's fact of life. Somebody is—

Corp Counsel Leong: Yeah—

Amano: With the line item veto is something that's not, something that I think we can tolerate because we have to decide our resources, whatever the resources might be.

Corp Counsel Leong: Yeah. I'm not a gambling person, I could almost guarantee you there will be not a line item veto for the Ethics Commission.

Amano: Good. That's great.

Corp Counsel Leong: But as I was saying the budget that we submitted last Fall that the Council was currently considering, that's a different budget, type of issue from the budgetary restrictions set forth in the Mayor's directive because he needs to decide. Once he gets the budget from the City Council, what he is going to do with the excluded exempt employees. And that's always done, it happens with collective bargaining. So, anyway, it's quite a complicated document. I don't understand all of it.

So, if I may, with regard to the 2015 salary, Mayor totally appreciates the work that this Commission does, and its support staff. Every single one of you. And, we did talk about increasing the ALC FY year salary from \$78,996, which was approved by mission's memo of January 30<sup>th</sup> to the number of \$82,140, which is the amount, I believe, the Commission had authorized in its meetings. And he is fully apprised of the Commission's memo. He is totally aware of all of the discussions that this Commission has had on this subject. He feels, however, that given the efforts made by mission to reconcile all of the historical information and the restrictions set forth in the charter and the ROH, as well as the Mayor's directives that were applicable for this FY, he believes that the ACL is being fairly compensated and has declined to retroactively adjust her salary for FY15.

So, you'll see in my letter that there are certain statements that forth in mission's memo that will be deleted because she basically has set forth would happen for FY16, but since he's choosing to delegate to the Commission within the parameters we just discussed, the authority to set the ACL's salary for FY16, there's language that will not be given effect for FY16.

Chairwoman: So, just to clarify. Ms. Shinn set it at 78 thousand and something, but then the Mayor is saying okay to go to 82, but then—Okay, I'm confused. So, he's saying back to 78—

Suemori: Holding it, 78,996.

Corp Counsel Leong: Correct.

Marks: Except we need to check the percentage increase bumped her to the 80,378.

Corp Counsel Leong: The 78,996 per mission's memo is actually a much higher step increase than she would've been entitled to under the pay classification plan for imparity (inaudible). And from FY13 to 14, she jumped several steps, whereas the imparity would be 13 (inaudible) step.

Mr. Totto: If I can add, I understand and appreciate Ms. Leong's approach, the Mayor's approach, but was missing from Ms. Shinn's analysis, and she admitted she did not look at anything prior to her coming on board and Mayor coming on board in 2013. And, as we pointed out to the Commission before, before the ALC position

was even created, we asked DHR what do we do about when the Commission give raises for this position? And, we were told definitively, and it was copied to then director and the division head for DHR that, yes, the Commission could do that based on—Actually they said based, the Commission has discretion to do that, they didn't say based on what. Ms. Shinn in not looking at that, unfortunately, was not aware of the history. And, we weren't just picking numbers out of the air. We were going on following the DHR memorandum from 2010. And, I just want to make it clear for the Commission. I understand what the Mayor has said. I'm concerned that the Mayor may not have been fully apprised because Ms. Shinn was not fully apprised. But in any event, that is why if you look at it from the ALC's point-of-view, the Commission's point-of-view, the staff's point-of-view, you would see that we were following everything we were told to do by various departments until Ember's memo decided to cut that off. I just want to make that clear for the record, and again I appreciate all the work that both the group of two has done, the Commission has done and also—

Lilly: So, the Mayor is not going to delegate 15 retroactive?

Corp Counsel Leong: No.

Lilly: Is not? Because that wasn't my impression in our meeting.

Corp Counsel Leong: Well, I specifically I remember the group asking Mayor to consider retroactively adjusting 15. So, a delegation of authority to establish '15 would be inconsistent with that request.

Lilly: With what?

Corp Counsel Leong: With that request.

Marks: Retro—

Corp Counsel Leong: Well, if he had, if the request had been to retroactively delegate to us, then we wouldn't be asking him, would you retroactively adjust, in first that he retains the authority to set the salary. And, I have to assure you he has spent much more time on numerous occasions on this salary for this one position than any other position in the City. I must assure you he has spent a lot of time on this issue.

Lilly: I'm disappointed he has not delegating us '15 because we had the savings and if we had—We think we have the authority, if he delegated it to us, we used our savings then we could've set the salary with those savings. So, I'm disappointed in that. And, I'm going to refresh your recollection, Ms. Leong, about our very clear discussion with the Mayor about the legal counsel's salary should go before the Salary Commission. We had a very clear discussion about that. And, his reaction to that, and he'll remember this, was “you know, his salary comes up all

the time. I hear the legal counsel's salary. It seems like every time I turn since the start of this job, I hear about the legal counsel's salary." And, that was the intro that we thought that it should go before the Salary Commission. And, my impression from his reaction because he keeps hearing about Chuck's salary so much, that it ought to go before Salary—It should be in the Salary Commission, then he wouldn't have to deal with it anymore. He wouldn't hear about it anymore.

Marks: But, I think what was said was consistent with that, what was not consistent was the associate legal counsel.

Lilly: No, no, Donna was saying that she didn't remember any discussion about his salary and we had that discussion because he was favorable to not having any further discussions about the legal counsel's salary in the future. Does that sound—Do you remember that?

Corp Counsel Leong: Yes. But, I think there's different ways to achieve it.

Lilly: Yeah. But the Salary Commission is one way to do it, and then it would never in the Mayor's lap again, except as a budget item.

Marks: You have to go through the Charter Commission and then the voters, right. So, there's no guarantee.

Lilly: Right. But my impression is that if we had the support of the Administration, something doable.

Marks: I didn't hear that the Mayor was or was not going to support the request to have the Charter Commission look at it.

Corp Counsel Leong: He really has not been presented with any of the Charter Commission amendments, and I have to say just dealing with all of the different divisions of the charter, it really depends on what it says. There are certain provisions unrelated to this Commission, that I'm going to submit because it's causing havoc in the City. I've gotten to the point where I've called the Charter Commissioner, who in the minutes supposed to be presented the thing, and it's like I don't know, I didn't know, I didn't present it, it was the other guy.

Chairwoman: Okay. So, at this point, the next step is we'll be waiting for that letter.

Corp Counsel Leong: I have copies.

Chairwoman: Okay.

Corp Counsel Leong: Should I give it to Lisa?

Chairwoman: So, are there any additional stuffs that we (inaudible), is the group going to be meeting again or—

Amano: We're coming to the Commission for direction, report back—

Chairwoman: Okay.

Amano: ...and you tell us what you think. I do have some recommendations to make—

Chairwoman: Sure.

Amano: ...but I'm wondering if it should go into executive session on some of them because it does pertain specific personal items. I mean, I don't know, I'm asking—

Mr. Totto: Yeah. If you're looking, if you're going to discuss—definitely going to discuss the quality of staff employees, and you may, looking at salary amounts and so on, but if you're just talking numbers and without any implication towards the quality of the employer, you're probably okay to do it in open session. But my recommendation would be to be cautious because that would be inappropriate to have an open session. So, you may want to go into exec session on that.

Amano: Okay. With regard to Step 3, which is the easy one to me, again. I would recommend that our group meet with the Managing Director and work for getting both the ELS and the ALC's salaries before the Joint Commission for recommendation to be on this 2016 balled recommendations and if the Commission is in agreement with that, perhaps our group can move forward. It really doesn't matter what the Mayor said or didn't say at this point. If he's going to oppose it, he's going to oppose it. If not, and he supports it, we'll find out real quick. But, I think that the Commission if everybody feels the same way, who want to have this under the Salary Commission, then I think we should put our efforts there. So, that's a clear directive on the issue 3.

Mr. Totto: And, if I may, on behalf of the staff, we've discussed this very often over the years and we have back in 2010, I realized that at some point, you know, the salary for the ALC is not going to what attorneys are getting or can get, corporation counsel or prosecutor's office and so on. So, bottom line it's fine with us because it is the one way to make sure that we're as close to being on an even plain field as we can be.

Amano: So, that's the third piece, and I don't know if—

Lilly: Do we need a resolution?

Mr. Totto: I think it would help to—You know, I would say we do that later, but actually resolution might be a good thing to have right now about this because it will give the group direction should the group need do more work on this.

Amano: Yeah, this is going to take work, but at least we have direction.

Chairwoman: Okay. Could I have—

Marks: So moved—

Yuen: Second.

Chairwoman: All in favor?

All Commissioners: Aye.

Chairwoman: So moved.

Amano: So, the second piece to me is going forward and, of course, we welcome the Mayor's delegation. And, I was just looking at the classification schedules for Step 26, Step M rather—Was it SR-26, sorry.

Marks: SR-26.

Amano: Yes, SR-26, sorry, step M for 2013, because I don't know why I have the newer stuff is at 85,416. So, we may have the ability to put in the number that we want for our ALC for FY2016 within the steps as designated.

Lilly: Correct.

Amano: And, hopefully the future beyond on that will be through the Salary Commission. But for FY16, let's try that.

Mr. Totto: Again, speaking on behalf of staff, I think that would be a great way to go. And, what we will need to do is talk with fiscal, our fiscal officer, and say what are the limitations and how do we go about—

Amano: Well, and I would recommend because we want to speak the language to look at the chart, the SR-26 thing, and we know the number, we think would be appropriate, and we pull out of the step and say this is what we want. Because that's what they want to hear from us.

Mr. Totto: Right.

Amano: So, let's do that.

Mr. Totto: Okay. And, that would consistent with the types of increases that occurring for corporation counsel, the prosecutor's office, the office of council services in terms of the 4% increases?

Amano: Well, you know, if we have to go that deep, we're going to get into some difficulty. I would just say that this is the number we think is appropriate given the levels that we're talking about and the history and workload, everything.

Mr. Totto: Okay. However, it is discussed that is fair approach—

Amano: So, I think, we just don't go too (inaudible) come from. I just want the outcome—

Mr. Totto: Yeah.

Amano: So, that's FY16. So, for FY15, I think the handwriting is on—

Mr. Totto: Can I take a moment? It's been taxing at times to have to be the one who is listening to the issues regarding her salaries, so I don't know if that's—But, if we could just take a short recess.

[5-minute recess]

Mr. Totto: Okay. We're back on the—being recorded.

Chairwoman: Okay. Commissioner Amano, you were wrapping up?

Amano: Yes. Going to the first item, which is FY15—

Mr. Totto: Well, for FY16, did we have a vote, I'm not sure if we did—

Amano: Oh, no, do we have to do something, because I think we still have to work on the budget, right?

Mr. Totto: Yeah. Okay.

Amano: Now that we have the delegation, we can go and make the fix, and I don't think anybody had any objection to looking for a number that would be consistent with what we hoped we would be giving them.

Mr. Totto: Okay, thank you.

Amano: Does that sound right? And, it does fall in the steps, I think. And, as to the first one, which is FY15, and our inability to go back and change that from the 78, whatever number it is. You know, we spent on a lot of time on it, I think we have to let it go. And that's my thinking. I realized I wasn't part of history, and I don't

really understand all the things that brought us here. Continue to fight over that issue seems to be me to be distracting and time consuming. And some feels (inaudible), and that's my thinking on that first issue.

Mr. Totto: My only, I agree—A lot of times been spent, a lot of energy, the Commission level, staff level, Ms. Leong's level, the Mayor, and so on. The only thing I feel a little uncomfortable about is, not having read this letter yet. I don't know—

Amano: I'm okay with deferring it.

Mr. Totto: Yeah, I was going to ask if we could defer for a month on that.

Amano: My thought off at the top of my head.

Mr. Totto: I'm not suggesting we're going to jump in and start (inaudible) or something. I just want to take a look.

Amano: And, finally for the record, I really despise the way this issue has been handled with our person sitting here like this. It just feels horrible, and I apologize. I don't know any other way to—

Mr. Totto: I appreciate that very much. I know Laurie will also—This has been very difficulty every time because all of us know what we get paid reflects the type of the person we are, what type of professional we are. So, it's very hard to hear it over months. But, thank you very much for your comments, and I'll pass it on to Laurie.

Chairwoman: Okay, great. Thank you. So, going onto Item C.

#### **IV.C. – NEW BUSINESS – For Discussion: Staff's Proposed Fiscal Year 2017 Operating Budget for the Ethics Commission.**

Mr. Totto: Right. I'm going to keep this at a high level, because, I think we're probably all pretty tired at this point, and I don't want to have to go through numbers, numbers and numbers, but I do want to talk about Item C, Staff's Proposal for Fiscal Year 2017 Operating Budget.

The main concern here is having sufficient resources, 1) to handle our complaints requiring investigation; 2) to have staff resources that are sufficient to do what this Commission thinks that we should be doing. Right now we are completely reactive Commission, excuse me, Commission staff. In other words, other than training—I should training aside, if somebody asks for a request for advice, they get a request, a response back. If somebody submits a complaint, we evaluate the complaint. If we are looking at an issue in media or we see one case might spin into another, the staff can open its own investigation. Again, we're just looking at things mostly coming into us as oppose to going out from us.

Chairwoman: So, I guess, all the Commission members understand the work load, how its been difficult it has been, and you described all of that. I guess, I'm wondering is how realistic is this to be honest because it's such a tremendous increase—

Mr. Totto: Right.

Amano: Before commenting, I wonder if could add to that thought.

Chairwoman: Okay.

Mr. Totto: Sure.

Amano: Because I also reviewed it and was surprised. And after what we just went through, I'm a little disheartened. I'm wondering if it's possible to—I can see this as part of a long range plan of some kind. And, maybe that's where our Commission should be extending a little bit of effort and, you know, aiming toward having three investigators, aiming toward having this, projecting the numbers, projecting the budgets, having plan to kind of get there. But to throw it out to everybody, we're inviting—

Mr. Totto: Those are both very good points. A little bit of history, in 2012 we started meeting with DHR and DHR, Lyla Tom, who was here before, it was very helpful. And they said you need to look at what type of Commission staff do you need? For instance, do you need a trainer? Somebody who's going to make sure all the training is done, so you don't have to pull a lawyer over to do it, and I think luckily we have two good trainers and our lawyers, but you don't always have that and so on. So, we put together a list for them at that time, which actually was from our point-of-view, a long term approach where we would be adding certain people. The problem is that—this is no one's fault necessarily, but the budgets weren't there, the funds weren't there and so nothing really changed. But, I appreciate that, and if this were to be—when this is brought to the attention of others, we'll try to go back to that initial 2012 approach. And, of course, then the Mayor is changed and the administration has changed. So, their priorities change. I didn't have any promise from the prior administration or anything like that.

Amano: I was also wondering if perhaps a member of our Commission might be involved with that process, our Chair perhaps, you know, so that it wouldn't be a surprise to the Commission either to sort of have this enormous budget, 50% essentially.

Chairwoman: So, is your—Because you asked for two more investigative position?

Mr. Totto: Right.

Chairwoman: Is that consideration that the AG is now giving you support or is it exclusive of that—

Mr. Totto: It's exclusive of that.

Chairwoman: ...because you don't know how long that—

Mr. Totto: Yeah. We don't know how long, what degree and how it will work. But it is exclusive of that, and also it's important that—I'm all for sharing resources, but I will tell you from my own personal experience back when I was consumer advocate, we were represented by four AGs deputies, and the auditor came in and said, you either have dedicated AGs that only consumer advocate work or you need to have the consumer advocate get their attorneys. And, for the reason for that was it seemed invariably whenever we need the AG, our deputies were already focused on some other case. So, like I say, we want to look at how we can share resources, at the same time we do need to have a presence even if the AG investigations work out well. We still need to have a, what I call, a coordinator or supervising investigator here, at least that one.

Chairwoman: So, when is the budget due?

Mr. Totto: I haven't been told yet. What I want to make sure. This was not necessarily for you guys to vote up or down. This was to start a discussion so that the issues can be brought up for the next time. And, I was trying to get a little farther along, but I realized depending on who or how many people you add, that drives all the other expenses. You know, how much space do you need, computers, desks, etc.

Chairwoman: Right.

Marks: Can I make a comment. I think the budget request has to be compelling to be successful. And, I would like to help it be compelling, but what I don't see in this is maybe a background document where, you know, distinguish your workload from the workload of other legal offices, how they're set up, the City, the State, the judiciary, other states whatever. Because, I think, without that you're not going to have a chance. And the other thing is that if it doesn't go through, you also need to be working on a Plan B even other than the AG's office to so you can function.

Chairwoman: I think that's a very good point, but the irony of that is that, I think, you have actually presented that in the past and didn't get this.

Mr. Totto: Well, done that presentation in the past. Actually, I pulled out my January 4<sup>th</sup>, 2013, and actually I was told this was too long and not to send anything—

Marks: Well, then you need to develop it into a chart or bullet point—

Mr. Totto: Excuse me, I think, you're absolutely right. I've done it, I've done it, I've don't it. It depends on who we're going to sale—and, I'm try to figure out who we are going to be talking.

Chairwoman: That's one of the reasons. I mean, her point is actually one of the reasons why I feel this isn't realistic because you've gone through that and this is even bigger jump. You know, this is even a bigger jump then when you did do that analysis that present that. I'm not trying to diminish the validity of it, I'm just saying it just makes it seem more unrealistic in light of the history.

Mr. Totto: Okay. If you're going to take getting zero increases as the status, then—

Chairwoman: No, I'm not saying that.

Mr. Totto: Okay.

Chairwoman: I'm not saying that—

Mr. Totto: All right. I don't mean to be argumentative, I'm just trying to figure this. Where you want me to go with this.

Chairwoman: Right.

Mr. Totto: And, I don't mind going back to that where I had the charts, where I got the 12 different things that we should be doing pro-actively including changing laws that—

Marks: No, no that isn't what I'm talking about. What I'm talking about is selling, why you're—

Mr. Totto: Excuse me, if I could finish.

Marks: Okay, I'm sorry.

Mr. Totto: ...comparisons with HPD and their professional standards office, where they do administrative cases, in a number of cases they do. Comparing it with the state's Ethics Commission in a number of complaint cases. They do a (inaudible) number attorneys, etc. So, I agree, and I have no problem updating this. And, it's obvious that would be certainly helpful for the Commissioners to understand that kind of background and that kind of comparison. My comment to you, my concern is if we say, "okay, let's go and maybe we can get one more investigator." Well, we tried that and it didn't work. And there's a problem with government and if you don't ask, you don't get. And, if you don't ask, you're assumed that you don't need. Now, those are unfortunate precepts to have to work under. But, I'd be happy to go back and brush this stuff up, get new statistics, take a look at what's going on. And to answer real briefly, the Plan B

will always be to have to prioritize. I mean, we're never going to have all resources to do all the cases that we'd like or think we should do. So, Plan B is always to prioritize and figure out this case whether we've got an AG investigator or not, this case is going to have gone by the (inaudible) compared to another case. But, thank you, I appreciate that, and it depends on which audience you're talking with. Because if you're talking to the BFS, the analyst, they just want to know the dollar amounts. They seem much less interested in the why, what you're trying to do and so on. And, as you go up the chain of command, you see the people starting to look at the bigger picture. But, those valid comments.

Chairwoman: Yes.

Corp Counsel Leong: When you take comments, may I participate?

Chairwoman: Sure; briefly.

Marks: Go ahead.

Corp Counsel Leong: I just wanted to share with you with the process as I know it. I think I've been through two budget seasons now there was two burning curves for both (inaudible). So, it's a little early to be doing 2017 budget planning. Only because 2016 has not yet been adopted. So, the period of time that this 2017 fiscal year is applicable for would be July 1, 2016 to June 30, 2017. And, what I've been told you basically as soon as the fiscal year budget has been adopted and they're required to adopt it by June 15<sup>th</sup> of this year for the Fiscal Year 2016, as soon it's adopted, start on your '17 budget, okay.

So, I think people take what's been approved for 2016, but they must super-copy it and they do some kind of adjustment to it. We get budget guidelines. I want to say maybe about September, October, and then we get a calendar by which the departments have to submit their request and budget issues, and what are called budget issues. And, those are things that are not in accordance with the budget guidelines to Budget and Fiscal Services. So, we submit it to them and they do their thing with it and we have discussions with them. And, I know, Chuck has had a lot of discussions with them. And then we, starting in October or November, December, a period for three months, BFS works with all the agencies and managing director and the managing director will make a recommendation to Mayor. And, I don't know what happens there, they must have discussions and the executive operating budget is submitted by the end of February and Council— We're in that session now between March and June 15<sup>th</sup>, Council has all of its budget hearings and so forth. So, I wanted to share with you what the process is and I totally agree with Chuck about getting out ahead of it because in the last— The very first year that I did this, way behind, because I didn't know what was going on. But last year, a little better. Try to plan a little bit better and this year soon as the Fiscal Year '16 budget is adopted, June 15<sup>th</sup> then we start really planning to submit something.

Chairwoman: Okay, thank you. Sounds there is some time and then you talked about getting some more information from Chuck. So, let's do that and then come back to—

Corp Counsel Leong: Thank you.

Ms. Iwasa: May I also comment, public—

Chairwoman: Sure.

Ms. Iwasa: Thank you. I'm so glad I was here. I mean, you've been here for a while almost two hours now, but I was over at Honolulu Hale. I'm Nathalie Wasa, CPA and also a certified (inaudible) examiner. And some of you may be aware I supported the Ethics Commission in the past and I continue to do so. And, I just wanted to offer a perspective, I think, from the public. Because what we have seen here, the way the City is working with the Ethics Commission, the way City Council is working with the Ethics Commission, is there has been a lot of friction and, I think, truly what needs to happen is a move to be more independent because when the Mayor is under investigation by the Ethics Commission he's not going to want to offer, give you more resources. He wants to hold back. Same thing with the City Council. Five members now are under investigation and they're not going to want to put more resources towards the Ethics Commission. There's a total conflict of interest between the two branches of government. And, so, I think, really what you folks should be looking at seriously is looking at the Inspector General or—I forget what city it was. I had looked at a couple of years ago had something that wasn't quite Inspector General, but they were more independent. Might have been somewhere in Ohio. But, really seriously look at that because, you know, when we have a down economy like we did for so many years, that's when people are tempted when they want, they feel the need, and if there's an opportunity to take advantage of their employer, that's when it will happen. And the thing we don't know what that costs us. We don't know until there's some kind of investigation, until we dig into it.

And, I apologize I forge the number that Chuck had mentioned in the budget hearing regarding the number of hours and one or two staff persons. But basically what boiled down to now with the recourses you have now, you have enough to do every investigation to take two days, two days per investigation, that is so unrealistic and that means, you know, they can't do that. And what happens, what's the consequence of that. Well, then other investigations that are lower priority don't get investigated. They don't get done. So, I just ask to really look at that, being a little more independent. I support more resources. I don't think it's too really to start talking about the Fiscal Year 2017 budget, I think that's a good thing to do, especially given the relationship that's been going on here for the last couple of years. So, I support all of you folks and, You know, I mentioned again in the budget hearing this morning, you guys need more

resources. So, if there's anything that I can do to help make what you're doing easier, please let me know because I think it's crucial to what happens with out City and how our money is being handled.

Amano: Thank you.

Chairwoman: Thank you, Ms. Iwasa. Okay. Going on to Item D, Request for Motion to Approve and Adopt Staff's Proposed Guidelines on the Federal Credit Union issue.

**IV.D. NEW BUSINESS – For Action: Request for a Motion to Approve and Adopt Staff's Proposed Guidelines on Use of City Resources to Support Certain Federal Credit Unions.**

Mr. Totto: Yeah. I just wanted to take a pulse on when people need to go. We have an advisory opinion when you need to leave today, because we do have an advisory opinion also that we like to—

Chairwoman: Need to get out.

Mr. Totto: So, I want to see how we can plan the time. So, if most of you're here until we're done, that's great. If some of you need to leave right away--

Marks: Within limits.

Mr. Totto: As my wife says, within reasonable limits. Okay. So, I'll move ahead then.

**Amano: Can I must make the motion—**

**Mr. Totto: For—**

**Amano: For approval and adoption of your proposed guidelines on the City Resources to Support Certain FCUs.**

**Yuen: I'll second.**

**Chairwoman: All in favor?**

Amano: So, now is the time to discuss. But I don't have any questions, I think it's fine.

Mr. Totto: The only thing I want to add is that we did finally get a response from Department of Human Resources today. They said, fine. They have no comment.

**Chairwoman: Can I have a motion to pass—All those in favor?**

**All Commissioners: Aye.**

**IV.E. NEW BUSINESS – For Action: Request for Motion to Approve and Adopt a News Release Policy.**

Mr. Totto: Okay. That brings us to Item E, For Action Request for Motion to Approve and Adopt a News Release Policy. And the policy itself is open for. Do you folks want to take a look and discuss it before, I'll leave it to the Commissioners for further discussion.

Amano: So, before making the motion or otherwise, I just want to comment I see that—I'd like to see a clearer articulated policy regarding our news releases. And, the reason that's important is because it will direct what that news release is going to be. It needs to be consistent with, I think, our mission and all the other things that we required by charter to follow. But for instance, the language it says, you know, the purpose is to summarize and communicate the actions, the positions taken by the Commission as well as their impact on the public and integrity. Then we start to get into some mushy judgmental areas that, I think would not be a good idea to be part of a news release. So, I could favor a more concise policy and that will (inaudible) my second concern which is there is no review of the news release prior to issuance. And maybe we're too small to do that. Maybe it's not appropriate because of timing, I don't know that. But with no clear direction and no review, we don't have a policy. We have procedures that are, I think, pretty good. But the policy is really my main concern. That's all I wanted to add.

Suemori: **Can I make a motion to defer this to the next meeting?** Because it says here's the polices and procedures and then it says here's the purpose. What is the policy with purpose?

Amano: I didn't want to come empty handed so I did try to look for other things. And, I noted for instance, the University of Hawaii at Hilo has a media relations policy and procedures, spelling out clearly policy and then the procedure. And, in the policy it's tight, and it should be. But for instance, it says the University's spokesperson will provide broad general information in responses to university inquiries, however, for matters that require more detailed information, administrators and faculty will respond accordingly.

So, you have a policy.

Chairwoman: So, because t his has been on the agenda couple of times, deferred a couple of times, but it sounds like it's still not where it's at, or where you want it to be, then maybe—

Amano: I'll be willing to take a shot at drafting something for consideration.

**Chairwoman: Okay. Why don't why we do that, and we can defer it.**

**Amano: Is that okay?**

**Suemori: Yeah.**

Chairwoman: Yes. All right.

Mr. Totto: If there's anything I can help with you, I'd be happy to do that.

Amano: I'll work with you.

Mr. Totto: We asked the Mayor's, those guys, they don't have a policy, but HART has one. So, this is basically what HART's looks like.

Amano: The procedures are real good. I think we just need to be really tight on the policy, and I notice when going through the handbook that we have, that there's some really good language on direction. So, maybe we can do that.

Mr. Totto: Okay.

Chairwoman: Okay. So, at this point, we need to go into executive session.

Mr. Totto: Yeah. So, we're done with the open session matters and now executive session.

**Chairwoman: Can I have a motion to go into executive session, please.**

**Suemori: So move.**

**Amano: Second.**

**Chairwoman: All in favor?**

**All Commissioners: Aye.**

EXECUTIVE SESSION DISCUSSION REGARDING ITEMS V.A. and B HAVE  
BEEN REDACTED

**Chairwoman: Okay. So, can I have a motion to move out of the executive session?**

**Amano: So move.**

**Suemori: Second.**

**Chairwoman: All in favor?**

**All Commissioners: Aye.**

Chairwoman: So, we're back in open session. I don't have to report anything, so—

Mr. Totto: No. It was deferred, so—

Chairwoman: Right. Okay.

Mr. Totto: You don't have to worry about reporting anything.

Chairwoman: Okay. So, then I'd like to have a **motion to close the meeting of open session.**

**Suemori: I'll move.**

**Marks: Second.**

**Chairwoman: All in favor?**

**All Commissioners: Aye.**

Chairwoman: Thank you.

VI. ADJOURNMENT

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

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2015 MAY -7 PM 1:12

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA

Honolulu Ethics Commission  
**May 13, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

- I. CALL TO ORDER
- II. FOR DISCUSSION: STATUS OF THE MINUTES OF THE OPEN SESSION OF THE APRIL 22, 2015 MEETING
- III. OLD BUSINESS
  - A. Confirming the Date and Time for the June 24, July 23, and August 19, 2015 Meetings; and Setting the Meeting Date During the Week of September 21 - 25, 2015.
- IV. NEW BUSINESS
  - A. For Discussion: Staff Report
    - 1. Complaints and requests for advice statistics through last month.
    - 2. Website statistics.
    - 3. Status of Fiscal Year 2015, 2016 and 2017 Operating Budgets.
    - 4. Status of Investigative Services for the Ethics Commission.
    - 5. Report on Mandatory Annual Financial Disclosures from City Officers and Employees.
    - 6. Ethics Training for Board and Commission Members DVD Available.

- B. For Discussion: Report of the Permitted Interaction Group Regarding the Commission Lawyers' Salaries and Recommended Next Steps.
  - C. For Action: Request for a Motion to Approve and Adopt a News Release Policy.
- V. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)
- A. For Discussion: Status of the Minutes of the Executive Session of the April 22, 2015 meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
  - B. For Action: Request for a Motion to Approve and Adopt Staff's Proposed Advisory Opinion No. 2015-2 Regarding Alleged Violations of the City Gifts Laws by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

VI. ADJOURNMENT

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU  
Formatted Transcribed Meeting Minutes

Date and Place:     May 13, 2015  
                          Standard Financial Plaza  
                          Conference Room, Suite 211

Present:             Katy Chen, Esq., Chair  
                          Michael A. Lilly, Esq., Vice Chair  
                          Stephen Silva, Commissioner  
                          Hon. Riki Amano (ret.), Commissioner  
                          Hon. Victoria Marks (ret.), Commissioner  
                          Hon. Allene Suemori (ret.), Commissioner  
                          Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
                          Laurie A. Wong, Associate Legal Counsel (ALC)  
                          Letha A. S. DeCaires, Investigator  
                          Lisa P. Parker, Legal Clerk III  
                          Kristine I. Bigornia, Legal Clerk I  
                          Geoffrey Kam, Deputy Corporation Counsel, Department of the  
                              Corporation Counsel (COR)  
                          Keoki Kerr, Reporter, Hawaii News Now

Absent:             Stanford Yuen, Commissioner

Transcriber:        Gloria C. Takara

**I. CALL TO ORDER**

Chair Chen: Hi, welcome. Welcome to the May 13<sup>th</sup>, 2015 Honolulu  
Ethics Commission open meeting. Do we need to go around  
introducing ourselves for the record.

All Commissioners: No.

EDLC Totto: The usual suspects are here.

**II. FOR DISCUSSION: STATUS OF THE MINUTES OF THE  
OPEN SESSION OF THE APRIL 22, 2015 MEETING**

Chair Chen: Okay. All right. Item 2 for discussion, status of the minutes of the open session of April 22<sup>nd</sup>, 2015 meeting.

EDLC Totto: Just wanted to let you folks know, excuse me. Again, because we got so much work on-going that I've had to make a decision about whether we're to going to spend couple of days—actually, it probably takes two to three days boil the discussions down to minutes, and instead we're using staff for other projects, but we are having a transcriber transcribe the meeting, so that we will have full information should anybody either in public you folks or staff need to go back and look at anything.

Chair Chen: Okay.

EDLC Totto: We hope to change that at some point. But—

Investigator DeCaires: State ethics in the Big Island just deferred the case of—

Lilly: They did what?

Amano: Deferred it?

Investigator DeCaires: They just deferred it until the State Attorney General was done investigating, they're not going to hear the case.

### **III. OLD BUSINESS – Confirming the Dates and Times for the June, July, August and September Meetings.**

Chair Chen: All right. Item 3, Old Businesses, confirm date and times for the future meetings. The first one is June 24<sup>th</sup>, 2015. Does that remain, all right?

Amano: Yeah.

Amano: Yes.

Chair Chen: Okay. July 23<sup>rd</sup>.

Amano: Yes.

Lilly: Yeah.

Chair Chen: That's okay with everybody? And then August 29<sup>th</sup>.

Yuen: August--

Amano: I can do August 19<sup>th</sup>.

Chair Chen: That's a Saturday.

Lilly: No, August 19<sup>th</sup>.

Chair Chen: Oh, I'm sorry, 19<sup>th</sup>. Okay.

Lilly: I won't be able to attend. That was always the case.

Chair Chen: Were there others?

EDLC Totto: Is that still—I know you had a two-week block you were concerned about—

Lilly: No. Actually I could attend that week but not that day. That's changed. I was going to be in arbitration on Maui, now that's turned into a mediation that day here.

EDLC Totto: So, if we were to do a day or two before, would that be okay?

Lilly: Yes, yeah. Either side would be fine.

Chair Chen: Okay.

Marks: This is for August?

Lilly: Yes, August 19<sup>th</sup>.

Chair Chen: I can do August 20<sup>th</sup>, the Thursday.

Yuen: He's going to be gone.

Lilly: No. I was going to be gone on the 20<sup>th</sup>, but now I'm going to be here.

Amano: I can't do the 20<sup>th</sup>.

Chair Chen: I can do Friday, August 21<sup>st</sup>.

Amano: 21<sup>st</sup> is okay with me.

Chair Chen: Friday, August 21<sup>st</sup>, does that work for everybody?

Yuen: So far so good.

Chair Chen: Okay. Let's amend it to August 21<sup>st</sup>.

Suemori: Hi, I'm here [just arrived]

Amano: Can you check your calendar real quick, August 21<sup>st</sup>.  
[referring to Suemori]

Chair Chen: We're changing the August 19th meeting to August 21<sup>st</sup> same time, 11:30.

Suemori: Probably I can make it. My son goes back to college, and I'm gone.

Amano: That date?

Suemori: Around there. I just got off the phone with him, and he's flying back and he's not concentrating. So let's just do 11:30 the 21<sup>st</sup> is fine.

Amano: Yeah, yeah, okay.

Chair Chen: Okay, good. Do we want to go one more month, September 23<sup>rd</sup>?

Amano: Yes, good.

Lilly: I'll be long gone. I'll be in Europe.

Amano: Oh, okay, so not good.

Suemori: The 23<sup>rd</sup>?

Chair Chen: Actually, I'm not sure if I can do that one either.

Lilly: I'll be hiking.

Suemori: It's hot, you know.

Lilly: No. This will be in the alps.

Amano: Can you connect by telephone? Just kidding.

Marks: Sir, we're saying yes or no to the 23<sup>rd</sup>?

Lilly: I'll be gone for most of that month. I leave around the 8<sup>th</sup>.

Suemori: We got to forget him. Just have a majority without him.

Amano: Okay.

Chair Chen: We don't have Stanford. We can put it down preliminary 23<sup>rd</sup> and then—

Seumori: But we're not here on the 30<sup>th</sup>, right?

Amano: Yeah, we're not here.

Lilly: I'm back the last week.

EDLC Totto: Of September?

Amano: I'm not good on the 30<sup>th</sup>.

Suemori: We're not here.

EDLC Totto: For a long time period or—

Suemori: A week.

EDLC Totto: A week. Okay.

Chair Chen: That whole week?

Suemori: Yeah. 23<sup>rd</sup>—Let's just do the 23<sup>rd</sup> and hopefully we have a quorum.

Chair Chen: And next meeting we can find out if Stanford can do that.

EDLC Totto: Okay. Yeah, we'll let him know.

#### **IV.A. NEW BUSINESS – For Discussion: Staff Report**

Chair Chen: All right. Thank you. Moving on to new business, Item A for discussions, staff report. Do you want to do that?

EDLC Totto: Yeah. Just real briefly on the complaints and request for advice.

Amano: You know you got a small typo, yeah.

EDLC Totto: Where's that?

Amano: Just above FYI '15 total. It should be March 31<sup>st</sup>, 2015, I think.

Chair Chen: 31<sup>st</sup> 2015.

EDLC Totto: Yes, thank you.

Amano: You're welcome.

EDLC Totto: Okay. So, July 1, 2014 through March 31, 2015, got it.

Amano: Yeah.

EDLC Totto: The main decrease was in FY14 total. You see that we were able to close a net 15 cases there. And, again, those were mostly investigations. So, we've been pushing hard to close as many as those as we can and still not get overwhelmed by what happens in this particular FY15. That's all what I wanted to say about that.

Amano: May I comment? It looks like our statistics are a little bit lower this year then they were last fiscal year?

EDLC Totto: Yeah, I looked at that. I think we're about 50 less, and I think most of those are request for advice. But we also have a few less complaints. And if you were going to ask me why? I don't know.

Chair Chen: Maybe because of the training.

EDLC Totto: Pardon me?

Chair Chen: Maybe because of the training that's being done?

EDLC Totto: Usually training stimulates.

Chair Chen: Oh, stimulates

EDLC Totto: Questions and concerns. But it also could be, I don't know how many—It has been the policy of the cabinet to no longer contact us for ethics advice because the formal managing director had said contact corporation counsel. So, that could be the difference—

Silva: You don't know how many they're handling?

EDLC Totto: No.

Silva: They know how much we handle?

EDLCT Totto: Yeah.

Amano: Because it's about a 10% drop if it continues on this same pattern.

Chair Chen: Okay. Website.

EDLC Totto: Yeah. I didn't get the automatic email from our website statistics, so I don't know what happened and I will check on that. Actually there's a bigger typo. It should be July 1, 2014 through April—Is there 30 days in April?

Chair Chen: Yes.

Amano: Yes. Oh, oh, okay—I thought you were just giving it to us by the quarters.

EDLC Totto: No, my mistake.

Amano: Got it. So, the drop would even be bigger.

EDLC Totto: Uh-huh. Let's see, Item No. 3, Status of FY15, 16 and 17. I really don't have anything to discuss right now, but FY15, I know we will be under our budget, and if you have questions I'll be happy to answer them.

For 2016, there was another committee draft of the budget bill which would've removed \$7,000 from our budget, but those potential cuts were withdrawn. So, we're almost 100% of what we were funded.

Amano: That's good, huh?

EDLC Totto: Yeah. For 2017, you know, we talked some about the budget request last month, and I wanted to put together some— This is just a basic load statistic. This is the type of thing we try to—Every year we try to put something like this together, so we contact the State's Ethics Commission, and you'll see that that the workload is relatively similar by lawyer any way for the various items. The biggest difference being—They don't use an investigator in the rare times. They tend to generate their cases from their lawyers and if they need investigation then they'll have their lawyers do the investigation.

They also limit quite a bit the number of cases that they look at in terms of the complaints requiring investigation. We drop off of about, I'd say about 50 a year and they drop off a lot more than that. But the major focus here is the complaint requiring investigation per investigator and that becomes even more relevant when you look at the bottom chart, and you'll see that we contacted the AG and their investigators, the Police Commission, the Professional Standard's office of HPD. That's what they now call internal— what they used to call Internal Affairs and then our office.

So, you can see that if you go down to the administrative investigations per investigator, we have a quite a major increase and huge workload compared to the others. And that's because the others, at least appear to me have sufficient resources so that they can do

that. And, again these are only administrative investigations. We made sure that the AGs and PSO remove any criminal investigations because that would be an unfair comparison.

Silva: I got a question?

EDLC Totto: Sure.

Silva: We look at total administrative investigators, we show the state has six, but on the top it shows zero. How come?

EDLC Totto: No, no, the bottom chart is the AG—

Silva: Oh, okay.

EDLC Totto: ...and the top chart is the State Ethics Commission.

Silva: Got it, got it.

EDLC Totto: So, we're trying to find out who in the state does similar work to us and that's what it looks like. So, this would be a reason to ask for an additional investigator or two if we assume that maybe average is about 25 investigations per administrative investigator. But that's just FYI.

Chair Chen: For 2017?

EDLC Totto: Yeah, this would be focused for 2017 budget. Any other questions or comments on that? [no response] Okay.

The fourth item is Status of Investigative Services for the Commission. We have Letha on contract through June 30<sup>th</sup>. What's going to happen after that is kind of a question mark? We should be getting a list of eligible civil service candidates. I'm not sure when that's going to come. I've been told by the end of this month, but then I was also told that we have to wait until after the prosecutor's office go through their list and goes through their

process of trying to hire. So, I don't know might add another month, six weeks, depends on how quickly they go. And then we have to see—I don't know who's going to be on that list or what quality the people will be.

So, it's up in the air at this point. By mid-June if we can't, if it doesn't look like we're going to fill the position by July 1, one option will be to see if we can get a dispensation from Human Resources and Corp and BFS to have another 89-day contract with Letha.

Chair Chen: Okay.

EDLC Totto: Assuming Letha wanted to do that.

Item 5, as you all filled out. We have the mandatory annual financial disclosure, which is sometimes a teeth-pulling exercise, the staff has been very good, and I can say as of this time everybody has filed except for one person.

Suemori: Is it me?

EDLC Totto: No, no, you filed. I mean in the whole City.

Suemori: This is a record?

EDLC Totto: But I'll tell you the difficulty with this, you know, I'm more of a "hey, we notified you, we notified you're late, you notified you were late, and we notified you the fourth time you were late, you can now just come and pay a fine." And, we haven't done that yet because unlike me, staff is too kind.

The other thing we do which is usually hopeful is we contact the Council Chair and the managing director and say, "these are the folks that haven't filed yet." And we let them break the (inaudible). And, they've been pretty good this year. It's tough for just a couple of people to keep calling. After a while it's like, they get pretty non-responsive. And, I think this year we had,

and I'm not quite sure, but about 475 financial disclosures annuals that needed to come in.

Ethics training for board and commission members DVD available by the end of the month, and if we can send it to you, we will or we'll just let you know that you can come in here and watch it here or whatever.

And that's it for the Administrative News or as we call it Staff Report now.

#### **IV.B. NEW BUSINESS – For Discussion: Report of the Permitted Interaction Group Regarding the Commission Lawyers' Salaries and Recommended Next Steps**

Chair Chen: Okay. Item B, for discussion Permitted Interaction (inaudible) Report regarding Lawyer's Salaries and recommended next steps. That would be Vice Chair Lilly and Commissioner Amano. Like to update us?

Lilly: Well, we had a very good meeting with Ray Soon at his office at Honolulu Hale. He couldn't commit to any particular thing about Salary Commission. We represented that our two attorneys would like to have their salary under the Salary Commission. That's the direction from this Commission. And, he couldn't commit because he had to go back and ascertain what the position might be. But we felt that, I think he was receptive. He was supposed to get back to us and tell us what the process was for applying to the Commission. And, apparently Commission doesn't have executive director at the moment.

EDLC Totto: Yeah, I guess, not yet.

Lilly: So, they're still assessing that, but there's going to be some kind of process for you to submit a white paper. Now, whether it's directly from you to the Commission or whether it's through the City, that hasn't been determined. But we need to have a white

paper that says what it is that we want. And, it will affect at least two of the chartered divisions. One, is the chartered provision on the Salary Commission that would include you under the Salary Commission and also changing the Ethics Commission's provision, says "we are responsible for setting the legal counsel's salary." So, those two things are going have to be amended.

And, we need to get that in by July?

Amano: Well, I think he anticipates that the Charter Commission will be finalizing its own plans by the end of July and then taking it out to the public from August forward.. So, they have their pig, believe it or not.

EDLC Totto: There are a lot of pigs running around.

Amano: Yeah, there are. And, so that pig is in charge of looking for the executive director. And, he expects—So, he named—There are 10 people on the Charter Commission. Half dozen that he could recall including John Waihee, Rick Tsujimura, Guy Fujimori, Mike Broderick, Mrs. Ray Soon. I don't know who is, but his wife, and Jessie Souki. Jessie Souki is the Chair of the Charter Commission. So, he contacted Jessie afterwards and then Jessie told them about the pig and they're anticipating a report back from the pig next week, the 21<sup>st</sup>. So that being the case, Souki said they'll know more by then. The City has not decided to present its own Charter recommendation, change recommendations. They may do it in bulk and they might invite us to join them, depends, or they may have to do it individualized. And, we might do it individualized anyway. So, each one of the changes is going to require a white paper, which he wants to have one to two pages and, of course, it has to reference which sections of the charter are to be amended in our case when we add our ALC and EDLC to the Salary Commission. Two pieces have to be amended that's our own piece, the Ethics Commission as well as the Salary Commission. That's all. He said two pages not more than that. And really it's

the reasons for why we want to have our two people in the Salary Commission, which I think are very sound.

Mike and I represented to Mr. Soon that our Ethics Commission supports this idea, and we want it. And, I hope that's accurate.

Lilly: We passed a resolution.

Amano: So, that's good.

Lilly: He said he didn't they would oppose it. But, I said we need you to support it.

Amano: So, that part we're going to be in touch him. Mike will be in touch with him and we'll work together on that. But nonetheless, we need to be prepared to either be part of them or do it alone, either way. If they chose not for us to be part of them, we're going to do it alone. We may chose to do it alone anyway, which we can do, I think.

Lilly: So, you didn't work on that white paper?

EDLC Totto: I think I've already done it.

Amano: Yeah.

EDLC Totto; But happy to put that together—

Amano: Great.

EDLT Totto: ...and we'll do our best to get it to you folks for the June meeting, so it'll be well ahead of whatever deadlines they set.

Amano: Yeah. So, we're prepared to walk it all the way through.

Chair Chen: Sounds like they're waiting from Mr. Soon for process.

Amano: Souki supposed be back to him after next week.

Lilly: Yeah. They haven't ascertained where it is yet.

Chair Chen: Okay.

Amano: So, we are small fish. They got a lot of big fishes, and I think that process is going to be very important to Soon, who has to put his whole package together. We're just really a small part. But we're tag along.

Chair Chen: Okay.

EDLC Totto: One of the most difficult things for the Charter Commission is taking the show, so to speak. Once they get their 5, 10, 40, I don't know how many requests for Charter Amendments, they have to do some determination as to what they think they should take out for the public and the public hearings on that around the island and so on and start that give and take process. It can take a lot of time especially—I'm not suggesting ours is going to be a big political or emotional issue, but some Charter Amendments may be, so that's where it takes a lot of time.

#### **IV.C. NEW BUSINESS – For Action: Request for a Motion to Approve and Adopt a News Release Policy**

Chair Chen: Okay. Thank you. Moving on to Item C for action, a Request for Motion to Approve and Adopt the News Release Policy and then we can discuss. So, can I have a motion, please?

Silva: So move.

Lilly: You made a motion?

Silva: I said so move.

Lilly: Second.

Chair Chen: Okay. So, we can discuss. There's two policies actually. One proposed by the Commission staff and then one that Commissioner Amano, I believe yesterday distributed?

Amano: Yeah.

Lilly: Which was that one?

Amano: Open to—

Seumori: Is that this one?

Chair Chen: Looks the same; yeah.

EDLC Totto: It says "Draft Honolulu Ethics Commission Media Policy" on the top.

Chair Chen: And then the one with the logo is the staff one.

Suemori: That one I don't have.

Chair Chen: This one you don't have; okay. So, Commissioner Amano would you like just to talk us through your proposal?

Amano: Well, I set out a policy for the statement which follows, I think which tracked our mission and tracks everything we have out there including in website. And then I set out, I researched some different kinds of media policies but I thought this was the best compilation of a good procedure. You know, our media interaction is very, very important. Because once you put it out there it's almost like digital. It's not gonna go away. We have to be careful with how we put it out there and what we put out there. And, I think it's very important to have people vote proactive and reactive because sometimes we do get if someone else said

something rather or something has become newsworthy, and we feel the need to react.

But other times we have a lot of important information that we want to get out there, so I hope this policy would cover both kinds of activities. It's very general. I think it's pretty clear, and I try to blend in what the staff had proposed which you see in Item No. 6 and also Item No. 5.

Chair Chen: So, what do you think of this (inaudible) differences between yours and the staff's version?

Amano: The biggest difference is that we before we have a media release of any kind, which would be the responsibility of our executive director, it would be reviewed with our Chair from the Commission, if possible. If time does not permit that then there's another way to do it. It's in the policy as well. That's the biggest difference.

Chair Chen: Okay. I didn't quite understand No. 2, which was "under no circumstances shall any media, communication engage, etc., etc., etc., or interpret or comment on any decisions or advisory opinions. I just wonder about under no circumstances to air concerns (inaudible) regarding the operations of the Ethics Commission. If that's maybe too broad because, I guess, how practical is that? Operations of the Ethics Commission could be—

Suemori: But it concerns of grievances.

Chair Chen: Yeah. I mean, it could just even be like this is the budget and you wouldn't be able to comment on the budget.

Suemori: I don't think publicly. Should we publicly?

Chair Chen: Well, I think that for example when there's council meetings and they have people go and talk about budget or

whatever the case may be. I'm just wondering if that's just so broad, is it practical? What's the purpose behind that is just to make sure—

Suemori: It's a boundary.

Amano: Yeah.

Chair Chen: So, I guess, this is under no circumstances at all? It seems, does it seem particularly practical—

Suemori: It's under no circumstances how any media communications. So, it's media communication. If he's in the City Council and the Council is having a meeting and the media is there. That's a media communication. That's a communication with the Council that's being covered by the media. But it's not media communication. It's not directly saying, "here, this is what I'm saying." He's doing it in the Council, Mayor, whatever or us.

I think it's just, I mean, I think a boundary to not submit to the newspaper or the TV a bitch about A, B or C is not a good thing. Unless, you guys agree, disagree. We should go into the media and submit our bitch. But, I don't think so.

Lilly: I don't know. First of all, I don't what that is, and I don't—

Suemori: There isn't any.

Lilly: ...how to define it.

Suemori: That's why I'm just saying. We just want to boundary or should we have no boundary?

Lilly: That's why really Judge Amano's initial suggestion do we have a policy and that's what they had worked up a draft.

Suemori: Right.

Lilly: Now, judge has a different (inaudible). I'm concerned about 2. 2 seems—I'd be hard pressed if I was in Chuck's position to figure it out when it was I couldn't talk with the media or not when given No. 2. Secondly, and I don't mind the idea that if he's going to issue a press release that he contact A, B or me or if we're not around somebody on the Commission to look at the press release. To me I don't think that's bad. But this one about them (inaudible) about getting prior written approval—

Amano: That's anybody else; not him. The authorization comes from him, if it's anybody else but him.

Lilly: Oh. So, okay. So, we don't communicate and the staff doesn't—

Amano: If we decide that an Ethics Commissioner, Mr. Silva, for instance is the appropriate person to speak on something that we want to notify the public about then that's a decision that all of us make together or the EDLC makes. Then he just gives a written authorization to Mr. Silva and he goes out and does it.

Suemori: So we don't have four Commissioners all talking their opinions and going to the media.

Amano: Yeah. It's controlled and it's controlled by the EDLC.

Lilly: Is it a written approval or can they call Acadia, say, "hey, I got contacted by Keoki Kerr, what do I do?"

Seumori: I think you should have written (inaudible) to protect him. What if she says, "well, I was (inaudible)". For him, I think we should cover that.

Amano: Because we have a written policy, it's better that we have clear record of what transpired and that its gone through the procedure. We leave it all in Chuck's hands.

Lilly: Does the email constitute written communication?

Amano: Yeah, sure, why not.

Suemori: Texting does.

Lilly: Texting.

Lilly: I don't care for Item 2.

Suemori: That's another thing. So, then—

Amano: Well, there's two parts to Item 2.

Suemori: Any circumstances (inaudible).

Amano: So, it's really (inaudible) concerns and grievances regarding the commission. That's really what it is.

Chair Chen: So, the interpreter comment on under no circumstances to interpret or comment.

Amano: Yeah, that's a separate issue. Interpret or comment on our decisions or advisory opinions. Those have to speak for themselves. That's why I put it under that way.

Marks: And that tracks what the staff drafted, right?

Amano: Yeah, what we approve.

Marks: Yeah. Staff should refrain from interpreting the opinion.

Chair Chen: Yeah. But I don't think that goes as far as to say under no circumstances can you comment.

Suemori: Not you, him.

Chair Chen: Right.

Silva: Well, he won't be able comment on a advisory—

Suemori: The court decides to issue the decision—your opinion on your decision.

Lilly: That's judges, that's different. We're not judge here. This is a Ethics Commission whose responsibility among other things is to educate the public and other employees about ethics rules and our advisory opinions are geared not only educate the public but other employees of the City and to be used by us in the future when a similar matter comes up because our advisory opinions track prior opinions.

Amano: All those things are exactly the same as judicial opinions.

Suemori: Yeah.

Lilly: But for him not able to comment on—

Seumori: On his own opinion?

Lilly: On opinions issued by the Commission.

Suemori: What if he says, "I don't agree with that one."

Lilly: No, no he's bound by it.

Suemori: But what if he comments that he's not.

Amano: But to me comment sometimes is elaboration and that's not what you want when you issue an advisory opinion. It has to speak for itself.

Suemori: Yeah, I agree.

Lilly: When an advisory opinion is issued that has City wide concern that the media may want to have somebody explain. I mean, that's what they do.

Chair Chen: He couldn't clarify, he couldn't answer any questions.

Lilly: No. The opinion stands for itself, but the media goes to some knowledgeable person and says, "what does this opinion mean?" Can you give us—

Suemori: Can he just write it?

Lilly: Pardon?

Suemori: He wrote it, right?

Lilly: But the media is not only—They would like to have a person like in the visual one, like Keoki is over there-

Suemori: So if he said that, he issues an opinion, he gets—

Lilly: We issue the opinion.

Suemori: But his written it and so next comes up. So, Keoki comes up and he says, "well, what do you think about this?" It's now printed in the newspaper. Next time over is that (inaudible)?

Lilly: No.

Seumori: What is it?

Lilly: The opinion speaks for itself. Keoki doesn't want to just put up the opinion. He wants to have somebody explain it.

Amano: Why should it be—

Suemori: Why should it be explained?

Lilly: Because it got members of the public.

Amano: No. But why should it be our executive director?

Lilly: Why shouldn't it be?

Amano: Because we issued the opinion and it needs to stand within its own parameters.

Lilly: Right.

Amano: Otherwise down the road you got someone who will come and say, "here's the advisory opinion, yes, but here's what was added to it afterwards."

Lilly: No, it's not—

Suemori: Right.

Chair Chen: No, I—

Lilly: No, I don't buy that.

Amano: Why?

Lilly: Because the opinion is the one that governs. The comment to the public is merely explanatory, but—

Amano: Okay. We're going to have a difference of opinion on that.

Suemori: Yeah, we're going to have a difference of opinion.

EDLC Totto: Well, let me give you a simple example. Can I pick on Keoki? The Commission renders an advisory opinion, and if it is all interesting to the media or public, the next day I will get a

call saying, “well does this mean for people with the City?” So, I explain well, in future they won’t be able to do X, Y.Z. So, have I violated this?

Suemori: Is that an opinion, sir?

EDLC Totto: I don’t know—the opinion will probably say, it may or may not say that. I don’t to interpret your opinions other than to give people advice, right? Because that’s what we do. That’s part of our job is take whatever the opinion is and say, “okay, based on that opinion, is probably, here’s the advice for you.” And this facts may or may not be totally similar but we use the statutes and the charter and the prior precedent to do that. Whatever I say to the media has absolutely no legal affect at all. I mean, I can’t imagine, and if you thought it did then reprimand me or put whatever you think is appropriate.

Amano: It’s too late.

Milks: I have a question?

EDLC Totto: Can I finish. I’m sorry, I just want to finish the example here. So, if any reporter asks me, “what does this mean if for City employees. I’m asking you, under your policy is that something I can respond to or not?

Amano: No.

Chair Chen: Under the policy you can respond under any circumstances. I guess, I feel that defects one of our primary purposes which is to educate the public. If you can’t explain or anything or comment any way to media inquiries about an opinion, then I think that diminished our ability as a commission to educate the public on ethics. And, I think that’s a disservice.

Lilly: I agree.

EDLC Totto: Also we have a current policy, “Procedures for Handling Request for Advice and Complaints.” And that was passed in 2006. And part of it says, “the news media often asks for opinions whether the conduct of an individual violates the ethics laws.” The policy of the Commission is that no comment should be made to the media or third parties on matters that may come before the Commission as a result of a request for advice or complaint.

However, when asked by a member of the media, the Commission or staff may describe generally the ethics laws and issues that may be relative to the conduct of an officer or employee.

So, if we adopt this new news policy, I think we’d have to take a very serious look at the old policy that we’ve been operating under for several years.

Amano: Doesn’t appear to be contradictory to me.

EDLC Totto: Okay.

Marks: I had a question? In the staff’s policy and procedures regarding news releases, it says “a new release about formal advisory opinions, staff should reframe from interpreting the opinion.” So, what did you mean by that?

EDLC Totto: By that mean, I didn’t mean to that we couldn’t apply it to future issues or other examples, but that we should not be saying “what did the Commission—was there a split on this issue or why is it written it this way and not another way?” And that type of thing. Because that, I think that’s the part of the opinion that should never be discussed with anybody else. But in terms of saying, Mr. Z is found to have violated the ethics law and then taking that and later whether it’s the media or whomever asks, I think would be okay to say, “well, we had this case, it was very similar to what you were saying, so this is what I think would happen. But, of course, you want to go to the Commission for

formal opinion and so on.” So, I appreciate that point, maybe it should be more clarified as to what that was meant.

And, also I have to say, you know, “should” is a weasel word. And, there might be circumstances where the interpretation occurs. But to me whatever, if anybody asks, and I do get questions, where somebody will ask, “what is the reason that the Commission decided to that?” Or Or is the reason because they got another case coming down the line or they’re worried by Mr. So and So’s conduct or something like that.

That would be totally prohibited from my point of view. Whether any of that was discussed by the Commission, it’s not in the opinion, and I do think the opinion has to stand for itself, and the people should review the opinion if they want to get the full effect of what’s been stated by the Commission.

Lilly: If there was an opinion here as to a particular City employee that violated X, and the media asks you, “well, what does that mean for other employees? What does that mean?” And, you say, “well, my interpretation with the Commission did. I don’t know what the Commission will do in some future, but my interpretation based on what the Commission did in this case. If other employees engage in X, Y and Z, there may be ethics violations.” Now what’s wrong with that?

EDLC Totto: It’s kind of a bases of an informal advisor opinion anyway. That’s what I’m looking it.

Amano: I don’t find that to be interpretation.

Chair Chen: Okay. Well, that is certainly a comment. That’s a comment.

Lilly: He’s extrapolating.

Chair Chen: The way it reads now, he can't make any comment. He can't say anything.

Amano: Well, you know, all I can do is put out proposal. I do not have the experiences that Chuck has already had, so this is somewhat in a vacuum. I did it in the biggest broadest sense, because I believe that we need to have some parameters, and my background is in the judiciary. I prepared it, and it make sense to me. So, it's not like we're not out there educating the public, we will, but there is a process for it. We have training, we have other things we will be using, our advisory opinions in the trainings. Obviously, you can't just put it out there and expect the attendees to review the opinion. You're gonna need to say, "here was this case, this is what it did, and this is the prohibited activity. Is that a comment? Absolutely." But it is constrained to the actual parameters of the opinion itself. You're not going beyond that. There's always a danger.

Lilly: Okay. If I understand what you're saying, and I can understand that. His interpretation of what this opinion means as to this employee, the opinion speaks for itself.

Silva: Right.

Amano: Or even future conduct.

Lilly: But, if you apply this, my interpretation of this, and it's certainly subject to future facts and whatever the Commission may do, (inaudible), but my interpretation is if other employee, City employees engage in these sorts of conduct, they can have an ethics violation, right? And you're saying that's not an interpretation.

Amano: I'm saying it's precedence, and he's informing them, 'here's the precedence. This is what it stands for.'

Lilly: Okay. Maybe to shorten this, I recommend that if you take the two recognizing what we're talking about in terms—Because, I think the way it's written now judge is, I think it's ambiguous of whether what I just described was interpretation.

Amano: Okay. But right now we have nothing. So—

Lily: And it's more like an application. What I'm saying is an application not an interpretation.

Suemori: If you were to send this back to be tweaked,, could we do something with that word “should”—

Chair Chen: Where?

Suemori: In No. 1 staff. Chuck corrected it's a weasel word.

Lilly: Should refrain.

Suemori: I don't care what word you use, but don't use “should” because “should” is a useless word.

Chair Chen: Well, I guess—

Suemori: Let him decide, figure it out.

Chair Chen: Well, are we working off of Commissioner Amano's—

Lilly: Take the two, recognize what the concerns are. I hear that the Commission doesn't have a concern about you taking an opinion and explaining how it might apply potentially to other employees, right?

Silva: That's what he does at his training.

Marks: Sure.

Lilly: For me, I don't want you constraining from being to do that, but I think what the judge is telling me is they don't want you to go too far in interpreting what this particular opinion is because it speaks for itself.

Amano: We're also dealing with different formats. It's one thing to deal with a room full of trainees. It's a whole another thing to get all the media and say this thing and then it's subject to your comments are subject to further interpretation by whoever else. And, I don't think it's beyond, you know, possibility, if not probability that a lawyer is going to grab the whole thing and say, "this is how this opinion ought to be interpreted." And, you could make a mistake. Once it's gone it's gone.

Suemori: And, I know the attorneys that would.

Lilly: I wonder if there's any (inaudible) of the public who have any comment? Comments?

Chair Chen: Commissioner Silva had a—

Silva: Let's see his interpretation first. He's with the media.

Mr. Kerr: Hi, I'm Keoki Kerr from Hawaii News Now.

Chair Chen: I had no idea.

Silva: We didn't recognize you.

Mr. Kerr: I didn't actually come here to testify, but I did feel compelled to speak about it because we've been dealing with Chuck for many years. And, I think what it comes down to is trust. I mean, you, as Commissioners have hired somebody to be the executive director. He is not a Commissioner, and sure what he says is not the final decision, the written decision. He is in so many ways the very important bully pulpit, if you will, for the Ethics Commission, which is frankly beleaguered in staff and in

budget and sometimes doesn't have the teeth that it would like to have. Yet, I see the important education role is to allow him the leeway to talk about these issues as Commissioner Lilly talked about broadening the month.

So, it's not just about Mr. Jones' case we're talking about, right? Often what we're interested, we may be interested because Mr. Jones is a high ranking City official and that's juicy and interesting, but it has a broader effect that Mr. Jones got in trouble here, but the important thing is that all City employees cannot do this on the job or whatever the issue is. And that's often why we need that kind of interpretation and that is really fulfilling. I think the mission of this Commission is to raise the awareness of ethics in City government and for the citizens of Oahu and by giving us the leeway to talk to him and expand slightly not intruding or obviously reinterpreting or misinterpreting a decision but he's broadening it and making, bringing it down to earth, because that's what we're trying to do, right?

Sometimes these opinions, and I've covered many of them for many years are very detailed. They're very, very lengthy and we have to boil it down to a very simple to understand, you know, decision, right? And, so that's often why we go to Chuck because sometimes they're legalistic. They're long and involved, and we want somebody to boil it down, and say, "why should we care? Why should the public care about this decision, Chuck? What effect does this going to have now? What does it mean that bus drivers are going have to do from now? And whatever the issue might be. And that's where, I think it serves the greater purpose of this Commission is to help us boil these cases down to important nuggets of information that we want the tax payers to know, and you want those public employees to know that this is the way their conduct is, they must conduct themselves or they must not conduct themselves. So, I think you have to be careful about putting all these constraints on your executive director.

You know, frankly, he has been, he's always been extremely, in spite of my record of trying to grab all kinds of things when you're not supposed to tell me, he's been very, very good about, you know, explaining I can't talk to you about it. This is an active investigation or whatever the case may be. We have other ways of finding out different things because people are brought in for questioning or whatever. We may do our own independent work. But the fact is Chuck always make sure everyone's rights are protected and the process is protected, and that's very important, you know.

But also it's important that you generate, I think, you generate discussion on these issues because, I think from covering government for many years, you know, a lot of people tend to look at the other way. And the important thing is that we don't look the other way when there's a problem and we address them. And if the executive director is allowed to do that without these constraints, worry that, "oh, no, am I going come a foul of this restriction?" It's hard enough to get us really these days, there's not enough coverage of government, and ethics and government, I think. And, frankly, the things I'm hearing about in this version, it just makes me scared it's going to even harder for us to get those kind of quotations if executive director is put under these constraints. It's like "oh, no, I'm going to be directed to an opinion and I have to quote some 27-page thing, really?" That's not really what's going on these days, right? Especially in broadcast media. You want somebody to try interpret a real human, not just a document. You know, this is not a court. This is the supreme court. This is not the ICA, this is not the circuit court. I know a lot of you have that experience but, you know, it's a different ball of wax. As Commissioner Lilly said, this is not a court. And his decisions are not going to be appealed to the Supreme Court, and he's merely helping the public to understand. And, I think that's really important, so I would caution you about any kind of restrictions.

But, I thank you. I don't know if you have any questions?

Chair Chen: Thank you very much.

Lilly: Does anybody here have any concerns about the way in which Keoki has expressed, the kinds of things the media—To me, getting the information out if it is valuable when the media covers an opinion that may just be sterile opinion that we file away and no employee ever sees it because it's not out there other than may be in an ethics training, but if it's important enough that the media is interested in, now it gets publication out to a lot of employees maybe on the line and may not stop violating ethics because they heard that "X" got dinged for what I'm doing.

Marks: Yeah. I have a comment, and, I think it's a follow-up to what we discussed last meeting and that is these advisory opinion should not be 100-page supreme court ruling they ought to be made under shorter understandable in English so that the average City employee doesn't have to read a tone to know what it is, doesn't have to have legal training to understand it, and that if it is so lengthy then the Commission ought to have a press release with it that's a paragraph or something so that everybody understands and it should be done at once and make things more understandable for the employees of the City and County.

Mr. Kerr: I think they have. I mean, that's what they do especially for some large cases, you have done that, right, in the past. And that is very helpful and there will be that sort of general interpretation that doesn't stray from the legal (inaudible) or whatever of that much longer decision because as you know the layers on the other side often throw all kinds of things in there, and so they do have to be addressed and sometimes it's not just that they're wordy, these guys love to write many pages. All these issues and these smoke screens brought up by people trying to defend strange behavior by politicians or by City employees.

And, so we do appreciate it. That's a great idea, but they are doing that already for some major cases they have done that. For a lot of routine cases, I don't think they do that, but they will send out a news release which does summarize the basic facts and sometimes does have a quotation into, I believe, from Chuck talking about the greater implications which does help us immensely and, you're right, helps boils it down for the public employees. Because that's what it is about raising awareness and letting them know, "hey, we're out there." You know what, we're on to this and this is not to be allowed. And you better think twice if you're doing the same kind of thing, I think that's important for people to know that you guys are all here. You give so much of your time. They're all volunteers. This is a lot of work.

Amano: What, we volunteer?

Mr. Kerr: But we want your, all your hard work, all the hard work that you do for your bottle of water over there. Right, we want to get out and get noticed as much as possible. I don't think, we, the media covers these issues enough because there aren't enough resources anymore. There's aren't enough reporters to do these kind of things.

So, that's why, again, any kind of awareness that you can bring which involves new releases you talked about, but also involves giving us access and giving us somebody to talk to us to help us interpret this. And, also to help us. You know when we're wrong because I've had some great discussion with Chuck where I go, "oh, well, this is clearly. Oh, this is so sleazy, it's terrible." And, he'll say, "wait a minute, you know, you have to take all this into consideration here and, you know, there could be a possible explanation, and we've had this kind of thing happen before. So, he really helps us, you know, to make the story fair and accurate and not just sort of go after somebody unfairly too.

I've had those kind of discussion with him before because of his lengthy experience in this issue. It's been tremendous, and I would be very sad if that kind of access. If he was so scared of even talking to me on background on an issue. Because I feel like my stories wouldn't be as good, as complete and as fair without that kind of give-and-take which is really important. But, I'll stop talking now. I appreciate your time.

Amano: Well, I appreciate your comments. Very, very helpful.

Mr. Kerr: Yeah, sure. Thank you. Thank you all for your service and for all you do. So, we really appreciate Ethics Commissions all over state and county. And there's one meeting today with Billy Kenoi over on the Big Island.

Lilly: The Ethics Commission apparently deferred.

Mr. Kerr: Thank you, guys, but it's nice to talk to you. Good to see you all.

Silva: Going back to where I was (inaudible). I come from a more religious background, so consequently I know about all of the interpretations so to speak of scripture or whatever. There's so many, and so the same thing here we hold here as an Ethics Commission. We should be holding the public's trust.

And, if you read through media newspaper, TV, whatever today, the general public has a kind of a low priority on government right now. And, whether it's national or local, state, whatever. And, so, basically our job, therefore, our main purpose is to improve, maintain the public's confidence in government officials and employees. That's basically what we need to do. Just looking at situations as they come along, whether this is right or whether this is wrong.

I mean, there's all kinds interpretations as law (inaudible). Because you're basically lawyers and attorneys and have you, judges. But

basically that's how we have to look at is what will the public think about what we conducted here today.

Is it a good thing or is it a bad thing. And sometimes things get shaded gray, right?

Suemori: What I was going to say, you know, follow-up to Commissioner Marks is that it was set last month when we got an advisory opinion. We got sort of like bogged out, the purpose of the advisory opinion and, I think—that's how we got out of this.

Chair Chen: That was in executive session.

EDLC Totto: Yeah. I think it's okay to talk about it generally.

Suemori: We're just talking about general.

EDLC Totto: Yeah, without the—

Suemori: And that's right. So then what happens is we wanted to have—if we were going to use an opinion for the public then we actually really need to make it a (inaudible) as opposed to 40-page, 80-page whatever. And if actually you know you can't say anything in five pages, don't say anything.

Silva: Can't say nothing good about—

Suemori: Yeah. You got to be real clear, and I don't know because I think there was a review of what is the purpose of an advisory opinion. We're not doing that now, but how we're going to communicate that to be fair to everybody, which is the parties, the public, the media and everything. And that is a challenge of how you draft and how you write. And it takes a lot of thoughtful word use. And, so we were just kind of—that opinion was not the longest but it was long, that's all.

Lilly: I think he's cut in half.

Suemori: So, now we're at 24.

Amano: I think it's five or six.

Chair Chen: So, we had a suggestion to look at 3<sup>rd</sup> version addressing some of the issues that were raised today and to reflect—

Suemori: The discussion.

Chair Chen: ...the discussion; yes. So-

Amano: For the record, I'm not married to any of this except the procedure of some kind with some parameters. I think it's a good idea to look at all the concepts, put something out there that's workable incorporating Mr. Kerr's concerns as well, which are equally important. I ask that we keep the policy that I articulated which mirrors exactly what our achievement is. I took it right off pretty much of our website. So, I know we should have something to guide us in our working with the media. If you make a mistake or we make a mistake of some kind, it's very, very difficult once it's out.

So, if we have a process that we can follow that would be helpful, and I don't have any problem with changing this so that it gives the leeway that's necessary to do the job.

Chair Chen: Okay.

Suemori: I was just going to say if you're going to have policy, have a policy or don't have a policy and call it a purpose. And the staff one, it says we have a policy and there's never anything else, but there is a purpose so we always mention it. So absurd.

Amano: But, thank you for at least hearing it out.

Chair Chen: Okay. So, do we need a motion to move it forward that way or—

**Amano: I think you table this motion, and we'll take it up at the next meeting.**

Chair Chen: Okay.

Lilly: You got enough guys?

EDLC Totto: Yes.

Chair Chen: Well, thank you. **We will need to now have a motion to move into executive session. Can I have a motion to move into executive session.**

**Silva: So move.**

**Lilly: Second.**

**Chair Chen: Okay. All in favor?**

**All Commissioners: Aye.**

**EXECUTIVE SESSION DISCUSSION REGARDING ITEMS  
V.A. AND B. HAVE BEEN REDACTED**

Chair Chen: Okay. All right. Can we have **a motion to move back into open session.**

**Marks: So moved.**

**Amano: Second.**

**Chair Chen: All in favor?**

**All Commissioners: Aye.**

Chair Chen: So, now we're back in open session. I'm just going to report that we approved and adopted an advisory opinion [as to Item V.B.].

So, now can I have a **motion to close today's meeting.**

## **VI. ADJOURNMENT**

**Amano: Move to adjourn.**

**Silva: Second.**

**Chair Chen: All in favor?**

**All Commissioners: Aye.**

Chair Chen: Thank you.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA  
Honolulu Ethics Commission  
**June 24, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

RECEIVED  
CITY CLERK  
& C OF HONOLULU  
2015 JUN 18 AM 8:48

- I. CALL TO ORDER
- II. OLD BUSINESS
  - A. Confirming the Date and Time for the July 23, August 21, and September 23, 2015 Meetings; and Setting the Meeting Date During the Week of October 26 - 30, 2015.
- III. NEW BUSINESS
  - A. For Discussion: Staff Report
    - 1. Complaints and requests for advice statistics through last month.
    - 2. Website statistics.
    - 3. Status of Fiscal Year 2016 and 2017 Operating Budgets.
    - 4. Report on Mandatory Annual Financial Disclosures from City Officers and Employees.
    - 5. Testimony of Executive Director and Legal Counsel before the Hawaii State Ethics Commission.
    - 6. Move to Kapalama Hale (the Sprint Building) in Iwilei.
  - B. For Action: Request for a Motion to Confirm the Salary for the Associate Legal Counsel for Fiscal Year 2016 Set at \$85,416.

- C. For Discussion: Options for Investigative Services.
- D. For Action: Performance Evaluation of the Executive Director and Legal Counsel.

The Commission reserves the right to go into executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved.

- E. For Action: Setting the Salary for the Executive Director and Legal Counsel for Fiscal Year 2016 at \$112,400.
- F. For Action: Request for a Motion to Approve and Adopt Staff's Recommended Charter Amendments to Submit to the Charter Commission Regarding Setting Salaries for the Commission Attorneys and/or Revising Administrative Attachment to the Department of Corporation Counsel.
- G. For Discussion: Whether the Ethics Commission should Recommend to the Charter Commission a Charter Amendment Requiring Recusal of Councilmembers Who Have a Conflict of Interest on any Bill or Resolution Before the Council.
- H. For Action: Setting a Media Policy.
- I. For Discussion: Department of Corporation Counsel's Letter Regarding Nullification of Votes where there has been No Disclosure of the Conflict of Interest.
- J. For Discussion: Procedures for Evaluating the Work Performance of the Executive Director and Legal Counsel.

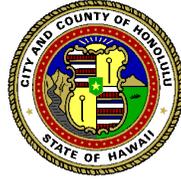
- IV. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Request for a Motion to Find Probable Cause of Violations of RCH Sec. 11-104 (Misuse of City Resources) by a City Employee. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
- B. For Discussion: Whether the Ethics Commission should Investigate If and How Information about a Confidential Ethics Investigation was Disclosed. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
- C. For Discussion: Prehearing and Hearing Processes in Four Contested Hearings. (HRS Sec. 92-5(a)(4))

V. ADJOURNMENT

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091  
PHONE: (808) 768-7786 • FAX: (808) 768-7768 • EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov) • INTERNET: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)



KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: June 24, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Totto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A.S. DeCaires, Investigator  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Donna Y. L. Leong, Corporation Counsel  
Noel T. Ono, Assistant Director (DHR)  
Lila T. Tom, Division Chief, Classification & Pay (DHR)  
Gwynne Inamasu, Recruitment Section Head, Employment &  
Personnel Services (DHR)  
Keoki Kerr, Hawaii News Now  
George Hurd, Cameraman, Hawaii News Now  
Nick Grube, Civil Beat  
Jay Parasco, Mayor's/MDO's Office

Absent: Michael A. Lilly, Esq., Vice Chair

Stenographer: Lisa P. Parker, Legal Clerk III

**TRANSCRIPTION OF THE JUNE 24, 2015 OPEN SESSION MEETING OF THE  
HONOLULU ETHICS COMMISSION**

Chair Chen: Could you introduce yourselves?

Yuen: Stanford Yuen, Commissioner.

Amano: Riki Amano, Commissioner.

Marks: Vikki Marks, Commissioner.

Silva: Stephen Silva, Commissioner.

Mr. Kerr: George Herb and Keoki Kerr from Hawaii News Now.

Mr. Brasco: Jay Parasco, Mayor's office.

Ms. Leong: Donna Leong, Corporation Counsel.

Ms. Parker: Lisa Parker, Legal Clerk.

Mr. Ono: Noel Ono, Human Resources

Ms. Tom: Lila Tom, Human Resources.

Ms. Inamasu: Gwen Inamasu, Human Resources.

Ms. Bigornia: Kristine Bigornia, Legal Clerk.

Suemori: Allene Suemori, Commissioner.

EDLC Totto: Chuck Totto, Legal Counsel to the Commission.

ALC Wong: Laurie Wong, Associate Legal Counsel.

Mr. Kam: Geoff Kam, Corporation—Counsel to the Commission.

Chair Chen: Okay. Thank you. **Let's go into setting the dates and times for the next meeting.** Can we confirm July 23<sup>rd</sup>, which is a Thursday. Is that still good 11:30:

All Commissioners: Yup.

Marks: How long does it need to be?

Silva: Good point.

EDLC Totto: Oh, the meeting?

Marks: Yeah.

EDLC Totto: I don't know. Part of it will depend on what we get done today. Part of it will depend on how much we will be able to get done for you folks. Very frankly it looks—Letha will be unavailable, so that will probably slow the attorney's (inaudible) a little bit, so I don't anticipate that's it's going to be very long, but as soon as we find out how long you think it will be, we'll let you folks you know.

Suemori: Probably say two hours.

Amano: I think longer.

Marks: Yeah, yeah.

EDLC Totto: Yeah, normally it's two hours. Just because we had so many items today—

Suemori: Probably going into two—like today three hours.

Chair Chen: Yeah, I need to leave by 1:30 today. Oh, no actually they changed. I need to leave at 2 today.

EDLC Totto: Okay, good.

Chair Chen: Okay. All right. So, let's just keep July 23<sup>rd</sup> then from 11:30 to 1:30. August 21<sup>st</sup> is apparently Statehood Day, so if we could—

EDLC Totto: I think we had set it to August 19<sup>th</sup> at the last meeting?

Chair Chen: I have August 21<sup>st</sup>. But we can consider August 19<sup>th</sup>.

Suemori: August 19<sup>th</sup> was a very a good stretch of break.

Silva: Yeah. Then it got switched to the 21<sup>st</sup> for some reason, I don't know why. Because I had the 19<sup>th</sup> down also, and I scratched it out. So, 19<sup>th</sup> is okay with you guys?

Amano: Yeah, good.

Silva: Let's go with the 19<sup>th</sup>, I'll scratch the 21<sup>st</sup>.

EDLC Totto: Is it a State holiday?

Suemori: The 21<sup>st</sup> is.

EDLC Totto: Oh, the 21<sup>st</sup> is.

Suemori: We went from the 19<sup>th</sup> to the 21<sup>st</sup> and now we're gonna go back to the 19<sup>th</sup>.

EDLC Totto: 19<sup>th</sup>, okay.

Marks: And we don't know if Mike is available.

EDLC Totto: Okay. So, staff will check with Commissioner Lilly.

Suemori: But we can't change it anyway because 21<sup>st</sup> is what we changed it to, and it's a holiday.

Chair Chen: So, we'll just preliminarily schedule it for August 19<sup>th</sup> because we know that at least six people can come. September 23<sup>rd</sup> my mother's birthday.

Suemori: Yeah, the 23<sup>rd</sup> everybody confirmed that last time.

Silva: Yeah, we confirmed that.

Chair Chen: Okay. So, let's look at October and, I guess, the National Information will be October 21<sup>st</sup>? Does that work for people?

Marks: I'm not available for that.

Chair Chen: Okay.

Suemori: Are we the fourth or third ones here every month? Or just have a regularity here as opposed to month-by-month?

Chair Chen: Usually the third.

Suemori: Is it the third?

Chair Chen: The third Wednesday. We can try the fourth Wednesday which is October 28th. Does that work for people?

Suemori: I'm okay.

Silva: Either one I'm fine.

Marks: I'm not; I

Chair Chen: Oh, you're still not.

Marks: 21<sup>st</sup> and 28<sup>th</sup>.

Silva: Both?

Marks: Yeah.

Suemori: Why we don't just set it for the 21<sup>st</sup> and change it the next time when we have more people.

Chair Chen: Well, we know that Vikki can't make it. So—

Suemori: Right.

Silva: We need four.

Suemori: We already five, so we don't have to worry about Vikki not being here.

EDLC Totto: If I could add, I mean, traditionally the Commission always tried to find the date where everybody could make it possible because everybody's point-of-view then.

Chair Chen: Something always happens.

Suemori: Let's decide October next month because Mike is not here, we'll never be able to decide. And if you want to have that policy then let's do it next month and figure out what October is.

Chair Chen: Yeah, we can do that.

Suemori: I mean, there's no point in discussing it if we don't have everybody here to have that.

Chair Chen: Do you want to do that or do you want to just preliminary schedule a different day of the week of the 26<sup>th</sup>?

Suemori: I don't care, we should hurry up because we have a lot of stuff we got to do.

Yuen: I'm okay every day.

Silva: Either one for me is fine.

Chair Chen: All right.

Marks: I'm booked both those weeks.

Suemori: We already know she can't make it, right?

Chair Chen: All right. Okay. So, what I'm going to do is because we're short on time, and I talked to Chuck Totto about priorities, making sure we do certain things, I was going to ask the Commission if we could get a **motion to move into executive session**.

Yuen: So move.

Silva: Second.

Chair Chen: All in favor?

All Commissioners: Aye.

Chair Chen: So if we could clear the room so we could move into executive session.

[pause. Everyone not participating in executive session clears the room]

[1:30 p.m. back in open session]

EDLC Totto: Chair, what I would suggest if you want to entertain a motion that the motion stated in Item B, the request for the motion stated in Item B at the end could say after the number, you could say subject to available funding.

Chair Chen: All right. So, we would have to a motion to amend?

EDLC Totto: No. There's no motion before you right now. You could just—

Chair Chen: Oh, just say that at the beginning?

EDLC Totto: Yeah.

Chair Chen: Okay. So, we're back in open session. **I'm at agenda Item III.B. If I could have a motion to confirm the salary for the Associate Legal Counsel for Fiscal Year 2016 set at \$85,416 subject to sufficient funding.**

Marks: So moved.

Silva: Second.

Suemori: Call for question.

Chair Chen: Oh, sorry.

Corp Counsel Leong: Is there an opportunity to comment from the public?

Chair Chen: Sure. You like to comment? So for the record could you state who you are?

Corp Counsel Leong: Good morning, Madam Chair, members of the Commission, staff. Donna Leong, Corporation Counsel. I just wanted to inform the Commission before you take action on this item that firstly we are still awaiting the Mayor's directive that it needs to be issued for fiscal year '16, which this item relates to. As stated in the letter, a copy of which I have provided to you, the Mayor's delegation to the Commission to Step B ALC's salary for fiscal year '16 would be pursuant to the Mayor's directive. So, we are awaiting that. I believe that the Commission needs to wait for that directive in order to exercise the power that he's going to grant you under the (inaudible). So, that's a procedural (inaudible).

Chair Chen: So, we're about to enter into a new fiscal year and this is the last meeting before the next fiscal year. So, what was timing on that?

Corp Counsel Leong: My understanding that it's going to issue within a month. It's usually issued just about this time. I'm not sure why it hasn't been issued yet. But my understanding it should be issuing within a month. And, typically it's effective as of July 1<sup>st</sup>. So, retro—the authority would be retroactive to July 1<sup>st</sup> and the Commission could exercise that power and take action in accordance with the Mayor's directive retroactive to July 1<sup>st</sup>. I'm hoping we'll have it by July 23<sup>rd</sup>.

Marks: So, you're telling us we shouldn't do it now but we should do it later and make it retroactive?

Corp Counsel Leong: I recommend that.

Marks: There won't be when any pay gets issued there will be an additional some for the delayed piece?

Corp Counsel Leong: That's correct.

Suemori: Just asking. Why we didn't just approve it subject to?

Corp Counsel Leong: Because that also contains budgetary constraints on the directors when they set, for example, myself, prosecuting attorney and other directors where Commission is (inaudible) who set the salaries of staff under that directive.

Chair Chen: Sorry, what does that mean? Your directive will include a monetary amount in it?

Corp Counsel Leong: No. There are budgetary directives in the Mayor's directive.

Suemori: Right.

Corp Counsel Leong: So, I'm not sure—I mean, you all should have in mind how much money we're being allowed to spend. The same is with me. I don't know how much money I'm going to be allowed to spend for my deputies corporation counsel.

Suemori: So, the Mayor comes in at 75 thousand, the directive was 75 thousand for her, then is that what you're saying?

Corp Counsel Leong: I guess, you could specify the number but that would be unusual. Usually the directive contains guidelines except for the folks whose salaries are absolutely set by the Salary Commission, that being the Directors of the Department, the Deputy Director, the Fire Chief, the Police Chief.

EDLC Totto: Maybe I can offer something. We have this subject to available funding and, I think Ms. Leong is saying you should also be subject to the Mayor's delegation of authority, is that correct, to the Commission?

Corp Counsel Leong: I suppose you could do it that way. I mean, I would suggest waiting until the—

Suemori: You're not asking to change the motion?

Corp Counsel Leong: I don't have that power.

Suemori: You could ask.

Corp Counsel Leong: I recommend that you defer this item until we get the Mayor's directive and you can consider it at the July 23<sup>rd</sup> meeting and assuming this is in accordance Mayor's directive, you could make it retroactive to July 1<sup>st</sup>.

EDLC Totto: My only concern is we don't have the ASO here; how the budget is set. My understanding very roughly is that the budgeted amount at the end of fiscal year '15 will be important to salary set at the end of '15 will be important to set the budget for fiscal year '17.

We put this off until into fiscal year '16 and we miss that date. I don't know if you have any information on that?

Corp Counsel Leong: As Mr. Tutto knows he has inquired about the timing for the fiscal year '17 budget and both BFS and we have advised him that it's premature. I totally understand that he may have some kind of draft budget that he wants BFS to consider, but we don't even have the direction for that yet. And that won't happen until after the Mayor's directive. I'm sorry, on the point as to whether the fiscal year '16 salary set the base for fiscal year '17, that's correct. It does but there's time to set the fiscal year '17.

EDLC Tutto: I'm actually asking about fiscal year '15, but I'm not an expert in that so I don't want to mislead or misguide anybody unintentionally.

Suemori: Why don't get back to the subject which is a request for a motion to confirm the salary and the request by Ms. Leong to defer it.

Chair Chen: So, there would have to an amendment to—Well, the motion is already out.

Suemori: Right. The motion is out, it's been seconded; we're in discussion, so she's recommending, so there's more discussion?

Chair Chen: She's recommending we defer it, so we would call (inaudible).

Suemori: Well, we can actually have discussion by the Commission members. That's what she's recommending, (inaudible) motion. So, we can discuss it.

Chair Chen: We are discussing it. What I'm saying is you wouldn't call a vote for the current motion. So, I guess, that's the question what the Commissioners want to do. If they want to defer it, call for a vote.

Yuen: I'm kind of leery about deferring it because there's always good reasons to defer anything, but I think we need to state for the record how we see it and I think they suggested like pending the Mayor's directive, I think should cover that. But, again I'm not a lawyer.

Chair Chen: So, do you have a comment on that? My concern is I don't want to pass motion that's turns out, gets invalidated because it's—

Counsel Kam: You'll pass a motion or not but I think it's all subject to the budgeting process. So, the Commission is going to state its position on what the salary should be, could be, but that's, I think is first part of (inaudible). So, Stanford's position, I think, to say something is not (inaudible). So, that would be my comment, (inaudible). But this is being a matter, this is the Commission's discussion.

Suemori: I actually would take the cautionary road and move to defer the motion as amended until July because there's no harm to (inaudible). From what I understand, tell me if I'm wrong, once the directive comes in, she gets what we recommend. No? Or within the budgeted process, but then are we saying we should do this notwithstanding budgetary process?

EDLC Totto: It is subject to the budgetary process. That's part of the motion.

Suemori: Right.

EDLC Totto: And last year we spent 12 months going over this.

Suemori: That's why I want to do it next month because it's subject to it as opposed to—

Chair Chen: So, did I understand correctly, Ms. Leong, you're saying a directive could come down with a specific number?

Suemori: No. That's not what she said.

Chair Chen: You saying he could do that?

Suemori: No.

Corp Counsel Leong: Theoretically, he could do that but he has indicated that he's delegating to this Commission, the authority to set the ALC's salary, but that has to be formalized in the Mayor's directive, and the reason—I mean, you could all adopt this if you want, I mean you could subject to the Mayor's directive which would empower you to actually do this but if it is inconsistent with the Mayor's directive I would have to ask Mr. Totto put it back on the agenda.

Suemori: Right. If the Mayor's directive came back and says everybody is going to get a 4% cut then where are we?

Corp Counsel Leong: I would have to ask the Commission to put it back on the agenda and discuss it again.

Suemori: Right. So, why don't we just wait.

EDLC Totto: Because I'm going to get down to dollars and cents because not only did we wait for 12 months last year, but every time there's a delay in this, she loses the value of the money. So, if you wait until July then there's a month. Let's say the Mayor's directive comes out next week, then I can start processing this because it will be subject to the Mayor's directive to give authority to the Commission and subject to funding, and I can at least start the process.

Suemori: Right. So, if the directive came down at minus 4% then what would you do?

EDLC Totto: Then I have to bring it back to you folks.

Suemori: Right.

EDLC Totto: Because that would be—

Suemori: And it would basically be one paycheck which is the July 15<sup>th</sup> paycheck.

Chair Chen: So, I take it the point that is a delay in a salary increase to the Associate Legal Counsel.

Suemori: Or decrease. I mean, if he comes in and says it's a minus 4% then we're back in, and if he has paid it out then what are we doing?

Marks: **Okay. It was my motion. I'm going to amend my motion that confirms the salary as stated subject to available funding and subject to the Mayor's directive.**

Chair Chen: Do we have a second?

Silva: Second.

Chair Chen: Do we have a call to vote on that?

Suemori: On the amendment.

Marks: On the amended motion.

All Commissioners: Aye.

Chair Chen: So, I'm sorry, Commissioner Amano, did you vote?

EDLC Totto: Yes, she did.

Silva: Yes, she did.

Chair Chen: Oh, okay, I didn't hear you.

Amano: It would help if you went through the normal process. You ask for ayes, you ask no no's, you ask for abstentions, then I'll come out, but I did say aye.

Chair Chen: Okay. All right. So, that's unanimous.

Suemori: That's amending the motion.

Marks: On the amended motion; yeah.

Suemori: No. That's to amend the motion; not vote on the amended motion.

Chair Chen: Did I misunderstand that. I thought you proposed a new motion.

Marks: I thought I did to.

Suemori: Then what happened to the first motion, seriously?

Marks: I withdraw the first motion.

Suemori: Okay. If she withdraws the first, you got to second it and then we have to vote on—

Chair Chair: It was seconded.

Suemori: No. She never withdrew the first motion. She moved to amend the motion. He seconded to amend, so we voted on amending the motion. We did not then vote on the amended motion.

Marks: Let's vote on the amended motion.

Suemori: Before you do that. Okay, okay, could do it that since you didn't vacate the first one.

Marks: Let's vote on the amended motion.

Suemori: Right.

**Chair Chen: All right. So, the amended motion is, you've made amended motion as stated so can we have a call to vote on the amended motion.**

Marks: Let's just vote on the amended motion. How many say aye?

All Commissioners: Aye.

Chair Chen: How many say nay? [no response] How many abstain? [no response] All right.

Marks: Okay. Passed.

Suemori: Moving right along.

**Chair Chen: So, Item III.C. For Discussion: Options for Investigative Services.**

EDLC Totto: Okay.

Marks: We all got a letter from Ms. Kubo. So, they're gonna still send you names but this is an exempt position so you can do what you want?

EDLC Totto: Correct. And that's one of the reasons that, although we appreciate them sending names, they don't put it through the normal process that civil positions. And, I guess, there's some—Maybe Mr. Ono could talk about that.

Mr. Ono: Thank you, Chair. We really appreciate. You have the memo from Director Kubo, and basically it's pretty much reiterating some of the information that Mr. Totto (inaudible) attachment and narrative. We had submitted a total of 76 eligible names. So, what that means is that these individuals all met the minimum qualifications requirements for the position. So they're all qualified. What we're adding to this at the bottom was, we want to make it clear that normally we don't get involved in exempt positions but as a courtesy in assisting the Commission we provided the names. So, we do have some additional names that we have gotten, not from the civil service roster, these are civil service lists that we provided to Mr. Totto. When we provide the names we'll probably by the end of the week. I'm not sure the number, but it might be a substantial number that you can review. Within the (inaudible) you'll have to probably contact to see their interest because it's not like an application, just an indication of interest. They may or may not be wanting to come.

Marks: Sure.

Mr. Ono: Mr. Totto (inaudible). But that's all I have to present to you. Clearly, when we screen these sole service, the names on the list that we provided, they do meet the qualifications. After that, it's up to the Department to do the (inaudible) process.

Marks: Thank you. I—

Mr. Ono: It's much easier than civil service because you don't have to go through all the hoops.

Marks: I appreciate HR helping out with this. I have a question and that is on the temporary hire provision, apparently a notice came out saying that they wouldn't extend the 89-day appointment, and I understand that Mr. Totto is aware of some other investigative positions in the City either with Liquor Commission, prosecutor's office or whatever that have had temporary hires for their investigators go on longer than what ours has. And, we're just wondering can we get another extension of the current investigator for this Commission?

Mr. Ono: First of all, let me—Regarding the other departments, the prosecuting attorney, currently they are filling in positions. In all of the departments we've always comment to them

as well as other departments that you need to fill certain positions. So, we send reminders to them and (inaudible) we're not going to renew it. But, you know, they do provide pertinent information that shows there's an attempt, we may extend. In this case, the prosecuting attorney they are filling their positions according to my staff. The Liquor Commission, those investigators are not professional investigators. They are Unit 3 type versus Unit 13, professional. As you know, they have years and years of problems there. They're undergoing a reorganization and they have filled some of the lower levels but they're trying to fill the higher. So, in that situation we think it's much different. They are attempting to fill, but, yes, they do have contracts. In reference to the investigators we use, these are only 19-hour investigators that we use if a Department cannot conduct an investigation for whatever reason because it's a sensitive one, investigating a director or somebody or the staff don't have the time, they make a request to us if we could utilize these investigators to do the investigation. So, it's like a fee (inaudible), they provide reimbursement to us. It's goes back to the general fund at the end of fiscal year and we start off the next year again. They are only 19 hours. Right now we currently have two that we're trying to remove. So, they don't work regularly. In fact, one of them, whenever they have time. So, we have a problem, we need to find investigators as well that would be willing to work and, of course, they're not highly paid.

Chair Chen: So, Mr. Totto has written out his attempts to find somebody. There's still a denial to extend the 89-day.

Mr. Ono: Okay. So, theoretically how it works, sorry Chair Chen. The request comes to us. The first step of the process, we could actually deny it and send it back or could appeal, but this extension request was at the MD's level, and the MD is the one that, I believe is denying it. So, it's sort of out of our hand.

Chair Chen: So, is he—

Mr. Ono: But you could submit a request for extension. It's not out of our hand at this point.

Corp Counsel Leong: Chair Chen, I would like to (inaudible) questions that have been asked. I know that the administration has advised Mr. Totto of the need to fill the position which is the civil service position—

EDLC Totto: Excuse me, it's not a civil service position. It's an exempt position, and I have a point to make about that later.

Corp Counsel Leong: Okay. I'm sorry, I'm not an HR expert. I do my best to fill this position, and it's been going on for a long time. So, earlier this year when I know that Mr. Totto and his open session memo indicated that he has made requests for extensions of this contract. We're on the 7<sup>th</sup> renewal at this time. When the managing director found out about it, he issued a direction to all of the directors and a copy was provided to Mr. Totto that these PAC contracts should terminate and so that's a city-wide direction to the directors. He realizes that it's not always

practical to do that. And, so there are extensions. I can't speak to any of other departments. I'm not going to defend the long-term renewals of the PAC contracts. I'm just providing the information.

Chair Chen: So, is he not satisfied with the efforts that have been made to find a replacement?

Corp Counsel Leong: So earlier this year—This request that's before the Commission today is not a new one. The administration has been trying to work with Mr. Totto to provide him with the appropriate candidates as Mr. Ono has indicated, and I have to defer to DHR on that. But with regard to the extension of the PAC contract, I know in the open session memo that Mr. Totto indicates there was a March 19th email and, in fact, a request attached says open-3, and he indicates in the memo that no response has been received. With the Chair's permission, I'd like to distribute to you my email of April 9<sup>th</sup> to Mr. Totto with a copy to the Ethic's staff in which I asked her to process the CAC I for the—

EDLC Totto: I apologize, that's correct, but—

Corp Counsel Leong: The CS-C1 for the investigator with instructions to amend it be deleting the overtime amount that had been requested and to extend through June 30<sup>th</sup>, approving the extension, through June 30<sup>th</sup>. Now, this is April 9<sup>th</sup>, so it was in my mind generous extension because this was not the first request to extend. And, I indicated in my email that I totally can relate with the difficulties in filling positions. I've had an Investigator II position in corporation counsel open for a long time. We go through the same process. Our investigator who does service the department, you know, he has a very work load but we have been trying to fill that position, I want to say for a year. It's challenging, I don't deny that, but you have to make efforts to do that, and I think all of the names sent by DHR are those efforts. And, I told Mr. Totto that even if he finds someone soon, because of the candidates likely need to give a two-week notice and other processing requirements, it usually takes anywhere from three to four weeks to bring them on board, therefore, I was approving the extension to June 30<sup>th</sup> to allow for a transition period. So, I just wanted to clarify that note in the—and I'm going to hand it to Laurie for distribution.

Chair Chen: So, going back to my previous question, is the managing director now denying an extension because he's not satisfied with the efforts to find a suitable replacement or what's the basis for him denying another extension?

Corp Counsel Leong: Mr. Totto did recently reach out to the managing director. I believe it was earlier this month requesting an 89-day extension which is the full period of the extension that's permitted. And, the managing director did deny that request, but said that he would consider an extension for shorter period of time, but he wanted to know that the recruitment efforts have been. I'm not always copied on email, but I have not seen a reply to that email. So, the managing director is awaiting information to my knowledge.

Chair Chen: Did you want to address that?

EDLC Totto: Yes. Just couple of things. First of all, I didn't think I misled the Commission because I do in the open session. So, after we were unable to find a suitable candidate in March we requested certification, so on. I thought that I had put it in there that they had relented and given the contract. But in any event obviously we have it through June 30<sup>th</sup>. The managing director did very recently a couple of days ago, deny the extension of an 89-day contract. He did say he would consider other things. He was very disappointed that we had not filled the position. He had looked at some of the applicants and found that they had either high level of education or lots of government experience. I'm going to belabor the issue with the—when the MD was not here, but the problem was that we had been finding a very little or sometimes no one who has had any experience dealing in employee investigation. And, that's a big difference as to what we do.

The other issue I wanted to point out, was my understanding, maybe Mr. Ono can confirm or correct. My understanding is that the reason for not wanting to have personal service contract for civil service positions is in order to ensure that civil service positions are filled properly. This is not a civil service position. We're asking actually somebody who's going to be an exempt employee who will not have the same benefits or protections under a union contract. And, I'm not sure why we're being—We're kind of getting thrown in to the same mold as if this were a civil service position.

But, in any event, I appreciate the Commission asking these questions because I'm not sure why—I guess, the last distinguishing point is, the third point here is, unlike Donna Leong's Corporation Counsel or the other places that we looked at, this is our only investigator. You remove this investigator position, we don't have any investigation on going. Liquor Commission, Prosecutor's office and the Equal Opportunity Office, even Corporation Counsel. I understand that they have more than one position, so hopefully they have employees that can investigate even if they miss somebody contract and or haven't filled the position yet.

Anyway, from what I can see, it looks like it's—I'm not sure, I got no sense from the MD's email that he would reconsider. So, just most of this focus is what can we do in the future other than—

Marks: Well, if he left open. I think he needs to go back and ask for 60 days extension. Well, I'm happy to do that. You know it's been couple of days so I haven't had a chance to go back. But, yeah, maybe the Commission can help in that. But I appreciate that. Good point.

Chair Chen: So are you reviewing any candidates right now?

EDLC Totto: Yes. We have—what happened was we did get the list in May of 13 folks around, I think it was May 15<sup>th</sup>. We had selected out of that group five people, two responded that they're interested in the position. What we do is because nobody has applied for the investigator at the Ethics Commission we send off to them. We say this is the job duties and if you're

interested please give us your experience in conducting administration investigations and specifically regarding employees. We got two back in that situation and then we got the next list June 15<sup>th</sup> after talking with—Anyway, we got the next list on June 15<sup>th</sup> and we're in the process today, yesterday and today actually sending out to find out who might be interested number one and then have them refine their qualifications towards what we do as opposed to going to prosecuting attorney or the Liquor Commission something like that.

So that's the process and we hope to start—We've given them until a week from today to respond whether they're interested and then we'll start conducting our interviews after that.

Chair Chen: Mr. Ono, would you—

Silva: May I ask you something? What Mr. Totto is describing is partial of, you know, sending them forms to fill out. It's sort of like following the civil service format. But you know in conversing with my staff because it's an exempt position, you don't have to even go that far, Mr. Totto. Essentially you could just invite the person to your office, question them, interview them and offer them a job. So, you don't have to go through all this hoops that might delay things.

EDLC Totto: Excuse me—

Mr. Ono: Understand, okay. Let me finish please. In addition, when you recruit for these positions, when the departments set up the interview process, you know, like you have a panel, you have a bunch of questions, you set a bar, like maybe there's a certain percentage where I think he refers to 70%. They didn't hit the 70%, where if you don't score high enough to that then they're eliminated. Sometimes you don't have to set the bar that high. I mean looking at the minimum qualifications first, you have eligible, then you interview them to see whether they can do the job. Not everyone is going to be equipped or have all the knowledge you need. So, if you say they say they got to know just cause, you gotta know all the contracts, there's no such person can do that right off the bat. There's very few of them that actually have that experience. They might be retired. The thing is if you're going to have a permanent position you need to fill it. So, if you reach too high you're going to have a hard time filling it. So, we tell people sometimes that's why we recommend downgrading positions, although that might be workable here because you pretty much attorney man type to come in and do the job. But perhaps Mr. Totto you're setting the bar too high. You need to look at someone that can come in do the job, quick learner and can perform the job.

Now, granted Ms. DeCaires is very experienced and knowledgeable in being on the job for this length of time. Perhaps she may have not known she can do today because she's developed that knowledge over time. You know a lot of these investigators get picked up by various departments, they don't know everything. But they're very capable and they learn on the job. So, we believe that if you do set the bar too high, you'll never going to be able to hire anyone and we're going to be constantly seeing a request for extension or contract. So, we try to gently recommend to the department, don't keep extending. Now, this MD is very serious as well as

formal one about pushing the end to express service contracts. I mean, these are clear marching orders. So, it's just not the Commission that's undergoing scrutiny from the MD. It's other departments. Sorry, sorry, Mr. Totto.

Chair Chen: So, I have a point. I guess, I take your point which is in the process of evaluating these candidates is your expectation that they come with all this knowledge and no expectation of training or is it—

EDLC Totto: Not at all.

Chair Chen: Okay. I guess, I thought I read somewhere you talked about there's a notable disadvantage or difficulty if the investigator changes because she's already interviewed hundreds of people and somebody else stepping into that role could set the investigation back. That's sort of a separate issue whether someone is qualified to assume the position.

EDLC Totto: I agree.

Chair Chen: So, I guess, are those two things getting muddled because if there is a difficulty because she is so experienced that to replace her you expect someone with equal caliber which is very difficult to do without downgrading the investigation.

EDLC Totto: Actually they do have to be looked at completely separately. The normal course of our investigation versus the ones that are we'll be trying to change midstream but the qualifications necessary. We set the bar relatively low 70%, we have written questions, we have maximum points for each question, we had three interviewers, one out of our office, one outside of our office from the State Attorney General's office so on. I don't think we were being unrealistic. The area where we think we were trained in, and this is what we had to do with Ms. DeCaires is ethics laws and ethics issues and that type of thing. Not necessarily whether or not you know how to interview somebody or you know the difference between interview and interrogation or you know the basics of just cause that kind of thing.

Obviously, I mean, I hear nobody trusts what we did. So, they're giving us a second chance to find somebody. That's good. We will continue with that. I'm still puzzled by DHR coming in here and saying they don't really, they're not concerned about just cause, I shouldn't say that's a misstatement. But they don't think that you have to know just cause issues before you become and Ethics Commission investigator. We were trying to find qualified. Not the same qualifications as Ms. DeCaires because she retired as an HPD captain and she had a lot experience in internal affairs investigations, so we were looking for somebody who could hit the ground running but there will be other areas that we'll look at. Now, I do think we need to divide it and look at what we could do for somebody who's going to be coming on board and what do we do with the cases the 15 to 17 cases where we expanded hundreds of hours and changing out. I don't think you could find anybody who could sit down and just pick up these cases without expecting that it would take them months to do. Because some of these are quite detailed,

complex issues, and we had up to, Ms. DeCaires told me 200 interviews. So, at this point, I think Commissioner Mark's idea is really a good one. I'll go back to the MD, tell him what we done and we're doing and ask for continued period, if not 89 days, and then the other options that I laid out in the memo are to consider for those cases where it would be very difficult, time consuming and counterproductive to have a new investigator to take over to look at having an outside contract as a vendor as opposed to personal services contract. The difference there being personal services contract is like an employee, outside services is a vendor and focus her on those items and then continue working with the AGs and continue in trying to find our exempt full-timer.

Marks: I have a question to something you said, Mr. Ono. For an exempt position you're saying no formal process has to be followed? He can just—

Mr. Ono: Not like the civil service process where it's really structured.

EDLC Totto: I'd like to comment on that because we've received several complaints over the years that I've been here about our personal contracts getting jobs and then when it becomes a civil service position, hey, I'm the one that had the personal service contracts for those years and they just drop in the civil service position because they have the experience in that area. Laurie and I, along with the other people in our office made a concerted decision not to simply do the quick and dirty approach. Because number one, we're the Ethics Commission, we want to make a fair process. And we're not trying to delay things. Actually, you know, it's a little humbug because you gotta ask people to send in things and you gotta interview them and so on, but that's a much fair process then simply finding somebody who, hey, I heard they're pretty good and saying okay you're on board. Also, when you hire somebody like that it's not better to fill the position then to have no one. That's something you have to be really careful about—

Marks: No, I agree.

EDLC Totto: Yeah, and so—Anyway, that's why we were taking that approach.

Mr. Ono: The reason why I was using that as an example is just to illustrate that perhaps, your process is maybe too formalized in trying to protect ethics reputation, it's great. But if you too formalize it, it slows the process down and that's why I'm saying really—I use extreme example which you can do, which is why I can see you wouldn't use it, but that's all it was an example. The thing about just cause, it was just an example, knowing just cause, knowing collective bargain agreements and whatever the bar you're setting you need to consider whether or not that setting it too high. Because you're looking at Investigator III here, you know, based on the duties that were described, the minimum qualifications to come with this class. A lot of these guys are qualified, yet we cannot find anyone? Naturally, we're going to wonder.

Marks: Corp Counsel can't find anyone either.

Mr. Ono: Really, if you really get too picky you're not going to find anyone. So that leads to then the extension to contract. Again, this contract people a lot of them are good. You want to keep them, but honestly we have to fill.

Corp Counsel Leong: I have to say my position as an Investigator II, the salary is really low. That's the challenge. Chuck's position as Investigator III.

Mr. Ono: Well, there are ways in our processes in discussing it via Director Leong or with us, there are ways to address certain things like salaries, (inaudible) rationale that can allow for maybe hiring. So, you just got to sit down and talk to us.

Corp Counsel Leong: And I'm pleased to say we found someone and he's starting within a week or two.

Marks: Good. Does he have any friends.

Corp Counsel Leong: Investigator II.

EDLC Totto: Well, I'm curious, what are you talking about? You're talking about actually, we have to prove to you folks that we've taken all reasonable efforts to find somebody Investigator III entry level but you'll allow higher payment?

Mr. Ono: I was just saying that in you effort to show that you are or you have been trying to fill the position, we told you before you got to show that you tried. And for our purposes perhaps an extension of the contract makes sense because you're in the process of trying, but if you're—All I'm saying is if you're setting it too high—

EDLC Totto: I understand—

Mr. Ono: ...then you're not going to find anyone. That's our concern. We're not saying you did this on purpose or whatever to keep Letha or whatever your reason is. Believe me we've seen many reasons why contracts are extended, and you know some of them they wanted to keep the contract person, others because they don't to train the new civil service person, so there's a lot of reasons why contracts continue to be extended. We just want to assist you to get somebody on board. That's why we're providing these names for you.

Chair Chen: Commissioner Yuen.

Yuen: You know we talk about setting the bar too high. That's a relevant subjective term. We all have different ideas of what that level is, what it really defines. But I would have to defer to the person I think would be most knowledgeable of what that bar setting is and that would be somebody who have been in the job and who would establish these criteria for that level. So, I would, you know, seem like everybody got their own different interpretations so in a way we're

saying, “well, your bar is too high or maybe you should drop it.” But what is too high? And, I would have to defer to the legal counsel on that because he’s been in the job.

Mr. Ono: I can understand what you’re saying. It’s a tough choice but, you know—

Chair Chen: Commissioner Silva.

Silva: I got a question. We’re talking about lowering the bar, 70% is kind of low, right? You want to go 60, 50, or 40? I don’t think so. The other question I have is, I think, we’re all looking for investigators. You’re looking for investigators, everybody else is looking for investigators. Why is it such a difficult situation to hire a retired police officer who’s been in investigation for 20 years or so. Because, I think, probably some of these rules need to be changed. I look at civil service, okay. Civil service, federal civil service, somebody in the military who is what they call a warrant officer specialty whatever he is in, infant specialties whether in ordinance or administration or whatever, they go immediately on retirement from military to civil service and they get a heck a lot more pay, you know what I’m saying? Whereas we go from police department to our position and they’re making less pay, right?

ECLD Totto: Correct.

Silva: I mean, she’s dedicating herself to do a good job. We’re not investigating Joe Blow down the street who maybe had some pakalolo on him or something. We’re investigating politicians and everybody else. So, we need somebody with not with lower bar, higher bar than anything else. So, I don’t know how you guys can maybe change some of those rules, but I think that’s the criteria that needs to be changed. We’re going around and around for it, trying to find to somebody that will fit the bill. And all of these cases that she’s handled, she’s handled from probably a month on the job she was handling cases already, right?

EDLC Totto: Oh—

Silva: Yeah, you know what I mean?

EDLC Totto: The first day job I gave her 30 open cases. She didn’t leave after that.

Silva: Yeah. And she come up with detailed information on these cases. Whereas we go with somebody with a lower bar type situation, we’re going to be looking at itty, gritty type—

Mr. Ono: All we’re saying is that you have to have permanent position, you need to fill it.

Suemori: We’re between a rock and a hard place. One, is she’s retired, she’s making her police salary retirement. If she joins us, she loses that and then to come on salary it’s lower. So, we’re in between a rock and a hard place because of her position and that’s a problem we’re going right

into the dead wall of (inaudible). As an Ethics Commission, I think we should not, we should actually not run into a wall.

Yuen: That's what I'm saying. Federal government they don't lose their retirement.

Suemori: Well, it is what it is.

Yuen: You know, that's why saying rules need to be changed.

Suemori: And, so right now it isn't what we want, but we're the ones as Ethics Commission. So, I think we should. That's all. I think it's unfortunate but it is what it is.

Marks: I have a question. Does DHR put out a newspaper advertisement like on a Sunday in the Classifieds for positions open in the City?

Mr. Ono: Yeah.

Suemori: You used to.

Mr. Ono: Except for civil service. We don't advertise for exempt—

Marks: You have anything for exempt like UH has, you know, instructional—

Mr. Ono: I remember correctly, we usually have the department if they want to issue. They got to pay it for themselves. But we don't because we only advertise for civil service—

Marks: So, there's no way for us to coattail on you without having to pay for the ad?

Mr. Ono: Well, in a sense we kind of helped you by giving you the list of what we had.

Marks: No, no, and we appreciate that.

Mr. Ono: So, short of advertising, you've gotten all the names.

EDLC Totto: And we have, in the March round we advertised and we also went on Craig's list—

Marks: And Jobs on Demand, I think you said—

EDLC Totto: Yeah, right, right.

Mr. Ono: And we will provide you additional names.

Marks: Thank you. Okay.

Chair Chen: Okay. Anything else on that?

EDLC Totto: Thank you for the input, appreciate it.

Chair Chen: **All right. So, moving on to Item III.D.** I wanted to talk about the no contexts of III.J. So, it seems like to me it makes more sense to discuss III.J. first what the procedures are for evaluating the work performance of executive director and then deferring the actual performance evaluation to a later time.

If I understand that correctly from you, Mr. Totto.

EDLC Totto: I mean, whether you talk about III.J. today or not, I just wanted to say that for D and E, which are the performance evaluation for the EDLC and E is the setting of the salary for fiscal year '16, it was going to be deferred. I understand that the Commissioners have not been able to communicate all their evals yet and I understand that particular issue, and if you want to take up Item J today, which is procedures for evaluating the work performance of the EDLC that's fine.

Chair Chen: Okay. I guess, I would want to clarify Item J so they're all on the same page about we're moving forward because I didn't receive any evaluations from any of the Commissioners for Mr. Totto.

Silva: I turned mines in.

Chair Chen: Oh, sorry. There was one from Commissioner Silva which needs to be getting passed on to me. But I had earlier requested that all the evaluation—Like in the past what has been done, the previous Chair is that the Chair collected all the evaluations from the different Commissioners and summarized them and then had a discussion with Mr. Totto.

Suemori: Who had discussion?

Chair Chen: The Chair had a discussion with Mr. Totto about the evaluations that were submitted. And, so—

Suemori: Like you said a committee of one for personnel is that what it was, the Chair?

EDLC Totto: I have to say, it seemed to me it was kind of an informal—everybody did their evals, and I think I saw all of them, but Chair would try to summarize them and then sit down and talk about that. And, I don't personally, I'm happy to hear from all at once or have it done, collected and then done. I do think it's important that the Commissioners have a chance to in

exec session or something to say, well, this is what I'm concerned about or this is what I really like or whatever or are you thinking about this for the future.

Suemori: When do we usually do this?

EDLC Totto: Good question. It's really been irregular. You know, I—

Marks: I think one time you said it happened generally in September, but we thought we should move it up to June to coincide with salary.

EDLC Totto: Thank you; yes.

Chair Chen: With the budget; right.

EDLC Totto: So, my last one, I think was September of last year, but because we've been told that if you're going to give a raise, do an eval and then you can, then you get set the salary based with having that evaluation information. So that's why I put it on this point. And then I thought it would be good to get it going before the new fiscal year, in this case fiscal year '17. So, I've asked to be put together at least it'll give the Commission a set point to start with.

Chair Chen: I think it makes sense to have an evaluation prior to setting the salary because if it's a merit based increase, I want bases that increases based on. That's my first point. My second point was that I know that you had mentioned sending the evaluations to you. I feel, in my personal opinion just because it was done—Well, it was done a different way before, and I think it's more appropriate that it goes to the Chair as opposed to it goes to the Commission, which—

EDLC Totto: Oh, you mean to the staff—

Chair Chen: Oh, sorry, to the staff. Rather than have the staff collect the evaluation for their own—

Suemori: Absolutely.

Chair Chen: ...for their own supervisory—

EDLC Totto: It was really just the intent of having us collect the stuff and then send it as opposed to reviewing or anything like that. But that's fine.

Suemori: I had some questions about what was the actual instrument—

Chair Chen: Instrument?

Suemori: Yeah. The (inaudible) of what it was serving and did it track the job and responsibilities and that kind of thing. It was sort hit with like in a vacuum, because I don't what's before and I don't what's going on. And, I know I raised that at the last meeting, but it was like—So, that's where I was coming from.

EDLC Totto: If we do have some more time. There's no formal job position description for my job, but I have in the past put down these are the 15 things I'm supposed to make sure that I do and how much time there is. In terms of the (inaudible) perform the Commission back in mid-2000s looked at a number of different executive director evals from different similar Commissions and then set the one you're looking at now. Commissioner Marks had asked also a similar question, so I asked corporation counsel to get a copy of what they do for the supervisors at corp and just got a copy of that. I haven't really looked at it. It looks very similar to the one they use any corp deputy but they could probably be a marriage between those two because I do have some issues or some responsibilities that are different and I'm happy to give that information over whatever way you think would be more sufficient.

Chair Chen: So, Commissioner Silva already completed the existing form. Other Commissioners, are you satisfied with continuing that current form knowing the origin?

Suemori: What's the origin?

[colloquy between Chair Chen and Suemori]

Is there a way we can see the job description?

EDLC Totto: I'm happy to send that out.

Suemori: Because we're getting the evaluation, I don't even know what I'm supposed to evaluate.

EDLC Totto: Sure.

Chair Chen: You can disperse the form again along with the job description at the same time.

EDLC Totto: Okay.

Chair Chen: And then if we were to evaluate you before setting the salary at the next meeting, then I would ask the Commissioners if they could complete the forms and send it back to me within the next couple weeks, and then I can meet with you to discuss it prior to the next meeting.

Suemori: Is it possible that you could actually meet with us?

Chair Chen: Yeah, we could do that too.

Suemori: (Inaudible) prior that we meet with him only because I would think you would want a consensus of us first before you try get the consensus from our documents to give to him or you think you could do that take it from the paper and then just represent—

Chair Chen: Well, my understanding the way it was done before is the Chair review them all and summarized them. And, I think if I had a difficulty summarizing it, if I felt things were inconsistent, I could go back to the individual Commissioners that completed the forms and ask for clarification if I think it was inconsistent with the others. I could do that. But if you wanted to have a particular meeting just to discuss that, we could do that as well.

Suemori: I don't know, how do you guys feel?

Marks: Well, I think the other thing we can do is put on executive session, and all of us could have a discussion with Chuck.

Suemori: Yeah, next meeting.

Marks: Next meeting.

Suemori: Yeah.

Chair Chen:

Amano: I'm interested in big picture policy. So in an ideal world, would it be better that we did evaluations in March or April so that we would be able to do this process and everything ready for the next budget year?

Suemori: Yeah, I agree with that.

Amano: So, we could put that timing together, that was my only hitch that all of sudden it came out from I don't where, and I know that supposed to be done an evaluation in September. I don't know what happened to that one because I was just a month a board. So, I don't think it went to the Chair. There was some discussion about the Chair not participating. Did those evaluations go to you?

Chair Chen: No.

Amano: Then it must've gone to you.

Marks: Were they done?

Amano: Yeah, they were done.

EDLC Totto: They were done. Actually I can't remember.

Amano: I don't think—I thought he collected them.

Suemori: Yeah, he did collect them. Who's he?

Chair Chen: The Chair.

EDLC Totto: The Chair at the time, Charles (inaudible) Gall. And, I do remember we had a Commission meeting where the Commissioners talked to me about issues that were brought in the evaluation. I remember that now. And, I just don't remember—I apologize—

Suemori: Where are the evaluations?

EDLC Totto: I would assume we've got them.

Suemori: Yeah, I would assume too.

EDLC Totto: Probably either—

Chair Chen: Commissioner Gall returned them.

EDLC Totto: Yeah.

Chair Chen: You're right. There were certain points in there that were addressed, I remember you addressing. No, actually I thought you met with him individually and then you responded to the Commissioners.

EDLC Totto: I think the problem was there was a limitation on his participation.

Marks: You know, let's talk about going forward. We're going to get your job description, copies of the evals sent out to all the Commission members. We'll complete them. At the next meeting, we'll be on executive session to discuss things with them.

Amano: So, we all get copies then?

Suemori: We should also get copies of his past evaluations to see how the past evaluations measures up to know, right? I mean, if it's the same issue. I mean, if he's blowing successful then we should know that. But if we're all going to do it and nobody knows topics before and after, how good is that?

Marks: Yeah.

EDLC Totto: I have no problem with that.

Suemori: Yeah, okay.

EDLC Totto: Well, I don't know. It sounds—

Marks: So, you need to go and find those old evals at least from last year if not two years.

EDLC Totto: Okay.

Amano: We go ahead and do the evaluation, submit to you, you would distribute to all of us, have a discussion at the next meeting, but going forward perhaps we start this process in March of next year, take a look at the tool, see it's still good to go, and we go launch right into it, make sense.

Chair Chen: Is there a formal internal policy in the evaluation process?

EDLC Totto: No, no, but I do ask, would I be able to see the evals before the reading on the evaluation?

Suemori: No.

Chair Chen: I think you should because if we're going to have a discussion about it, then he should be able to—

Suemori: Don't you think we should each other's first?

Chair Chen: Yeah, no, I agree with that. I'm saying—

Suemori: And have that discussion first?

Marks: We take too long doing stuff.

Chair Chen: Did I understand correctly you're saying at the next executive session we actually meet—

Marks: Yeah, but in advance we should see things. I think it's okay give him to Chuck. I mean, you don't want this going to two meetings, three meetings.

Suemori: Okay, fine, fine.

Marks: We got too much to talk about.

EDLC Totto: I'll put together an email also to kind of adhere the steps.

Suemori: But I think we should have a procedure for—

Amano: An evaluation policy—

Marks: Oh, yeah.

Suemori: A policy, right.

Chair Chen: So, we could ask the Commission to come up with a very basic policy that kind of aligns of what we just said, the timing for next—

Marks: Okay.

EDLC Totto: Set out the steps—

Chair Chen: Okay. So that's off D and J. So, D will be deferred to next meeting. **Sorry, D and E will be deferred to the next meeting.** Okay. **So moving on Item III.F. for Action or Request for Motion to Approve and Adopt Staff's Recommended Chartered Amendments** to submit and (inaudible). Can I have a motion to discuss.

Yuen: So move.

Silva: Second.

Chair Chen: Okay. Would you like to take that forward, Mr. Totto?

EDLC Totto: I'm cautious to say too much because I don't want to weigh the Commission's attorney-client privilege. But I have laid out. First of all, I tried in the first part, there's two alternatives. Alternative 1, I tried to capture what the Commission has talked about over the last few meetings regarding, having the attorneys, the EDLC and ACL become within the jurisdiction of the Salary Commission. The Salary Commission would set the pay ranges. And, I give an example their last approach for that, and then the Commission would set the salaries based on those pay ranges and, of course, as always based on whatever budget is going to be allowed.

The second approach is to revise, is simply a question to the Commission that's why it's up for discussion, whether the Commission wants to do the Salary Commission and makes changes regarding the attachment to corporation counsel as administratively and whether the Commission wants to look at other options whether to go administratively attached to a different department or take the model used for the City auditor, which is to say, "okay, City auditor basically we're

going to allow you to set budget and personnel matters as if the Ethics Commission in this case were a department director. Obviously, the Ethics Commission would still be subject to the guidelines, limitations, restrictions and budget of the administration in a situation like that. And, so at this point, I throw it out for discussion.

Suemori: Was there a reason why you put that as “and/or” as opposed to two different charters—

EDLC Totto: Yeah. Actually, that’s a good point. And, thank you for—

Suemori: Well, I was on the Charter Commission before—

EDLC Totto: Oh, really.

Suemori: Yeah. So, I’m—

EDLC Totto: Which one?

Suemori: The one with Bill McCorriston.

EDLC Totto: Okay. It’s a couple back. Anyway, the staff has no problem with it being set out as two and both given—or one of the other. That’s why I said “and/or”.

Suemori: Because it could go up or down on both of them go down or both, both will probably go down before they both go up. Because they both usually go down before they go up.

EDLC Totto: Well, and certainly one of things in both of the options, both alternatives we need to get input from the administration as to, I wouldn’t say we need to, but in terms of trying to figure out the vital ability of each option, you might want to have the permitted interaction group continue—

[colloquy between Chair Chen and Commissioners]

Amano: That’s all we asked for, we wanted a white paper on whether or not the salary should go under the Salary Commission. That’s it. And this is what we got in response.

Suemori: I think you need to do a white paper on that one and via white (inaudible) do not want administration attachment to corp counsel.

Amano: They need to be separated.

Chair Chen: The permitted interaction group didn’t address the removal from administrative attachment (inaudible).

Amano: First time I even heard of it was from this memo.

Suemori: Yeah. That's why we need a white paper on both. So, we can defer that to the next meeting.

Chair Chen: Okay.

Amano: Reiterate the request to have the white paper done on the salary issues.

Suemori: Pros and cons.

Amano: So, we that we can get that going to the Charter Commission.

Suemori: Yeah, because we were late.

Chair Chen: Okay. Any other—

EDLC Totto: Actually, I have a question, just to clarify. Okay. Pros and cons on white paper for both but separate or-

Suemori: Yeah.

Marks: Yeah.

EDLC Totto: Okay.

Yuen: I got a quick question. Chuck, how realistic is it being on the charter, I mean, on the (inaudible). I mean is it a long shot or—I mean, there's others—

EDLC Totto: Actually, I talked to, one thing I and perhaps others, but certainly what I need to do is go talk with the Charter Commission and get a sense of are they going to have 30 things that are battling for priority or are they going to have much fewer. Because my personal view is that there is a saturation point for the voters of maybe at tops half a dozen items. Now, I've talked with one member who says that basically if it is a housekeeping issue, like who's going to set the salary that kind of thing, but that's relatively straight forward. But on the other hand, this member also said, but we're looking for more aggressive things from the Ethics Commission. But that was his opinion only. Obviously, the more aggressive you are, the more you're going to ruffle people's feathers, you're going to have oppositions and so on.

That so the number is an issue and the level or propriety is an issue and then it.

Suemori: Can I make a point—

EDLC Totto: Sure.

Suemori: You know what really matters is there is a lot but the Commission goes through all departments, all the around (inaudible). And if you have somebody that's out there with a whole bunch of grass roots, it totally detracts from everything else or if somebody else comes in with a big issue it detracts and other ones they get to the (inaudible) and they say, oh, go (inaudible). It's like wow, we did all this work and it's all going down because the other issue is a big issue that people just want to vote on. So, it's really—You can't really call it.

EDLC Totto: That's really a good point. Because I know in 2006, there were a lot of issues, a lot of potential—

Suemori: Red flag—

EDLC Totto: Yeah. And, I think we even testified on maybe on eight or nine or of them, so a lot of them touched on ethics issues and so on.

Suemori: Probably half.

EDLC Totto: Once the Charter Commission sorted them out, the stuff for us all passed, so that's good. But it's really a political question as to how are people going to feel about things. I mean, generally, I think we have a pretty good view in the public eye, but if you never know.

Chair Chen: Ms. Leong, did you want to say something?

Corp Counsel Leong: Chair Chen, are you taking public testimony on this item?

Chair Chen: Sure.

Counsel Leong: So that I may provide information too to the Commission. Thank you. I'm going to wear my corporation counsel hat now as corporation counsel. I'd like to offer in response to Commissioner Amano's request for a white paper from the Ethics staff. I totally defer them on the white paper because I'm not sure what the request was. There is a lot of history about this type of request from a historical perspective about on this type of an issue. Perhaps not with regard to the salary—

Amano: Which issue are you talking about?

Corp Counsel Leong: The issue about the salaries or the Ethics Commission being a separate department—

Amano: So both separate issues?

Corp Counsel Leong: I can't recall exactly what the specific issue was. I do know the previous Ethics Commissioners, Commissions, have made requests of either the administration or the Charter Commission for different proposals, I'd be happy to summarize for you just the historical proposals and what happened to them because it might provide you with historical contexts when you read Mr. Totto's white paper, and it might save him some time because it's painstaking research.

Marks: Thank you.

Suemori: Okay.

EDLC Totto: It's already been done, I believe.

Suemori: Yeah. But we can get it again.

Corp Counsel Leong: Okay. I'd be happy to refresh it and address it to this Commission.

Amano: Thank you.

Chair Chen: Thank you.

Marks: Thank you.

Chair Chen: So, are we clear on the next steps?

Suemori: Yeah.

EDLC Totto: So, the Commission would like a brief white paper on each, by that I mean a couple of pages and with the pros and cons of each item and from great predominantly ethics operations and law point of view to (inaudible).

Suemori: (Inaudible).

EDLC Totto: That's fine. And—

Amano: Well, I think the next course of action was that Mike Lilly was going to take the white paper to admin and see how it fits in with their proposed changes and make a plan to go forward.

EDLC Totto: Okay. Well, I apologize for misunderstanding. So, I'll make sure—

Chair Chen: All right. Any further discussion on that item? [no response] Okay. **Item III.G. for discussion whether the Ethics Commission should recommend to the Charter**

**Commission requiring recusal of Councilmembers of Conflict-of-Interest on Bill Resolution before the Council.**

EDLC Totto: This isn't quite a white paper, but it was brought forward, Commissioner Silva had asked that it be put on. We're just trying to put together some of the history that's occurred on this issue in the past.

Suemori: So, are we going to get a white paper?

EDLC Totto: Up to you folks. Whatever you would like on this; be happy to do that. There's certainly more information that I need to dig back into my files to pull up. The original review was for 2006, Charter Commission, and then we also looked at 2008 and 2011 when the City Council had it and voted it down.

Suemori: Did it vote down on the charter too before?

EDLC Totto: I don't think—The Charter Commission did not send it forth.

Chair Chen: He had already looked at other Ethics Commission?

EDLC Totto: Right. And I want to redo that because that's 10 years old at this point.

Chair Chen: Okay.

EDLC Totto: There might be a lot more information out there about it, but that's doable, we can check with the same Commissions and others.

Suemori: Why they do and why they don't.

Chair Chen: Okay. So sounds like a good plan, moving forward—Research white paper requiring recusal of councilmembers.

EDLC Totto: Okay.

Chair Chen: Okay. Thank you. **So, moving on to Item III.H. for action, Setting a Media Policy.**

EDLC Totto: Thank you. So, what staff has tried to do is to offer something that might take care of the particular issues as we heard them or concerns and without going into detail because it is late, I'd be happy to discuss any detail but at this point, I wanted to make sure a clear understanding as to why the policies needed to make sure that there's a balance between being cautious and also allowing flexibility for staff to be responsive and to make sure to the best we can understand what the consequences of approach would be. And, so on page 9 of the open

session memo, we put together another draft, media policy with the—very brief statements in italics. This would be page 9 of the open session memo as opposed to open 6 or 7. You have the memo with you or I can share, we can get—Open Memo as opposed to, not the open exhibits.

Marks: I don't think that got sent out. I don't have it.

Suemori: We don't have it.

ALC Wong: Embedded within that open session memo.

Suemori: Is there a way we can just get one copy and all of us get it right now?

Marks: Okay, it's this one.

ALC Wong: It's within the text—

Marks: Got it.

Chair Chen: Oh, I do have it.

EDLC Totto: So, this is where the matter starts. It's Item H and what I'm referring to in particular is this Media Policy.

Chair Chen: Does anyone need a copy? [No response.] Okay.

EDLC Totto: So, basically the concerns were that the—Well, as laid out in the italics there's of the media policy itself and that's the one in the text on page 9 of the open session memo, and basically there were some word-smiting done but probably the most significant change is in Item, Procedure No. 2, all media inquiries should be directed to the EDLC. The EDLC will respond to normal course at the earliest reasonable opportunity the EDLC will inform the Commission members of email of the content or comments made to the media. As kind of an experiment on that, the request we had from Keoki Kerr and from Nick Ruby I sent to you folks, I think it was yesterday, the request came in so that you could kind of see what that would look like.

Suemori: Wait, wait, can I ask questions?

[Colloquy between Chair Chen and Suemori]

The proposed one which is the text—

Marks: Is on the letterhead.

EDLC Totto: No, no. Wow, I actually apologize for making this so confusing.

Suemori: Because the text within the text also mentions paragraph three.

EDLC Totto: Actually there's no paragraph. It's a typo.

Chair Chen: It's not—

Suemori: Oh, it's 1, 2, 4, and 5.

Chair Chen: Yeah.

EDLC Totto: Yes. I apologize. It should be 1, 2, 3, 4, and 5. Sorry about that. But let's give you couple of minutes to catch up.

Suemori: Can I just ask, in recommendation 4, within the text of the text, what is that? Is that (inaudible) recommendation 1, 2, 3—

EDLC Totto: 1, 2, 3 are on the prior pages. No. 3 is on page 8, No. 2 and 1 are on page 7 of the open session memos. Does everybody have a copy of the open session memo?

Marks: Yes.

EDLC Totto: Okay.

Suemori: Okay; yeah.

EDLC Totto: So, 1 and 2 are on page 7. Staff gave an initial suggestion and that's the one on letterhead. That is open 7. Commissioner Amano redraft that's open 6. Staff did a—

Chair Chen: Okay. So open 7 and open 6 is what we looked at the last time?

EDLC Totto: Correct.

Chair Chen: And so now you're proposing what's within the memo?

EDLC Totto: Yes. I guess, I'm going to do that differently next time. If there's too much confusion, I apologize on that, but basically—

Marks: I'm missing Open 6, does somebody have an extra copy of Open 6? Oh, no, never mind, I got it.

Chair Chen: But you're looking at the Open Memo, right?

EDLC Totto: I'm looking at the Open Memo, pages 9 to 10. And as Commissioner Suemori pointed out there should be four points, so four paragraphs in Procedures 1, 2, 3, and 4.

Suemori: So, you're asking us to approve this, page 9 and page top of 10.

EDLC Totto: Yes.

Chair Chen: Deleting the comments?

EDLC Totto: Yes, deleting the comments. They won't be included unless you want them to, but I don't think they're necessary. And, the purpose is to see if this going to be a compromise or to see if maybe this is something Commission want to try for six months and see how it works or if does not cover the major concerns then we'll go back to the drawing board.

Suemori: I only say this, could we have a better word then "should".

EDLC Totto: The reason I've used should as opposed to shall is I'm very concerned about the Commissioners are going to say they may not make a comment. I was trying to think of an example. And maybe this is not a good one. But let's say—

Chair Chen: Where are you referring to?

Suemori: New paragraph 3. I mean, should is just a bad word; shall not communicate; (inaudible) unless under the following circumstances and delineate your exceptions. And then you could have some clarity because you're fraud. If you put yourself under the should you're just laying yourself out for all sorts of criticisms and boundaries; allegations of (inaudible) boundary. So, if you wanted to sit there and say, I'm not going to comment except under X or (inaudible) misdirect circumstances. Because you have them Chuck.

EDLC Totto: There were writing of an ordinance. This is a policy, simply a guidance.

Suemori: Right. So, you're not giving yourself—

EDLC Totto: To me should is better than shall. Because if you want shall, I'll do it. That means every time I get—

Suemori: Chuck, Chuck, I said shall, subject to stating one exceptions because—

EDLC Totto: I don't know what all the exceptions are.

Suemori: Then when you get into the should, what's going to happen? You're going to have no guidance from us and you're just going to be under in harm's way. If you want to go in the harm's way, go ahead.

EDLC Totto: Okay. Maybe I misunderstanding, what would be an example of where I should respond—

Suemori: It says, to void confusion, “potentially contradiction information, Commission members and staff shall not communicate with media on behalf of the Commission unless they previously discussed it or they’ve had a joint”, whatever. Because you’re saying, oh, no, let’s all go talking around. That’s my only concern. I’m more concerned about you then us, but it’s just like—So, there’s no confusion out there in the public. Because if—a lot of the media they go out and Commission Silva and Commission what do you think about this and they say it and then you say it and then what?

Chair Chen: My concern with 3 is, well even more so if you switch it to shall, it seems it contradicts to.

Suemori: Well, that too.

EDLC Totto: I’ll be happy to put in a phrase that says, unless otherwise described herein—

Suemori: That’s all I’m saying.

Chair Chen: Yeah. I don’t understand. Sorry, I don’t want to belabor it, but—

Suemori: Yeah, I don’t want to belabor it either—

Chair Chen: 2 and 3 seem to contradict each other.

EDLC Totto: Okay. I’m happy to add a phrase that says, “unless otherwise allowed herein”. So, the 3 contemplates 2, which I think would any way, but just to make it clear—

Marks: Okay. Can I make a motion. I kind of sort of cut through this.

EDLC Totto: Thank you.

Marks: **The Draft Media Policy prepared by Judge Amano, I’m going to move that we approve it.**

Suemori: Which one is that one?

Amano: Open 6.

Marks: Open 6.

Suemori: That's this one, right, the one on the letterhead?

Marks: No. Plain one, just draft.

Silva: 6.

Amano: Second.

Chair Chen: I thought we discussed last and people didn't agree on Item No. 2.

Suemori: What do you mean, there's a motion and second on the floor. So—

Marks: Well, you can have discussion.

Suemori: We're in discussion now.

EDLC Totto: Did somebody second?

Suemori: Yeah.

Amano: I did.

EDLC Totto: Okay, thanks.

Marks: And, I think the discussion was to what extent should there be comment on opinions or advisory opinions or should the opinions sort of speak for themselves.

Chair Chen: Yeah, I thought at the last meeting, it was expressed that the procedure No. 2 went too far.

Suemori: That was part of the discussion, but so then they came out with this other draft and so now we're still under discussion because of the motion to approve this. Shall I ask or call for the question?

Chair Chen: You can. **So, I guess, all in favor of passing Honolulu Ethics Commission Media Policy Open agenda Item 6. All in favor, say aye.**

Five Commissioners: Aye.

Chair Chen: All in favor, say nay. Nay. Any abstain?

Marks: Passed.

EDLC Totto: What was the vote?

Marks: Five to one.

Suemori: Five to one.

Marks: Five ayes and one nay.

Chair Chen: Okay. So, probably the last item, **Item III.I. for discussion**, Department of Corporation Counsel's Letter Regarding Nullification of Votes where there has been no Disclosure of the Conflict of Interest.

EDLC Totto: I'm sorry?

Chair Chen: Items I.

EDLC Totto: I'm sorry, I'm a little tired, and my energy is a little low. What issue are we on?

Amano: I.

Chair Chen: III.I.

Silva: Nullification of Vote.

EDLC Totto: Let me catch up to myself.

Marks: I think we received this letter in an email. It wasn't sent out again, but we had it in the email some time ago.

EDLC Totto: The letter from Donna Leong?

Chair Chen: Yes.

EDLC Totto: Yeah. So, did everybody get a copy of open agenda, Open 8? That's the attorney-client privilege response on the item, on Item III.I?

Chair Chen: So, Ms. Leong did you want to comment following your letter?

Corp Counsel Leong: Chair Chen, I think the letter speaks for itself?

Chair Chen: Okay. I'm not aware of the (inaudible) the memorandum that Mr. Totto is referring to, so I wouldn't be able to comment on that.

EDLC Totto: Do you have Open 8, I want to make sure. Letterhead on it dated June 19<sup>th</sup>?

Suemori: From who?

EDLC Totto: From me to Katy Chen.

Chair Chen: Yes.

EDLC Totto: We're in open session, so I'm cautious about making any statement, but I think I can say without getting in to detail, but vote nullification issue is an ethics issue. It's also policy issue for the council and so on. But it's an ethics issue because if you are councilmember or, I guess, in an ordered Commission you don't disclose that you have a conflict of interest then you violated the ethics law. The public harm occurs that if there's no public disclosure then the individual's vote is under Hawaii law, appellate law void and it can leave either the vote of the council on this case or the vote of a board or commission whether something was properly passed in limbo.

The other thing I would just say about it is what I put, what I responded to the Star-Advertiser about is what has been, was in the Cachola opinion, a prior 2012 opinion regarding Councilmember Garcia and the current 2015 opinion followed suit; I think it even started as early as 2007 is simply to state the consequences of nullification vote. So, I'm happy to answer any questions.

Corp Counsel Leong: Chair Chen, if I may respond?

Chair Chen: Sure.

Suemori: Should we be in executive session?

Chair Chen: This is in open session.

Suemori: Okay. Nobody thinks we should be, keep it open?

Corp Counsel Leong: I just wish to respond on a very general level. I don't, as I mentioned, I do not have a copy of the Open 8 memorandum, which apparently is a legal opinion. I would be happy to have our department review that opinion and advise the Commission in an attorney-client privilege memorandum as to the law with regard to nullification of a vote.

With regard to the mention of the Cachola memorandum, my clear recollection of that memorandum is that there were no findings or conclusions by this Commission of any wrongdoing because it was a settlement agreement. From approximately page 4 of that document to the end, until you have the fines stated, it was basically a re(inaudible) of what the investigation would've said or the facts would've said, so any analysis in that memorandum with

regard to case law is (inaudible) I would think because there were no findings and no conclusions made by the Commission. That's my clear recollection of that opinion. So, I would be happy to set this legal analysis as the chief legal advisory to the City attorney-client privilege memorandum to the Commission.

Amano: How did the issue come up?

Suemori: On the agenda?

Amano: No. I mean, the (inaudible) at all.

Marks: I think it came up like by this. I think the settlement was made public. I think there was some news articles and then you wrote, Donna wrote a letter to the Commission. I think that's sort of the history of it.

Amano: But the news articles were involved. Why did the issue come up, I don't understand.

Corp Counsel Leong: Attached to my letter of June 1<sup>st</sup> that you have a copy of, it is reported in the Star-Advertiser article of May 28th with regard to formal Councilmember Garcia's settlement agreement as follows: "But Totto made it clear that his staff believes Garcia's votes that benefited the interest of the lobbyist who gave him unlawful gifts should be nullified."

Amano: Is that true?

EDLC Totto: Either Gordon Pang's misquoting me or Donna Leong is misquoting me. What I said is at Open 8 – 2, you'll see an email from me. It's a May 27<sup>th</sup> 2005 email, says "the Commission's staff position is that the lobbyist who donated unlawful gifts to Councilmember Garcia created a conflict-of-interest for Councilmember Garcia and he was required to disclose the conflict in writing before he voted on the Bills that affected the lobbyist's interest. Because he did not disclose the conflict before voting on the lobbyist's measures, his vote would be nullified. Then the council would have determined whether the subtraction of his vote would change whether the measure passed".

Amano: So, I'm sorry, you're responding to somebody's email?

EDLC Totto: Yes. From Gordon Pang.

Amano: So, he asked you—I'm sorry, I apologize, what did he ask you?

Chair Chen: Whether this ruling had any impact on any votes taken on legislation that affected those who made contributions?

EDLC Totto: So that's what I responded based on prior rulings of the Commission.

Suemori: But settlement, was a settlement?

EDLC Totto: Well, the appellate court decisions don't distinguish between whether—They don't say you have to have a Finding of Fact, but even if that were the case in Cachola, Cachola admitted, remember when you called it an admission, which it was in large part, he admitted that he had violated the gift law and that he had failed to disclose those gifts are required under (inaudible).

Amano: Cachola or Garcia?

EDLC Totto: I'm sorry Garcia in 2015-2.

Suemori: You know what I really think. We should be in executive session at this point.

EDLC Totto: For what purpose?

Suemori: Because we're talking about settlement cases. We're bringing up issues on that were settlement, which did not go to media.

Corp Counsel Leong: Commissioner Suemori, all the statements thus far, as far as I can hear, are actually statements that are in the settlement agreements or reported in the press. The Cachola case there was no admission of wrongdoing in the advisory opinion that was issued. The Garcia case, there was some kind of statement about what former Councilmember admitted or did not admit, so I don't want to comment outside of that advisory opinion.

I must say that I felt the need to send this letter to the Commission because back in January, there was media interest in the October 2014 Cachola advisory opinion. I don't know why there was a gap of time. At that time, the media reported that Mr. Totto said that there again, the vote was nullified. So, I had an email trade, I had an email trade with Mr. Totto back and forth a little bit in which I asked him to confirm that, in fact, as a result of the advisory opinion the vote was not nullified and reconfirmed. So, when I saw the statement that was attributed to him, I felt the need to bringing it to the Commission's attention for dealing whichever way you wish. That was the purpose of my letter.

Chair Chen: So, do I understand you correctly, you're saying there's a distinction was nullified versus would be nullified?

EDLC Totto: I think that's part of it, but I also think basically the statement to Mr. Pang is a statement of what the Commission decided in prior cases and follows on the two appellate cases from the Hawaii Appellate courts.

Amano: I guess I'm wondering why we're (inaudible) on an issue that's not before us.

EDLC Totto: Because the Commission had said in the past that the vote is nullified if there was a failure to make the disclosure of conflict.

Amano: The issue is not before us.

Marks: The issue about the vote isn't before this Commission.

EDLC Totto: So, you're suggesting that I shouldn't then say that the Commission has done this in the past? I mean, I could preface, I mean I could've written so, the Commission's—

Marks: Has the Commission in the past ever made a declaration that so and so vote nullifies a council vote?

EDLC Totto: Have you folks—

Marks: Yeah, I read the law.

EDLC Totto: No. Have you read my—

Amano: Of course.

EDLC Totto: Okay. My Open 8?

Amano: Yes.

EDLC Totto: Okay. Appreciate that.

Amano: I don't disagree or agree. I'm just wondering why we got involved because there's no issue in front of us. Nobody made a complaint, we didn't investigate, we're just finding somewhat irresponsibly in my mind because we don't know what the context is. We don't know what the facts. We're just (inaudible), and so I don't know why we did that?

Chair Chen: I think it was placed on the agenda because Ms. Leong sent a letter to the Commission.

Amano: Yes. My bottom line question is really to Mr. Totto, why are we (inaudible) about the nullification of the vote or not? I don't understand that. Nobody has complained. Nobody issued, you know what I mean?

EDLC Totto: I guess, there's been a lot of times whether it's a sensitive issue like this or other types of issues where somebody would ask questions of staff and I would respond. I mean, I've done hundreds of responses to media or to the public, etc. where it's not necessarily right before

the Commission, but we look at prior Commission advisory opinions. The aspects have been made public and then say well based on the prior Commission's opinions, this is—

Amano: I understand that.

Silva: Precedent set already.

Amano: But if I might suggest to you, as an example, on the Big Island, for instance, Mayor Kenoi has a lot of issues whatever they may be, but I do not think their Ethics Commission is (inaudible) on the various issues without a complaint being before him and they're doing the investigation which is what we do and then we do the legal research and then we give our answer. And, so we had put something out there without a complaint. There's no complaint, there's nothing.

Silva: But if precedent was set already, is it the precedent there?

Suemori: The precedent set, to answer a question when it's presented, and we have. But, I do like why would start talking about precedent when we don't know what is, in fact, the question.

EDLC Totto: How about, let me change the example. I think the one about Mayor Kenoi is a good one.

Amano: Sure. Because even before the complaints, I mean, what if the media said well, Mr. Chair or the Ethics Commission, what do you think, is this unethical or not?

EDLC Totto: Right. And you wouldn't want him saying one way or the other.

Amano: Well, I don't think it would be responsible to say it without investigating it properly, acknowledging the facts, doing the application of law, and so that's what I think as a matter of policy an Ethics Commission shouldn't and doesn't do that. I know the courts don't. We don't do that.

EDLC Totto: No. And, in fact, I have to disagree because as a matter of policy and long-term practice of Ethics Commissions around the country and in the state do not make judgments that would prejudice a case. But in July I'm going to have to do training for the councilmembers. So if councilmembers should say or ask, "what are the ramifications if I have, and I fail to make a disclosure of a conflict of interest?" I think it would be fair for me to say, "well, you have to be concerned about we go through different factors, how serious it is, how many times, and so on and so forth." But ultimately, I think, it would be appropriate given the Commission's precedent to say and "your vote may be nullified and that could affect whether or not a measure passed."

Suemori: Which you might also have to say, but if we settle it, you may not have to. But that's something for corporation counsel to see. Because what if they settled it, then you got to tell him, if you settle it then that's not for us to comment.

EDLC Totto: Well, it kind of depends on the settlement, I think. If the settlement is one where there's a full—

Suemori: Well, if he admits—

EDLC Totto: Yeah.

Suemori: ...if he admits then no.

Amano: I think there's a fine line, for example, is—But, I think you also understand Mayor Kenoi's example is another one that's rather broad and sometimes it's not responsible to applying or answer those questions without full investigation. So—

EDLC Totto: No, no, I agree. I do get questions now and then where you can tell from the context of the question and what's happening and they're asking perhaps indirectly about a particular (inaudible) and most what we'll say, well, these are the issues that we have to be reviewed. And just leave it as that.

Amano: If somebody is making a general question like that one, I mean, I think there's a room to defer that to the corporation counsel. I mean, it doesn't have to be us. In this case, I would've hoped that we had a more clear complaint of some kind or something that we would've then done our normal thorough investigation.

Chair Chen: Well, I guess, I thought Gordon Pang's question would mean more like, do you issue this opinion, I'm trying to understand it, what is the consequences of his opinion and then if he answers that. From my perspective that still seems out of point because you have someone asking for consequences or the clarification of something you issue as a Commission.

Suemori: But if you didn't actually say, if this and that, or if this and that. So, I think his answer was kind of confusing. Because he said, would. If this would happen then this would happen. But that's not what happened. He settled it.

Amano: Also bear in mind, I know that the Commission is 100% behind giving clarity about ethics to City workers, the public and so we didn't clarify things, it made things somewhat confusing.

Chair Chen: I didn't look at it as confusing, because he didn't say it was nullified. He said based on precedent, it would be nullified. I think that to me it seems fine as opposed to saying it was nullified by, you know, the administration.

Amano: But then our corporation counsel is saying, “hey, you’re not the one to call that shot, we should call that shot.” Then we started something that—Why?

Chair Chen: I guess, I looked at it and he was clarifying an opinion that was issued by the Commission. Did I misunderstand that? I guess, in light of the most recent media policy this probably won’t happen again. So, I guess, I would leave it as that. In light of the most recent meeting policy. **I need to leave now. I can’t—Are there are other people that need to leave at 2:30?** So, will there be a quorum remaining?

Suemori: Do we need anything else?

Chair Chen: There’s a bunch of other items. All the A, 1 through 6. So, if you want to continue the meeting to address A, 1 through 6, my understanding is I could appoint—

EDLC Totto: We’ve done it both ways. People volunteered or you can suggest, you could ask somebody if they wouldn’t mind taking over and acting as Chair. (Suemori volunteers to act as Chair)

Chair Chen: Okay. So, **going back to III.A.**

Suemori: Has everyone seen the handouts for **III.A., 1 through 6?**

All Commissioners: Yes.

Suemori: Is there any highlights that you want to explain or could we leave it as submitted?

EDLC Totto: I think staff has that.

Suemori: I know staff has a report, but you haven’t submitted a report. So, rather than repeating what staff has said, does staff add to this report?

EDLC Totto: We handed out something at the beginning of the session.

Marks: Thank you, I appreciate the graphs.

ALC Wong: Thank you Kristine, she did all the hard work.

All Commissioners: Thank you.

ALC Wong: So, we’re trying to make it more visual, understandable.

Suemori: Does anybody have any questions on 1 through 6? Or do you want me to take it individually?

Amano: Why is 5 there?

EDLC Totto: I figure you want to know what your executive director and (inaudible) council is up to because—

Amano: That's okay, I saw you on TV.

EDLC Totto: Basically the intent was to simply say what it's like to be on the job. I think Mr. Kerr asked me, are you supporting them. I said, I didn't take a position. State Ethics Commission is what's like.

Amano: Were you subpoenaed?

EDLC Totto: No. Volunteered.

Amano: I don't understand why we're convening at all. I don't understand the context of what they did.

EDLC Totto: Of what the State Ethics Commission?

Amano: What was that meeting about?

EDLC Totto: They asked for testimony for and against. I should just say the evaluation of their executive director. So, he said would you testify, and I said I will talk about what it's like being in the position so they have more context. That's all.

Suemori: Are there any further questions? [no response]

Marks: I do have a question about Kapalama move? Are you coordinating with like the Liquor Commission and others to make sure we have a conference room for our meetings and parking.

EDLC Totto: In terms of the physical plant we're talking to the Community Services Group that's 2<sup>nd</sup> and 3<sup>rd</sup> floor here who already share this conference room with and it looks like the only other Commission that will be going over is the Neighborhood Commission. So, we're trying to figure out what do we need collectively. I think they have nine or eleven Commissioners, so when they said they need a really bigger room they do get a lot of public folks there, etc. So, yeah, we're coordinating. And then hope to have a site visit within the next two weeks. We've been told and also to then have a conference room we can share. I think that's possible. An interview room, we're gonna want our own. And it doesn't have to be big as this. But this is just to interview people that come in.

Suemori: What's the date of moving in?

EDLC Totto: Right now the target date is October 1, and as Laurie said that probably the earlier we get there the better we can stake out our territory.

Suemori: Absolutely. Have you done a walk through?

EDLC Totto: No. I'm waiting to do that.

Suemori: Is there a lot of space opened?

EDLC Totto: I'm really not sure. I actually broke in the place a year ago when I thought we really going to go and took a look then but I think it's been reconfigured to some degree. But I think it's mostly open space and then they're going to start putting up the walls. I know DIT is in there to put in the computer access.

Suemori: Yes, all IT stuff. Any further questions? [no response] **I'll entertain a motion to adjourn if there's nothing else.**

Silva: So move.

Amano: Second.

Suemori: Okay. See you here back in July.

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Meeting ended at approximately 3:00pm.

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov)  
Internet: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

### AGENDA

Honolulu Ethics Commission  
**July 23, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

#### SPEAKER REGISTRATION

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda item subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

#### WRITTEN TESTIMONY

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

#### ORDER OF BUSINESS

- I. CALL TO ORDER
- II. OLD BUSINESS

- A. Confirming the Date and Time for the August 19, September 23, and October 21, 2015 Meetings; and Setting the Meeting Date During the Week of November 16 - 19, 2015.

### III. NEW BUSINESS

- A. For Action: Request for a Motion to Rescind the Media Policy Adopted at the June 24, 2015 Meeting.
- B. For Action: Request for a Motion to Adopt a New Draft Media Policy.
- C. For Discussion: Performance Evaluation of the Executive Director and Legal Counsel.

The Commission reserves the right to go into executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved.

- D. For Action: Request for a Motion to Approve and Adopt Staff's Recommended Charter Amendment Regarding Setting Salaries for the Ethics Commission Attorneys and to Submit the Amendment to the Charter Commission.

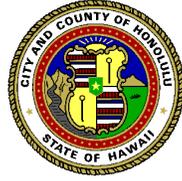
### IV. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.4 (Failure to File Complete Financial Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
- B. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.4 (Failure to File Complete Financial Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

### V. ADJOURNMENT

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091  
PHONE: (808) 768-7786 • FAX: (808) 768-7768 • EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov) • INTERNET: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)



KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: July 23, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A.S. DeCaires, Investigator  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)

Guests: Darryl Huff, Hawaii News Now  
George Hurd, Cameraman, Hawaii News Now  
Adam LeFavre, Mayor's/MDO's Office  
Ann Shaver, League of Women Voters  
Janet Mason, League of Women Voters  
Lynne Matusow, member of the public  
Gordon Pang, Star Advertiser  
Junta Tokunaga, Hawaii News Now  
Dr. Michael Uechi, member of the public  
Roy Nakamura, member of the public

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

## MINUTES OF THE JULY 23, 2015 OPEN SESSION MEETING

### I. CALL TO ORDER

Chair Chen called the meeting to order at 11:35 am.

### II. OLD BUSINESS

- A. Confirming the Date and Time for the August 19, September 23, and October 21, 2015 Meetings; and Setting the Meeting Date During the Week of November 16 - 19, 2015.

The Commission confirmed meetings for the following tentative dates: August 27, 2015; September 23, 2015; October 21, 2015; November 18, 2015

### III. NEW BUSINESS

- A. For Action: Request for a Motion to Rescind the Media Policy Adopted at the June 24, 2015 Meeting.

**Commissioner Marks moved to change the agenda item order so that agenda item III.B. would be heard before item III.A.** After discussion, Chair Chen called for a vote on the Motion.

Ayes: Suemori, Amano, Marks

Noes: Chen, Lilly, Yuen, Silva

**Motion Fails.**

**Vice Chair Lilly moved to rescind the media policy adopted at the June 24, 2015 meeting. Commissioner Yuen seconded the Motion.**

The following written testimony submitted for this agenda item:

- Jerry Lam – Supports Rescission
- Natalie Iwasa – Supports Rescission
- Susan Schwichow-Lord – Supports Rescission
- Chu Lan Schubert Kwock – Supports Rescission
- Ann Shaver and Beppie Shapiro, League of Women Voters – Supports Rescission
- Lynne Matusow – Supports Rescission
- Makakilo Neighborhood Board – Supports Rescission
- Dr. Michael Uechi – Supports Rescission
- Choon James – Supports Rescission
- Cinnie Firth – Supports Rescission

Ms. Shaver, Ms. Matusow, and Dr. Uechi presented oral testimony supporting rescission of the June 24, 2015 media policy.

After public testimony, the following discussion ensued:

Commissioner Amano stated that discussion of this issue began in September 2014 following a situation where she had learned of an Ethics Commission issue on TV. She learned that the EC had no media policy at the time. She requested that the subject of adopting a media policy be placed on the agenda. She asked staff to draft a policy to work with. Her primary concern is that the EDLC should be speaking for the EC, but how can he do that without the EC having any input or review until after the issue has already been discussed with the media. She believes the media is a tool to educate the public and she wants to create parameters. She created the draft policy in order to isolate issues and have further discussion. There was a lot of confusion at the long June meeting when the policy was adopted. She wants the EC to be able to provide input to the EDLC for media responses.

Commissioner Suemori delineated between staff and commissioners and confirmed that she wanted to know what the EDLC is talking about to media.

Commissioner Marks stated that she feels it is appropriate for the EC members to learn about a media inquiry that the EC staff responded to from the staff not from the media.

Vice Chair Lilly stated that the proposed new media policy (agenda Item III.B.) does have a provision that requires the EDLC to inform the EC if he receives a media inquiry, and that he expects that the EDLC inform the EC first as to media responses. The EC's primary role is education, which is more important than enforcement. If the EC can educate the public, it will help to avoid violations. It benefits the EC for the EDLC to be able to explain the Advisory Opinions. Therefore, it is vital for staff to be able to explain and advise. The EC is the guardian of integrity in government and one of the ways to educate is via the media.

Vice Chair Lilly further stated that one of the recent issues that has affected the media policy is the EDLC's statement regarding vote nullification. The Hawaii Intermediate Court of Appeals has decided a case that is directly on point that confirms the EDLC's statement, that failure to disclose a conflict of interest renders the vote null and void. It is not the EC's duty to adjudicate that the particular votes are null and void, but the EC should point it out that vote nullification is a concern. It is up to the affected board, commission or City Council, to correct the record, otherwise it will undermine the public's confidence in the votes and in government. He stated that the policy that was adopted last month was a mistake. He further stated that he held the highest regard for the Commission members who had voted to adopt the media policy last month.

**Commissioner Amano moved to defer the vote on Agenda Item III.A. until after Agenda Item III.B. has been decided. Commissioner Suemori seconded the Motion.** Commissioner

Amano confirmed that she did not want to rescind the media policy until a new one was approved.

**After discussion, Chair Chen called for a vote on Commissioner Amano's motion.**

Ayes: Suemori, Amano, Marks

Noes: Lilly, Chen, Yuen, Silva

**Motion denied.**

**Chair Chen called for a vote on Vice Chair Lilly's original Motion to rescind the Media Policy that had been adopted on June 24, 2015.**

Ayes: Lilly, Chen, Yuen, Silva

Noes: Amano, Suemori, Marks

**Motion to rescind the Media Policy that had been adopted on June 24, 2015 was adopted.**

B. For Action: Request for a Motion to Adopt a New Draft Media Policy.

The following written testimony was submitted and accepted for Agenda Item III.B.

- Choon James – Supports adopting a new media policy
- Cinnie Firth – Supports adopting a new media policy
- Natalie Iwasa – Opposes adopting a new media policy

**Vice Chair Lilly moved to adopt the draft new media policy identified as OPEN-3 in the July meeting materials, but striking out paragraphs 4 and 7. Commissioner Yuen seconded the Motion.**

Vice Chair Lilly stated that he wanted to delete paragraph 4 because it is redundant of paragraph 3 and also because it would be cumbersome for the EDLC's to respond to media requests. Also, paragraph 7 should be deleted because it is also redundant of paragraph 3. After striking paragraphs 4 and 7, the new proposed media policy would still require the EDLC to inform the EC before it is aired on the news.

Commissioner Suemori stated that she would be more comfortable for the EDLC to run responses through at least one of the Commissioners before media response.

Vice Chair Lilly stated that Mr. Tutto is the EDLC and that he would have a sense about how the EC feels about certain things. If Mr. Tutto is not doing his job, he will be held accountable; Vice Chair reiterated his confidence in Mr. Tutto. Chair Chen also stated that the underlying issue is in regard to trusting the EDLC to respond to the media.

Commissioner Suemori stated that perhaps there should not be a media policy.

Commissioner Yuen stated that he feels that Mr. Tutto is competent to distinguish what can be addressed to the media. He further stated that we all make mistakes, and in regard to the prior

situation that was alluded to in which the Commissioners were told about a media release after the fact, the EDLC could be counselled instead of the Commission adopting a media policy. Commissioner Yuen stated that there does not need to be a media policy because the system is not broken. But, he believes that the issues regarding the media policy over the last month was worthwhile as the policy was vetted by the public. He believes that this new policy, if adopted, would be clarification so the public will know where the EC stands on it.

Commissioner Amano stated that policies are not intended to be directed at a single individual, it is to ensure consistency issued by EC, the people who are responsible. The media is a powerful tool in this fast paced society and everything the EC puts out there has to be accurate, truthful, thoughtful, transparent, and responsible. She is asking for a procedure for the EC to have some oversight of matters that are going to the media via the EC. Commissioner Amano stated that she would support adopting the proposed media policy by Vice Chair Lilly keeping the language of paragraph 4.

Commissioner Suemori stated that she likes having a media policy and that the policy is for the EDLC's benefit so that he has someone else to confer with from the EC.

Commissioner Silva stated that no-one else has more ethics law knowledge than Mr. Totto, and that Mr. Totto has the expertise on everything that is issued from the EC office; he doesn't know why there is argument.

**Commissioner Amano moved to amend Vice Chair's Motion so that it will reflect approving OPEN-3 without striking paragraph 4. Commissioner Suemori seconded the Motion.**

**Chair Chen asked for a Motion to Recess as the meeting had already gone for an hour and a half. Commissioner Yuen so moved and Commissioner Suemori seconded the Motion. The motion passed unanimously.**

The meeting recessed from approximately 12:45 pm-12:50 pm.

Ms. Matusow further addressed the Commission.

Commissioner Marks requested to review the media policies from other jurisdictions as referenced in the Open Meeting materials. EDLC provided Commissioner Marks with the referenced media policies.

**Chair Chen called for a vote on Commissioner Amano's Motion to Amend Vice Chair Lilly's Motion by adopting the media policy without striking paragraphs 4 and 7.**

Ayes: Suemori, Amano, Marks

Noes: Lilly, Chen, Yuen, Silva

**Motion denied.**

**Chair Chen called for a vote on Vice Chair Lilly's Motion to Adopt the new media policy identified as OPEN-3 in the meeting materials striking paragraphs 4 and 7. The motion was adopted unanimously.**

- C. For Discussion: Performance Evaluation of the Executive Director and Legal Counsel.

The Commission reserves the right to go into executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved.

Vice Chair Lilly moved to defer Agenda Item III.C. until the next meeting. Commissioner Suemori seconded the Motion.

Written testimony accepted for this item follows:

- Natalie Iwasa – Comments supporting the performance of the EDLC

Ms. Matusow addressed further comments to the Commission requesting evaluation of the Commission by the public.

Chair Chen called for a vote on the Motion to Defer Agenda Item III.C.

Ayes: Suemori, Lilly, Chen, Yuen, Marks, Silva

Noes: None

Abstain: Amano

**Motion to Defer Agenda Item III.C. was adopted.**

- D. For Action: Request for a Motion to Approve and Adopt Staff's Recommended Charter Amendment Regarding Setting Salaries for the Ethics Commission Attorneys and to Submit the Amendment to the Charter Commission.

**Commissioner Amano moved to approve and adopt staff's recommended Charter Amendment re Setting Salaries for the EC Attorneys to Submit to the Charter Commission. Commissioner Marks seconded the motion.**

Vice Chair Lilly informed the EDLC that he and Commissioner Amano were meeting with Mr. Ray Soon, the Mayor's Chief of Staff tomorrow. Commissioner Amano requested that the EDLC put the proposed Charter Amendment in form for presentation to Mr. Soon.

**Chair Chen called for a vote on the Motion. The Motion passed unanimously.**

**Chair Chen requested a motion to enter Executive Session. Commissioner Suemori so moved. Commissioner Amano seconded the Motion. The Motion passed unanimously.**

#### IV. EXECUTIVE SESSION SUMMARY

(The following agenda items were reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.4 (Failure to File Complete Financial Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause of ethics law violations and approved the issuance of a Notice of Alleged Violation to the City Officer.**

- B. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.4 (Failure to File Complete Financial Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause of ethics law violations and approved the issuance of a Notice of Alleged Violation to the City Officer.**

#### V. ADJOURNMENT

**Chair Chen requested a Motion to Adjourn the meeting. Commissioner Amano so moved, Commissioner Suemori seconded the Motion. The motion was passed unanimously.**

The meeting adjourned at approximately 1:41 pm.

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov)  
Internet: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

RECEIVED  
CITY CLERK  
CITY AND COUNTY OF HONOLULU  
2015 AUG 20 PM 3:36

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

### AGENDA

Honolulu Ethics Commission  
**August 27, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

#### SPEAKER REGISTRATION

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

#### WRITTEN TESTIMONY

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

#### ORDER OF BUSINESS

- I. CALL TO ORDER
- II. OLD BUSINESS

- A. Confirming the Date and Time for the September 23, and October 21, November 18, 2015 Meetings; and Setting the Meeting Date During the Week of December 14 - 18, 2015.
- B. Request to set a specific date and time each month in 2016 for the Commission meetings.

III. NEW BUSINESS

- A. Introduction of Bill Shanafelt, Investigator III.
- B. Motion to Approve the Open Session Minutes of the July 23, 2015 Meeting.

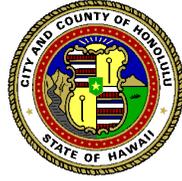
IV. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. Motion to Approve the Minutes of the Executive Session of the July 23, 2015 meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
- B. Evaluation of the Executive Director and Legal Counsel. (HRS Secs. 92-5(a)(2) and (a)(8))
- C. Plan for Processing Complaint Against Members of an Agency's Staff.

V. ADJOURNMENT

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091  
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KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: August 27, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A.S. DeCaires, Investigator III  
William Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)

Absent: Hon. Allene Suemori (ret), Commissioner

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

**MINUTES OF THE AUGUST 27, 2015 OPEN SESSION MEETING**

I. CALL TO ORDER

Vice Chair Lilly called the meeting to order at 11:35 A.M.

II. OLD BUSINESS

- A. Confirming the Date and Time for the September 23, and October 21, November 18, 2015 Meetings; and Setting the Meeting Date During the Week of December 14 - 18, 2015.

Vice Chair Lilly asked if Commissioners should consider Commissioner Marks' suggestion to confirm meeting dates through email instead of the beginning of each meeting.

The EDLC suggested scheduling a particular date of every month. The EDLC explained that confirming dates through email might take longer for Staff who will need to contact each Commissioner to compare their availability. The EDLC further explained that during the meeting, the Commission members will be able to discuss their schedules in a short amount of time.

Commissioner Amano stated that the concern is that the Commission confirms the date at every meeting. She also stated to continue picking the date until the end of the year.

Commissioner Yuen will not be able to attend the December 16<sup>th</sup> meeting.

The Commission confirmed meetings for the following tentative dates: September 23, 2015; October 21, 2015; November 18, 2015; and December 16, 2015.

### III. NEW BUSINESS

- A. Introduction of Bill Shanafelt, Investigator III.

The EDLC introduced Bill Shanafelt to the Commission.

Commissioner Marks asked Investigator Shanafelt to talk about his background.

Investigator Shanafelt shared his employment background in law enforcement, administrative investigations, and undercover work.

- B. Motion to Approve the Open Session Minutes of the July 23, 2015 Meeting.

**Vice Chair Lilly called for a motion to approve the Open Minutes of the July 23, 2015 Meeting. Commissioner Yuen so moved. Commissioner Silva seconded.**

Vice Chair Lilly commented on page 3, last paragraph. He requested to correct a particular sentence to "it is up to *the affected* board, commission or city council..." Vice Chair Lilly stated that he was not addressing rail and not the City Council per se. He further stated that he was addressing all boards and commissions, of any voting body, in general.

**Vice Chair Lilly asked for a motion to approve the minutes with the subject to change page 3, last paragraph, and the sentence should read, “it is up to the affected board, commission or city council...” Commissioner Silva so moved. Commissioner Yuen seconded the motion. The motion carried unanimously.**

IV. EXECUTIVE SESSION SUMMARY. (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission’s attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

**Commissioner Amano moved to enter into executive session. Commissioner Silva seconded the motion. The motion was approved unanimously.**

- A. Motion to Approve the Minutes of the Executive Session of the July 23, 2015 meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

With no further discussion, **Commissioner Yuen moved to approve the minutes. Commissioner Silva seconded. The motion carried unanimously.**

- B. Evaluation of the Executive Director and Legal Counsel. (HRS Secs. 92-5(a)(2) and (a)(8))

After discussing the EDLC’s performance, **Vice Chair Lilly moved to approve to increase the EDLC’s salary by 4%. Commissioner Silva seconded. The motion carried unanimously.**

- C. Plan for Processing a Complaint Against Members of an Agency’s Staff. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

After discussing with Mr. Kam, **Commissioner Amano moved to engage the Attorney General’s Office to investigate this complaint. Commissioner Silva seconded. The motion passed unanimously.**

**Vice Chair Lilly moved to exit out of executive session and enter to open session. Commissioner Amano seconded the motion. The motion carried unanimously.**

V. ADJOURNMENT

**Commissioner Marks moved to exit open session and adjourn the meeting. Commissioner Silva seconded. The motion passed unanimously.**

The meeting adjourned at approximately 1:13 pm.

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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RECEIVED  
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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AMENDED AGENDA  
Honolulu Ethics Commission  
**September 23, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
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**WRITTEN TESTIMONY**

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- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

I. CALL TO ORDER

II. OLD BUSINESS

- A. Confirming the Date and Time for the October 21, November 18, and December 16, 2015 Meetings.

- B. Request to set a specific date and time each month in 2016 for the Commission meetings.

### III. NEW BUSINESS

- A. Motion to Approve the Open Session Minutes of the August 27, 2015 Meeting.
- B. Executive Director and Legal Counsel's Administrative Report.
  - 1. General statistics: Requests for advice and complaints requiring investigation.
  - 2. Fiscal year 2015 statistics.
  - 3. Current fiscal year budget issues.
  - 4. Fiscal year 2017 budget.
  - 5. Ethics training program.
  - 6. Staff's priorities for fiscal years 2016 – 2017.
- C. Request for a Motion to Set the FY 2016 Associate Legal Counsel's Salary Based on the Mayor's Directive.
- D. Request for a Motion to Set the FY 2016 Salary of the Executive Director and Legal Counsel Based on the Mayor's Directive.

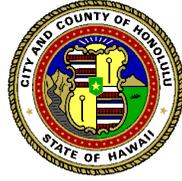
### IV. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. Motion to Approve the Minutes of the Executive Session of the August 27, 2015 meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
- B. Plan for Processing Complaint Against Members of an Agency's Staff. (HRS Secs. 92-5(a)(2), a(4) and (a)(8))

V. ADJOURNMENT

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: September 23, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Stanford Yuen, P.E., Acting Chair  
Stephen Silva, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
William Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)

Absent: Katy Chen, Esq., Chair  
Michael Lilly, Esq., Vice Chair

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

**MINUTES OF THE SEPTEMBER 23, 2015 OPEN SESSION MEETING**

I. CALL TO ORDER

**Commissioner Suemori moved to have Commissioner Yuen lead the meeting. Commissioner Marks seconded. All were in favor and the motion carried.**

Acting Chair, Yuen, called the meeting to order at 11:35 a.m.

## II. OLD BUSINESS

- A. Confirming the Date and Time for the October 21, November 18, and December 16, 2015 Meetings.

The Commission confirmed meetings for the following tentative dates: October 21, 2015; November 18, 2015; and December 16, 2015.

- B. Request to set a specific date and time each month in 2016 for the Commission meetings.

The Commission confirmed the future meeting dates for calendar year 2016 to be set on the 3<sup>rd</sup> Wednesday of each month with the exception of November, which will be held on the 2<sup>nd</sup> Wednesday.

## III. NEW BUSINESS

- A. Motion to Approve the Open Session Minutes of the August 27, 2015 Meeting.

Commissioner Amano requested a couple of revisions to the minutes. On page 2 paragraph 1, she does not recall Vice Chair Lilly “agreeing” to the suggestion of confirming the meeting dates through email. On page 3 paragraph 1 on Item IV.C., she pointed out that there is an extra “to.”

Staff will modify the minutes according to Commissioner Amano’s comments, by deleting the extra words.

**Commissioner Marks moved to approve the open session minutes, as amended. Commissioner Silva seconded. All were in favor and the motion carried.**

- B. Executive Director and Legal Counsel’s Administrative Report.

There were no questions and discussions for the following Items 1 to 5:

1. General statistics: Requests for advice and complaints requiring investigation.
2. Fiscal year 2015 statistics.
3. Current fiscal year budget issues.
4. Fiscal year 2017 budget.

5. Ethics training program.

Commissioner Marks recommended sending out a Newsletter to the City of the EC's report on a bi-annual basis. Commissioner Amano added that this will include the laws and impending move that will reach 8,000 City employees and Union Representatives.

The EDLC expressed one concern, about keeping the Newsletter on schedule, but will initiate to re-connect with City employees by Newsletter instead of conducting the previous mass training via email blast.

Commissioner Amano suggested the Newsletter be a high priority.

6. Staff's priorities for fiscal years 2016 – 2017.

The EDLC explained he did not include this item by reason of not having the City personnel surveys. He further explained that this was a secondary priority, but it would be moved up.

C. Request for a Motion to Set the FY 2016 Associate Legal Counsel's Salary Based on the Mayor's Directive.

With no further discussion, **Commissioner Marks moved to set the ALC's FY 2016 salary based on the Mayor's Directive. Commissioner Silva seconded. All were in favor and the motion carried.**

The EDLC thanked the Permitted Interaction Group ("Group") for continuing to support and push for this matter.

Commissioner Marks thanked the Group and stated to staff that the budget needs to be done accordingly. Commissioner Amano added that with the frequency of litigations and the growth of the agency, staff needs to plan ahead of time by two or three years. The EDLC explained that he is discussing with both the Budget and Fiscal Services Director and Managing Director on how to plan the budget accordingly.

Commissioner Amano thanked the ALC for her patience and for staying with the Commission.

D. Request for a Motion to Set the FY 2016 Salary of the Executive Director and Legal Counsel Based on the Mayor's Directive.

The EDLC announced to the Commission that his raise will be going towards the ALC's salary as a catch up.

With no further discussion, **Commissioner Marks moved to set the EDLC's FY 2016 salary, based on the Mayor's Directive. Commissioner Silva seconded. All were in favor and the motion carried.**

**Commissioner Marks moved to exit Open Session, and enter Executive Session. Commissioner Suemori seconded. All were in favor, and the motion carried.**

IV. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. Motion to Approve the Minutes of the Executive Session of the August 27, 2015 meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**Commissioner Amano moved to approve the executive session meeting minutes. Commissioner Silva seconded. All were in favor and the motion carried.**

B. Plan for Processing Complaint Against Members of an Agency's Staff. (HRS Secs. 92-5(a)(2), a(4) and (a)(8))

At 11:46 a.m., staff removed themselves from the room for this item.

**[Attorney-Client Privilege with Deputy Kam]**

At 12:30 p.m., **Commissioner Marks moved to exit the executive session, and then to enter open session. Commissioner Silva seconded. All were in favor, and the motion carried.**

V. ADJOURNMENT

**Commissioner Suemori moved to exit open session and adjourn the meeting. Commissioner Marks seconded. The motion carried.**

The meeting adjourned at approximately 1:13 pm.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

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2015 OCT 15 PM 4:04

**AGENDA**

Honolulu Ethics Commission  
**October 21, 2015 – 11:30 am**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
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**WRITTEN TESTIMONY**

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- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER
- II. OLD BUSINESS
  - A. Confirming the Date and Time for the November 18 and December 16, 2015 meetings. Beginning January 20, 2016, meetings will be held every third Wednesday of every month, except November, second Wednesday.

III. NEW BUSINESS

- A. Motion to Approve the Open Session Minutes of the September 23, 2015 Meeting.
- B. Executive Director and Legal Counsel's Administrative Report.
  - 1. General statistics: Requests for advice and complaints requiring investigation.
  - 2. Fiscal year 2015 statistics.
  - 3. Current fiscal year budget issues.
  - 4. Fiscal year 2017 budget.
  - 5. Ethics training program.
  - 6. Staff's priorities for fiscal years 2016 – 2017.
  - 7. Staff Monthly Communication with City Work Force.

IV. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. Motion to Approve the Minutes of the Executive Session of the August 27, 2015 meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))
- B. For Discussion: Proposed Amendments to the Ethics Commission Rules of Procedure. (HRS Secs. 92-5(a)(4))
- C. For Discussion: Proposed Amendments to the Guidelines on Gifts. (HRS Secs. 92-5(a)(4))

V. ADJOURNMENT

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place:           October 21, 2015  
                                  Standard Financial Plaza  
                                  Conference Room, Suite 211

Present:                    Katy Chen, Esq., Chair  
                                  Stanford Yuen, P.E., Commissioner  
                                  Stephen Silva, Commissioner  
                                  Hon. Riki Amano (ret.), Commissioner  
                                  Hon. Allene Suemori (ret), Commissioner [Arrived at 12:00 p.m]  
                                  Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
                                  Laurie A. Wong, Associate Legal Counsel (ALC)  
                                  William “Bill” Shanafelt, Investigator III  
                                  Geoffrey Kam, Deputy Corporation Counsel, Department of the  
                                  Corporation Counsel (COR)  
                                  Jay Parasco, Mayor’s Office  
                                  Gordon Pang, Star-Advertiser

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

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

**MINUTES OF THE OCTOBER 21, 2015 OPEN SESSION MEETING**

I.     **CALL TO ORDER**

Chair Chen called the meeting to order at 11:38 a.m.

## II. OLD BUSINESS

- A. Confirming the Date and Time for the November 18 and December 16, 2015 meetings. Beginning January 20, 2016, meetings will be held every third Wednesday of every month, except November, second Wednesday.

The Commission confirmed meetings for the following tentative dates: November 18, 2015, and December 16, 2015. Chair Chen announced starting January 20, 2016, the meetings will be held on every third Wednesday of every month, except November, which will be held on the second Wednesday.

## III. NEW BUSINESS

- A. Motion to Approve the Open Session Minutes of the September 23, 2015 Meeting.

Chair Chen asked for a Motion to approve the Open Minutes of the September 23, 2015 meeting.

**Commissioner Yuen so moved and Commissioner Amano seconded. Chair Chen then asked if there were any issues on the Minutes and since there none, all were in favor and the motion carried.**

- B. Executive Director and Legal Counsel's Administrative Report.

The EDLC asked the Commission if they had any questions to any of the items listed on the agenda, and further stated that the ALC had additional statistics to distribute and discuss.

1. General statistics: Requests for advice and complaints requiring investigation.
2. Fiscal year 2015 statistics.
3. Current fiscal year budget issues.
4. Fiscal year 2017 budget.
5. Ethics training program.
6. Staff's priorities for fiscal years 2016 — 2017.
7. Staff Monthly Communication with City Work Force.

The ALC explained to the Commission that Staff was thinking of incorporating visualization in the meeting, such as having a PowerPoint presentation. The ALC further

explained that having a PowerPoint would be helpful, especially when presenting statistics. With that thought in mind, the ALC stated that the Commission could discuss this visualization matter at a later time.

Commissioner Yuen asked what the priorities are for the office. For Item 6, the EDLC responded that the priorities are the same as last week. The EDLC explained that there were a couple of issues that he would like to discuss, but was not able to put on the agenda for priority purposes.

Commissioner Yuen was concerned about the amount of staff's workload, and wanted to know if it's within our capacity. With the limited resources, the EDLC explained that we needed to cut back on investigations. With the prior investigator, Letha DeCaires, the EDLC stated that she was quick and thorough when reviewing incoming complaints and was able to cut-down the backlog. The EDLC further stated that with the current investigator, Bill Shanafelt, who has been a great asset, but would still need time to "get up to speed." The EDLC continued that he would be happy to assist the Commission by showing a flow of the workload process, and that after several discussions amongst staff, it was concluded that we need to slow down. Physically and emotionally staff is burnt-out.

Commissioner Yuen requested, when possible, to show an estimate of man hours for these priorities. The EDLC informed the Commission that he would respond with an estimate at the next meeting, or rather the November or December meeting

Chair Chen asked what was the status of the move to Kapalama Hale. The EDLC responded that he had not heard any updates of the move other than the earliest our office is expected to move is March 2016.

Chair Chen asked if there were any questions on the administrative report, and since there none, asked for a motion to move into executive session and noted that the Executive Session, IV.B and IV.C of the agenda would be deferred to the November 18, 2015 meeting and would be placed on the open session agenda.

**Commissioner Silva so moved and Commissioner Amano seconded. All were in favor, and the motion carried.**

IV. EXECUTIVE SESSION SUMMARY (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. Motion to Approve the Minutes of the Executive Session of the August 27, 2015 meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The ALC asked to amend the motion to approve the minutes of the Executive Session of the September 23, 2015 meeting. Commissioner Yuen so moved for this amendment, and Commissioner Silva seconded.**

**With no further discussion, Commissioner Yuen moved to approve the minutes of the September 23, 2015 meeting. Commissioner Yuen so moved for this amendment and Commissioner Silva seconded.**

- B. For Discussion: Proposed Amendments to the Ethics Commission Rules of Procedure. (HRS Secs. 92-5(a)(4))
- C. For Discussion: Proposed Amendments to the Guidelines on Gifts. (HRS Secs. 92-5(a)(4))

**Commissioner Silva moved to exit executive session and enter open session. Commissioner Amano seconded. All were in favor, and the motion carried.**

#### V. ADJOURNMENT

Commissioner Amano moved to add “Contested Hearing Procedures” during open session on the agenda.

Deputy Kam informed Commissioner Amano that the motion could not be heard at this time, due to the lack of votes, which is to have at least two-thirds (2/3) of the Commission or five (5) votes among the Commissioners.

Due to the insufficient votes, Commissioner Amano’s motion was tabled to the next meeting to be held on November 18, 2015.

**Commissioner Amano moved to have the “Contested Hearing Procedures” as an agenda item in the November 18, 2015 meeting. Commissioner Silva seconded. All were in favor, and the motion carried.**

**Commissioner Yuen moved to adjourn the meeting. Commissioner Silva seconded. All were in favor, and the motion carried.**

The meeting adjourned at approximately 11:50 a.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov)  
Internet: [www.honolulu.gov/ethics](http://www.honolulu.gov/ethics)

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA  
Honolulu Ethics Commission  
**November 3, 2015 – 5:30 pm**  
Mission Memorial Building Hearings Room  
550 South King Street, Ground Floor  
Honolulu, Hawaii 96813

and

371 Alae Road,  
Kula, HI 96790

Pursuant to HRS Sec. 92-3.5, members of the public may attend the public session at either location.

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER.

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## II. EXECUTIVE SESSION.

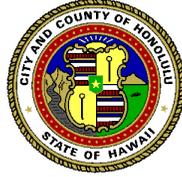
The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to personnel and management matters.

## III. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov  
Internet: www.honolulu.gov/ethics

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

NOTICE OF CANCELLATION

The Ethics Commission meeting previously scheduled for the following times and locations has been cancelled.

**November 3, 2015 – 5:30 pm**  
Mission Memorial Building Hearings Room  
550 South King Street, Ground Floor  
Honolulu, Hawaii 96813

and

371 Alae Road,  
Kula, HI 96790

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

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**AGENDA**

Honolulu Ethics Commission  
**November 18, 2015 – 11:30 pm**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

**ORDER OF BUSINESS**

- I. CALL TO ORDER.
- II. NEW BUSINESS
  - A. Approval of Open Session Minutes of October 21, 2015 Meeting.

### III. EXECUTIVE SESSION

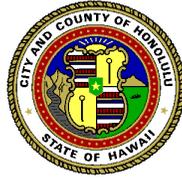
- A. Approval of Exec Session Minutes of October 21, 2015 Meeting.
- B. **Possible Workers Compensation Claim.** The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to a possible workers' compensation claim.
- C. **Formation of a Permitted Interaction Group to Investigate Office Conditions, Including Management, Personnel and Procedure Issues.** The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to formation of a permitted interaction group to investigate office conditions, including management, personnel and procedure issues.

### IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091  
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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: November 18, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael Lilly, Esq., Vice Chair  
Stanford Yuen, P.E., Commissioner  
Stephen Silva, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Laurie A. Wong, Associate Legal Counsel (ALC)  
William "Bill" Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Lynne Matusow, Member of the Public  
Cory Lum, Honolulu Civil Beat

Absent: Charles W. Totto, Executive Director and Legal Counsel (EDLC)

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

**MINUTES OF THE NOVEMBER 18, 2015 OPEN SESSION MEETING**

I. CALL TO ORDER

Chair Chen called the meeting to order at 11:38 a.m.

II. NEW BUSINESS

A. Approval of Open Session Minutes of the October 21, 2015 Meeting.

Commissioner Suemori stated that she was at the October 21, 2015 meeting, and Commissioner Amano confirmed her attendance.

Chair Chen confirmed Commissioner Suemori's attendance to the adjudicative portion only (post-meeting) and asked if there were any additional changes to the Minutes. The Commission had no further comments and changes.

**With no further discussion, Commissioner Marks moved to approve the October 21, 2015 minutes, as amended. Commissioner Amano seconded. All were in favor, and the motion carried.**

Before entering into executive session, Chair Chen invited the public to testify on the executive session matters.

Lynne Matusow, a member from the public, introduced herself. She expressed her concern with the Commission's cancelled November 3, 2015 meeting, because the agenda did not meet the requirements of the Sunshine Law. She wanted to know who prepared the agenda, because, it was her understanding that the EDLC did not prepare the agenda.

Ms. Matusow also provided testimony in regard to the Sunshine Law's applicability to Item III.C., creating a permitted interaction group ("PIG"). She stated that the PIG's duties, members, and any voting must be done in Open Session.

In addition, Ms. Matusow testified briefly for another member of the public, Natalie Iwasa. Ms. Matusow informed the Commission that Ms. Iwasa submitted a proposed amendment to the City Charter Commission, to create an Inspector General (IG) agency which would be a government watchdog on behalf of residents and taxpayers to hold county representatives, officials and employees accountable, instead of the Ethics Commission. The IG would not be administratively attached to the Corporation Counsel.

Commissioner Marks stated that Ms. Matusow also submitted written testimony that was received by the Commission on November 2, 2015. Commissioner Marks further stated that the November 3, 2015 meeting agenda was prepared by the Commission's legal counsel, Corp Counsel Deputy Kam, and that the Corporation Counsel and the Office of Information Practices (OIP) had a difference of opinions regarding the requirements for the agenda. But, the Commission would certainly comply with the Sunshine Law, which was why the November 3 agenda items were postponed to this meeting.

In reference to the written testimony, Commissioner Marks asked Ms. Matusow to explain what, "rumors are flying fast and furious," and who was the source of the rumors. Ms. Matusow responded that people were talking amongst themselves and believed that the intent of the November 3, executive session was to fire the EDLC.

Commissioner Suemori asked for further clarification as to the source of the rumors. Ms. Matusow generally referenced the people in the community.

Commissioner Suemori asked Ms. Matusow how this conclusion arose. Ms. Matusow responded that it was because the Mayor and Corporation Counsel have fights with the EDLC; also there are issues with both the City and State Ethics Commission, as well as both City and State administrations.

Chair Chen stated that she did not believe that the agenda indicated that the EDLC was getting fired. Commissioner Suemori also agreed, and was surprised. Ms. Matusow responded that people believe that he was going to be fired based on that agenda item.

Commissioner Lilly responded that the administration and Mayor have no influence over the Commission and their deliberations. Commissioner Amano asked why the EDLC was not in attendance. Commissioner Silva responded that the EDLC was on medical leave.

Commissioner Marks advised Ms. Matusow that she should not believe every rumor she hears or reads. Ms. Matusow agreed, and mentioned that the media can be contradictory.

**Vice Chair Lilly moved to exit open session and enter into executive session. Commissioner Yuen seconded. All were in favor, and the motion carried.**

Everyone, including staff (ALC, Mr. Shanafelt, Ms. Parker and Ms. Bigornia), exited the conference room for the Commission to discuss the attorney-client privileged and executive session items with Deputy Kam.

### III. EXECUTIVE SESSION SUMMARY

At approximately 1:30 p.m. the Commission returned to Open Session. Staff returned to the meeting room, and Chair Chen reported the following:

III.A. Approval of Executive Session Minutes of the October 21, 2015 Meeting.

**The Executive Session Minutes were approved. All were in favor, and the motion carried.**

III.B. **Possible Workers Compensation Claim.** The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities related to a possible workers' compensation claim.

**The Commission discussed the matter.**

III.C. **Formation of a Permitted Interaction Group to Investigate Office Conditions, Including Management, Personnel and Procedure Issues.** The Commission anticipates convening an executive session, pursuant to Hawaii Revised Statutes, Section 92-5(a) (4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges,

immunities and liabilities related to formation of a permitted interaction group to investigate office conditions, including management, personnel and procedure issues.

**Chair Chen asked for a motion to form a Permitted Interaction Group to Investigate Office Conditions. Commissioner Amano moved to form a permitted interaction group (“PIG”) to investigate office conditions. Commissioner Silva seconded the motion. The Commission voted as follows:**

**Aye – Commissioner Silva**

**Nay – Chair Chen, Vice Chair Lilly and Commissioners Yuen, Amano, Marks, Suemori**

**Abstained - None**

**The motion did not carry.**

**Chair Chen called for a motion to hire an independent investigator to investigate office conditions, including management and personnel procedure issues. Commissioner Marks so moved and Vice Chair Lilly seconded. All were in favor and the motion carried.**

#### **IV. ADJOURNMENT**

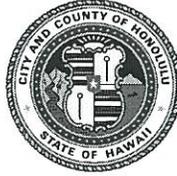
**Vice Chair Lilly moved to adjourn the meeting. Commissioner Yuen seconded. All were in favor, and the motion carried.**

The meeting adjourned at approximately 1:35 p.m.

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

AGENDA  
Honolulu Ethics Commission  
**December 16, 2015 – 11:30 pm**  
Standard Financial Plaza  
Conference Room, Suite 211  
715 South King Street  
Honolulu, Hawaii 96813

and

371 Alae Road,  
Kula, Maui, HI 96790

Pursuant to HRS Sec. 92-3.5, members of the public may attend the public session at either location.

THE PUBLIC IS ENCOURAGED TO SUBMIT WRITTEN TESTIMONY AND/OR SPEAK ON ANY AGENDA ITEM BELOW.

**SPEAKER REGISTRATION**

- Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number and agenda subject matter via email at [ethics@honolulu.gov](mailto:ethics@honolulu.gov); or calling 768-7787 or 768-7791.
- On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following the oral testimonies of the registered speakers.
- Each speaker is limited to three minute presentations on each item.

**WRITTEN TESTIMONY**

- Prior to the Day of the Meeting: Testimony may be emailed to [ethics@honolulu.gov](mailto:ethics@honolulu.gov) or faxed to 768-7768.
- On the Day of the Meeting: 10 copies are requested if written testimony is submitted on-site.

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## **ORDER OF BUSINESS**

- I. CALL TO ORDER
  
- II. NEW BUSINESS
  - A. Motion to Approve the Open Session Minutes of November 18, 2015 Meeting.
  - B. Nomination and Vote for Chair and Vice Chair for Calendar Year 2016.  
Explanation of Holdover Process.
  - C. Executive Director and Legal Counsel's Administrative Report.
    - 1. Reminder of January 20 and February 17, 2016 Commission Meetings.
    - 2. General Statistics for Requests for Advice and Complaints.
    - 3. Current Fiscal Year Budget Issues.
    - 4. Fiscal Year 2017 Operating Budget Issues.
    - 5. Ethics Training Program.
    - 6. Staff Priorities for Fiscal Years 2016 - 2017.
  - D. For Discussion: Contested Case Pre-Hearing and Hearing Procedures.
  - E. For Discussion: Potential Amendments to Commission's Rules of Procedure.
  - F. For Discussion: Potential Changes to the Commission's Guidelines on Gifts.
  
- III. EXECUTIVE SESSION (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)
  - A. Motion to Approve the Executive Session Minutes of the November 18, 2015 Meeting. (Pursuant to HRS Secs. 92-5(a)(2), (a)(4) and (a)(8).)

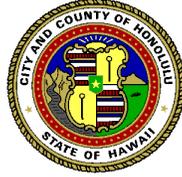
- B. Presentation by Deputy Corporation Counsel Derek Mayeshiro Regarding Doe & Roe v. Honolulu Ethics Commission; Decision by Circuit Court Regarding the Commission's Motion to Dismiss the Complaint for Lack of Jurisdiction. (Pursuant to HRS Secs. 92-5(a)(2), (a)(4) and (a)(8).)
- C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator's Report of Commission Office Conditions, Including Management, Personnel and Procedures. (Also, pursuant to HRS Secs. 92-5(a)(4) and (a)(8).)

IV. ADJOURNMENT

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR & LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: December 16, 2015  
Standard Financial Plaza  
Conference Room, Suite 211  
-and-  
371 Alae Road  
Kula, Maui, HI 96790

Present: Katy Chen, Esq., Chair  
Michael Lilly, Esq., Vice Chair  
(Skype – Telephone-Video Conference Call)  
Stephen Silva, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
William “Bill” Shanafelt, Investigator III  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Lynne Matusow, Member of the Public

Absent: Stanford Yuen, P.E., Commissioner  
Laurie A. Wong, Associate Legal Counsel (ALC)

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

**MINUTES OF THE DECEMBER 16, 2015 OPEN SESSION MEETING**

I. CALL TO ORDER

The Ethics Commission members had received a copy of the Open Session Memo, dated December 14, 2015. Chair Chen called the meeting to order at 11:34 a.m.

The EDLC presented a lei and an “Award of Recognition” from the Mayor to Chair Chen, whose term ends on December 31, 2015, and thanked her for her service on the Commission. She appreciated the gesture.

The EDLC announced that this was her last meeting for this Commission.

Commissioner Silva asked if Chair Chen had to stay until there’s a replacement and if there’s holdover. The EDLC responded that the Chair didn’t need to stay on, and that her holding over is an option. Chair Chen stated that she would finish her term and then move on.

## II. NEW BUSINESS

A. Motion to Approve the Open Session Minutes of November 18, 2015 Meeting.

**Vice Chair Lilly moved to approve the open session minutes of November 18, 2015 meeting. Commissioner Amano seconded the motion. All were in favor, and the motion carried.**

B. Nomination and Vote for Chair and Vice Chair for Calendar Year 2016.  
Explanation of Holdover Process.

Before proceeding, Commissioner Amano stated that she was involved in a prior election and that it was by ballot. She continued that per the resource guide, elections are to be held on January 1, and pursuant to what will happen after Chair Chen’s and Vice Chair Lilly’s terms, she expressed that having the elections at this time would be untimely and asked that the election be deferred.

Commissioner Amano also mentioned that pursuant to Lynne Matusow’s email, a secret ballot was inappropriate. The EDLC responded that he contacted OIP and they confirmed that it was inappropriate to have a secret ballot, and that the election should be an open nomination. Commissioner Amano then asked that the procedure be amended.

Commissioner Amano requested that the elections be tabled until next month.

The EDLC asked Vice Chair Lilly if he planned to be a holdover, and the Vice Chair responded that he would holdover until they decide to renew his Commission or appoint a new Commissioner

**Commissioner Marks moved to table the election until the January meeting. Commissioner Suemori seconded the motion. All were in favor, and the motion carried.**

The EDLC briefly explained the holdover process and that it was up to Chair Chen and Vice Chair Lilly to decide if she/he will continue as a commissioner until replaced by the Mayor. The EDLC informed the Commission that no information has been received about replacements .

Commissioner Amano asked if there was anything that the Chair needed to hold over, and the EDLC responded she just needs to attend the meetings.

Commissioner Amano encouraged Chair Chen to continue attending the meetings, and further stated that the Commission was at a critical time, and since they've operated as a team, she was concerned about the two commissioners leaving, since they were integral to the team.

C. Executive Director and Legal Counsel's Administrative Report.

The EDLC passed out an additional handout to the Commission and asked for any comments or questions. He continued that he wanted to be sure to list a number of items that had been discussed in the last few months and didn't want those items to fall behind.

**Chair Chen interjected a reminder of the January 20 and February 17, 2016 meetings.**

Chair Chen then asked the EDLC if he had anything to highlight in his report, or on the additional items, and the EDLC had none. Chair Chen asked the Commission if there were any questions regarding the report and since there were none, there was no further discussion.

1. Reminder of January 20 and February 17, 2016 Commission Meetings.
2. General Statistics for Requests for Advice and Complaints.
3. Current Fiscal Year Budget Issues.
4. Fiscal Year 2017 Operating Budget Issues.
5. Ethics Training Program.
6. Staff Priorities for Fiscal Years 2016 - 2017

D. For Discussion: Contested Case Pre-Hearing and Hearing Procedures.

Commissioner Amano affirmed that she raised questions regarding this item. She stated that she was confused about how to go forward and what's open to the public and what is not. She explained that she did inquire with Deputy Kam about the requirements of other Commissions in the State.

The EDLC responded regarding the non-public nature of the contested hearing process. The neighbor island ethics commissions appear to have their contested hearings in open session. I conferring with OIP, OIP confirmed the neighbor islands' procedures were not correct under the Open Records Law. The EDLC informed the Commission that this issue can be revisited, since it was about 12 years ago when he discussed it with OIP.

Commissioner Amano asked the EDLC for confirmation that, according to OIP, all meetings and hearings regarding personnel matters have to be heard in secret. The EDLC confirmed that personnel matters are considered to be within the HRS Sec. 92F-13(1), “unwarranted invasions of personal privacy.” Ethics complaints are considered personnel matters under the Open Records Law.

The EDLC stated that the State Ethics Commission’s (SEC) approach is that once a charge is filed in a misconduct case, i.e., once probable cause is found, then the pleadings become public. The EDLC continued that he had asked OIP and the SEC why the SEC does not follow the Open Records Law regarding complaint hearings. He stated that the SEC has a separate statute that it believes takes precedence over the Open Records Law. OIP’s position is that the Open Records Law takes precedence because it reads “any law to the contrary notwithstanding...”. The EDLC concluded that he would be willing to check further and would ask for a brief opinion from OIP, so that the Commission would know whether misconduct hearings should be public or non-public. Commissioner Amano asked that the discussion continue since it would shed further light on some of the process issues and challenges, like with the filing of documents, etc. She continued that there needs to be more clarity and procedures need to be consistent and fair. For example, she is concerned that there is no “neutral” place where filings are filed.

The EDLC agreed, and stated that it was hard to manage the filing of documents because of small office. The EDLC informed the Commission that he plans to discuss the questions with Ms. Shinmura from ODC and the State Ethics Commission.

Commissioner Suemori added that she thought contested case hearings were under the HRS, Chapter 91, and , if that was the case, then logically it would state that, “employer-employee labor lawsuits are confidential.” Commissioner Suemori suggested getting an opinion on the matter.

Commissioner Amano replied that she didn’t mind tabling the matter, but didn’t want it to be lost.

Commissioner Marks asked to keep the matter on the agenda, and to put it under “old business.” The EDLC and Commissioners Amano and Suemori agreed.

Commissioner Amano informed everyone that she will be meeting with someone in Hilo and will find out about their procedures.

E. For Discussion: Potential Amendments to Commission’s Rules of Procedure.

Chair Chen informed the Commission of the four items for discussion, and Commissioner Amano responded that all of the items needed to be discussed in total and recommended that the matters be put under “old business” for the next session, since they continue to learn more.

The EDLC agreed and stated that in terms of discovery or use of subpoenas, back in September, he had been able to go through the arbitration and mediation rules to look at what the Hawaii Civil Rights Commission, the SEC, etc., does.

Commissioner Marks announced that they were discussing contested case pre-hearing and hearing procedures and thought that there were testimonies submitted regarding that topic.

A member from the public, Lynne Matusow, testified on two items. The first item had already been addressed, that the election of chair and vice chair may not be by secret ballot. The second item was that she asked that a rule on mandatory Sunshine Law Training be included under ROH Section 3-12.2.

Commissioner Amano and Chair Chen thanked Ms. Matusow for her testimony.

Chair Chen stated that the Commission seemed to be all in agreement to get additional information on Items 1 through 3, and since Ms. Matusow testified on Item 4, asked the Commission if there were any other items for discussion.

Commissioner Amano stated that the Commission did inquire about Sunshine Law Training. The EDLC confirmed and stated that the person in charge at the Mayor's office had been on sick leave for quite a while, and it's unknown when he would return, so the other alternative is to have Deputy Kam or the EDLC conduct Sunshine Law training. Commissioner Amano then asked if someone from OIP could conduct the training since the training comes out of OIP.

Ms. Matusow responded that there is a video program on OIP's website and on occasion OIP will conduct the training and if there's room they'll invite City people, only if there's a massive training for State people.

Commissioner Suemori preferred to have in-person training rather than video training, and the EDLC responded that he would check with various offices.

Commissioner Amano informed the Commission that her husband is employed at OIP as a part-time staff attorney and stated that her husband must have notified his office that she's on the Ethics Commission, so there will be internal OIP protections from any conflict of interest.

Chair Chen stated she had some difficulties on the Rules of Procedure link, since it "no longer existed." The EDLC responded that the link worked after it was uploaded, but that he would check on it again.

F. For Discussion: Potential Changes to the Commission's Guidelines on Gifts.

The EDLC passed out hard copies of the Guidelines on Gifts (Revised April 21, 2004) to the Commission.

Chair Chen asked if there was anything in particular to change in the 2004 gift guidelines.

Commissioner Silva asked if they needed to do different guidelines. The EDLC responded that they could do a refinement and maybe add in certain areas or do a review, as well as re-do everything, since he thought they were lengthy. Commissioner Suemori agreed.

The EDLC continued that there were some specific areas, like the gifts from lobbyists, which seemed to have arisen because of particular issues, and that he could offer the Commission some ideas when adding a section for the lobbyists.

Commissioner Suemori asked if they could follow a red-line draft like the Legislature. Commissioner Suemori continued that the recommendations would be explained in the margins as to why you made those recommendations with pros and cons, and the EDLC agreed.

Chair Chen responded that it's not necessary to revise, but it needed additional clarification.

Commissioner Suemori asked if the Commission had been doing things that were not covered in the Gift Guidelines, such as how gifts, such as meals, would be valued and if there's a rule about more than one person present at the same meal. The EDLC responded that he would have to research it.

Commissioner Suemori instructed the EDLC to list the positions that the Commission would want to take and to make sure the Commission is consistent, and the EDLC agreed.

The EDLC continued that he agreed with Chair Chen that most of the changes to the four issues would be additional changes, since many of the issues came up in a recent case.

Chair Chen responded that the Commission had advised on issues, such as Item 2 (describing how gifts such as meals will be valued when more than one person is present). The EDLC replied and confirmed that it was informal advice.

Commissioner Suemori asked if informal advice was given, and the EDLC confirmed that the Commission hasn't taken a formal position..

Commissioner Silva stated that in order to be simple, it should be "zero" gifts, per his prior business background. He continued that if there are "zero" gifts, then there would be no problem, and all lobbyists would be required to only meet in their office with whoever they're trying to entertain in order to influence and, therefore, since the meeting would be in their office, their staff would become witnesses to what was being transpired.

The EDLC responded that in talking with the lobbyists in the last few cases, some of them have a "no cup of coffee" rule (with any Councilmember or Legislator). Others and probably most do not follow that rule. The EDLC continued that in 2002 when they wanted to change the rule, there was a debate on whether there should be a "no cup of coffee" rule, and the problems countered with the culture and gifts, but one wouldn't be able to even give a "Gift of Aloha," something with a low value. It was then decided that there would be two approaches to

the gift laws, i.e., (1) a prohibition on accepting anything which a reasonable person could infer was offered to influence and (2) the \$200 gift cap. Commissioner Silva stated that lobbyists should report gift giving. The EDLC further continued that there is no requirement for gift reporting and the lobbyists' law has not been amended since 1978, except in 2005 when it was transferred from the City Council to the Ethics Commission.

Commissioner Silva stated with regard to gifts to councilmembers, if it's disclosed publicly by the councilmember, he/she can vote on a matter that affects the interest of the donor. The EDLC replied, only if they disclose a "conflict of interest."

Chair Chen asked if the lobbyists were subject to the same general gift rule.

Commissioners Silva and Marks replied that the lobbyists were not subjected to the same rule. Commissioner Marks remarked that basically there is nothing on the lobbying law to prevent gifts. The EDLC agreed that the Commission has no law under which to pursue lobbyists for gifts, creating one would be another option.

Chair Chen stated that a distinction between a lobbyist and any person is the nature of their profession and that their appearance of impropriety is stronger for a lobbyist.

The EDLC replied that the definition of lobbyist is "a person being paid to influence the policy making of the council or administration," which could create an inference that a gift from a lobbyist is offered to either reward or influence.

Commissioner Silva stated that in previous cases, lobbyists were willing to give their records and that if we were to go after lobbyists, they would "clam-up."

The EDLC responded that the lobbyists were subpoenaed so they have a legal obligation to produce their records.

Chair Chen stated that two approaches may be taken: the first approach is "interpreting existing rules on how it may apply," and the second is actually "instituting new rules."

Commissioner Marks responded that some of the rules are statutory.

The EDLC responded that the Gift Guidelines were to help both the City employees and the lobbyists understand what they should or should not do, but the Commission may depart from guidelines when warranted.

Commissioner Suemori responded that the guidelines are basically clarifying statements of how to read those sections of the Charter and revised Ordinances.

Commissioner Suemori further stated that she is unclear if the guidelines even have any kind of authority, so whether the Commission should make any changes, they would still need to go back to the law. Commissioner Suemori understood, however she further stated that it's

twelve pages of policy that basically has no authority other than just thoughts on an interpretation of the Ordinance.

Commissioner Suemori asked if ROH Sections 8.7 and 8.8 had been interpreted by any courts or by the City. The EDLC couldn't confirm but equates guidelines to be like a policy.

Commissioner Marks agreed and stated that there's only a footnote that mentions one of the provisions. Commissioner Marks responded that there should be references to the law. Commissioner Marks further stated that no one would read 12 pages and if the intent is to give employees the knowledge so they can avoid problems, proposed a one-page bullet-point, and on any fiscal year, nothing over \$200 in the aggregate.

Commissioner Marks further stated that in her point of view, a quarterly newsletter, one-page with bullet-points, can be sent out to all City employees. Chair Chen agreed that having a one-page guideline is a great reference tool, but finds the 12-page guidelines helpful because it gave examples, since she encountered precise problems that were referenced. Commissioner Marks responded that the guidelines could be posted on the web page.

Chair Chen explained that Gift Guidelines interpretation the laws and for a typical person it would be very practical.

**[Lost Skype connection with Vice Chair Lilly.]**

**Commissioner Marks made a motion that she would ask the Commission, through staff, put out a quarterly newsletter that is one-page, provided to all City employees, and Commissioner Amano seconded.**

Commissioner Marks stated it would be for any topic and that one would be on gifts, with a one-page bullet-point, then pick another topic for the next quarter.

**[Skype connection with Vice Chair Lilly was back on.]**

**Commissioner Marks asked for a vote on the motion, and Commissioner Suemori called for the question.**

Chair Chen then asked if the Commission had the capacity to channel and distribute the newsletter, and the EDLC replied that staff could do an email blast to each department which is then transmitted to the employees. Chair Chen asked who would be determining the content, and Commissioner Marks replied that the content can be determined by either the Commission or Staff. The EDLC agreed to have staff do the newsletter and then provide the Commission with a draft.

Chair Chen asked if the guidelines go to every new City employee, and the EDLC explained that it can be viewed on the website, and for the new employee orientation there's

discussion about gifts. There is more detailed gift training during the “all employee” ethics training, and in supervisors’, elected officials’ and cabinet training.

**Commissioner Marks moved to have the Commission, through Staff, put out a quarterly newsletter on one-page, and to provide it to all City employees. Commissioner Amano seconded. All were in favor, and the motion carried.**

Commissioner Amano requested to have continued discussions on the guidelines under old business since the EDLC wanted to discuss substantive matters, and perhaps with authorities, and the EDLC confirmed. The EDLC added that the Feds have similar rules with their Code of Federal Regulation (“CFR”), which goes through examples, including meanings of certain sections.

**Chair Chen asked for a motion to exit open session and to enter executive session. Commissioner Amano so moved and Commissioner Suemori seconded. All were in favor, and the motion carried.**

III. EXECUTIVE SESSION SUMMARY . (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission’s attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. Motion to Approve the Executive Session Minutes of the November 18, 2015 Meeting. (Pursuant to HRS Secs. 92-5(a)(2), (a)(4) and (a)(8).)

**Commissioner Marks moved to approve the November 18, 2015 executive session minutes. Commissioner Suemori seconded. All were in favor, and the motion carried.**

B. Presentation by Deputy Corporation Counsel Derek Mayeshiro Regarding Doe & Roe v. Honolulu Ethics Commission; Decision by Circuit Court Regarding the Commission’s Motion to Dismiss the Complaint for Lack of Jurisdiction. (Pursuant to HRS Secs. 92-5(a)(2), (a)(4) and (a)(8).)

Chair Chen reported that the Commission heard Deputy Mayeshiro’s presentation.

C. For Discussion: Pursuant to HRS Sec. 92-5(a)(2) Regarding the Hire, Evaluation, Dismissal, or Discipline of an Officer or Employee to Consider the Independent Investigator’s Report of Commission Office Conditions, Including Management, Personnel and Procedures. (Also, pursuant to HRS Secs. 92-5(a)(4) and (a)(8).)

Staff was excused for this item during the executive session.

**Commissioner Marks moved to hire a private investigator to look into other existing ethics complaints. Commissioner Suemori seconded, all were in favor, and the motion carried.**

Commissioner Amano asked for confirmation on the operating budget and asked the EDLC about the FY15-16 in hiring an additional investigator. The EDLC responded that it was not for a full-time employee, but there were funds available. Commissioner Amano asked for the available amount, and the EDLC responded that he did not know the exact amount available.

Commissioner Suemori moved that the FY2016 budget reflect that the sums would be expended for two (2) contracts that had already been approved and that the remaining balance be set aside for an outside contract investigator for the other existing ethics complaints that are now before the Commission.

Commissioner Marks asked for amendment of Commissioner Suemori's motion that no investigator be hired.

**Chair Chen amended the motion and moved that the budget reflect that the consultant and outside services funds would be set and used for the two (2) approved contracts and to hire a special investigator, within the budget, and that funds are not to be expended to hire anyone on a temporary hire or other basis and that only the Commission can hire another investigator. Commissioner Amano seconded the motion and all were in favor, with the exception of Vice Chair Lilly, who voted "nay."**

#### IV. ADJOURNMENT

**Commissioner Amano moved to adjourn the meeting. Commissioner Suemori seconded. All were in favor, and the motion carried.**

The meeting adjourned at approximately 2:45 p.m.