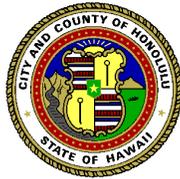


**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817  
PHONE: (808) 768-9242 • 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



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place:        June 20, 2018  
                                 Kapālama Hale  
                                 1st Floor Conference Room  
                                 925 Dillingham Boulevard  
                                 Honolulu, Hawai‘i 96817

Present:                 Michael Lilly, Esq., Vice Chair

Peter S. Adler, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Lynette Lo Kanda, Commissioner  
David B. Monk, Commissioner  
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel  
Janice Yonamine, Investigator  
Kristine Bigornia (TA), Legal Clerk III

Moana Yost, Deputy Corporation Counsel,  
Department of the Corporation Counsel (COR)

Absent:                 Hon. Victoria Marks (ret.), Chair

**MINUTES OF THE ETHICS COMMISSION MEETING**

I.        Call to Order, Public Notice, Quorum

Vice Chair Lilly called the meeting to order at 11:33 a.m., stating that all Commissioners were present except Chair Marks. Vice Chair Lilly declared quorum.

II.       New Business

## A. Chair's Report

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

The Executive Director and Legal Counsel (EDLC) noted correspondence from the executive directors of the State Campaign Spending Commission and State and City Ethics Commissions thanking Senior Hearings Officer Craig Uyehara, Office of Administrative Hearings, for his training on May 23, 2018.

### 2. For Action: Approval of Open Session Minutes of May 16, 2018

**Commissioner Amano made and Commissioner Suemori seconded a motion to approve the open session minutes of May 16, 2018. The motion carried unanimously.**

### 3. For Action: Approval of Executive Session Minutes of May 16, 2018

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

**Commissioner Amano made and Commissioner Suemori seconded a motion to approve the executive session minutes of May 16, 2018. The motion carried unanimously.**

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

### 1. Staff Work Reports Summary

The EDLC stated that Legal Clerk III (LC III) Bigornia has been overloaded with phone calls as we near the end of the ethics training biennium.

The Investigator continues her work on cases and minutes. The Associate Legal Counsel (ALC) has shifted her attention to developing next biennium's training. That work will include outreach to Commissioner Kanda.

The EDLC stated that position descriptions for an ethics training specialist and ethics secretary have been sent to the Administrative Services Officer for review.

### 2. Statistics

a. Website Sessions, May 2018 - 420

### 3. Budget

a. FY2018 Operating Budget – None

b. FY2019 Operating Budget Request – Update

Bill 15, Floor Draft 1 (2018), which is this year's Executive Budget Bill, restored the Commission's funding request for EDLC and ALC salary increases, one (1) out-of-state training/travel, and conflict monies. The increases included an additional six (6) percent for FY2018 and 10 percent for FY2019.

The EDLC stated that the Ethics Commission came out very well in the budget and thanked everyone who assisted, especially Chair Marks.

The EDLC explained that the executive budget bill was transmitted to the Mayor from Council on June 7, 2018, and the deadline to approve or to return the bill is June 22, 2018.

The EDLC stated that she requested a meeting with the budget director upon Chair Marks' return. That meeting will be scheduled in July as budgets for FY 2020 are developed.

4. Education and Outreach
  - a. Ethics Training Program – Update

LC III Bigornia reported that she has been receiving a lot of calls and anticipated calls regarding technical issues. She also has received feedback from city employees, which will be taken into consideration when developing next biennium's training.

The EDLC stated that staff did a "snow card" exercise and engaged in brainstorming for the next round of training. Answers to issues raised during this biennium's training will be built into the next training.

The EDLC added that the training approach will differ; this year, training will focus on reaching line employees. Staff hopes to use real examples and realistic situations in next biennium's training.

Commissioner Adler asked whether departments have requested a more tailored session. The EDLC responded no, probably because this is the first round of our new online training.

The EDLC summarized that 155 of 168 board and commission members have been trained as of June 14, 2018. The EDLC noted, however, that the total number of board and commission members is not static as members cycle in and out.

The EDLC reported that, to date, approximately 6,000 employees have been trained. The end of the training biennium is June 30, 2018.

7. Education Opportunities – Commissioners and Staff
  - a. For Discussion: Office of Administrative Hearings, State Department of Commerce and Consumer Affairs

The EDLC announced that Commissioners Adler, Amano, Kanda and Suemori attended the training and asked for feedback.

Commissioner Amano commented that the commissions are so different; therefore, the hearings that the Ethics Commission would have are vastly different. Commissioner Amano described Commission hearings as “mini court hearings.” In an ideal world, the Ethics Commission’s education piece should be matched with its prosecution piece. Commissioner Amano mused, “if hit with a big one today, would the Commission be ready?”

For example, Commissioner Amano recalled that when U.S. Representative Colleen Hanabusa was representing three (3) councilmembers, there was one hearing on a motion to dismiss and Representative Hanabusa’s motion had one thousand pages. Commissioner Amano added that all the Commission members would have to be there or the Commission would be unable to vote.

Commissioner Suemori likened the training to a “101 course;” the Commission needs an “honors” level course.

Commissioner Kanda offered her perspective that as a beginner, she found the training to be very useful. Commissioner Kanda expressed that she would like the opportunity to go to more training and to learn more.

The EDLC summarized that the Commission wants training tailored more specifically to the Commission’s needs and that the request can be made of the Office of Administrative Hearings (OAH).

The Commission discussed prior cases with specific issues. Commissioner Adler suggested inviting Senior Hearings Officer Uyehara to meet with the Commission.

Commissioner Suemori added that the Commission also needs training on the “admin piece.” She would like training on what it takes to conduct a hearing.

The EDLC stated that she would contact OAH and pursue a memorandum of understanding (MOU) whereby OAH would conduct the Commission’s administrative hearings.

Commissioner Suemori asked who does the hearings for the Campaign Spending Commission, to which the EDLC stated that they do their own. Commissioner Amano asked if the Campaign Spending Commission sits “as a whole,” to which the EDLC confirmed, at least, that is what she had seen.

Commissioner Adler asked if OAH were to do the hearing, would it bring a decision to the Ethics Commission, to which the EDLC confirmed, adding that OAH would bring the findings of fact and conclusions of law, with a recommendation. At that point, the Commission would accept or reject the recommendation. No changes could be made.

Commissioner Adler stated that time permitting, he would want to consult with OAH and stage a “dress rehearsal” of a hypothetical. Commissioner Adler further explained that it could be like a walk through. Seeing that process would be good for “non-lawyers.”

The Commission discussed challenges in the past when conducting hearings, all while interacting with the news media. Other challenges included logistics and coordinating time because all commissioners need to be present.

The EDLC stated that she would bring information to the Commission after she explored an MOU with the OAH. Such an MOU would alleviate the need to contract those services piecemeal. The EDLC described past challenges when procuring such services.

The Commissioners generally discussed contracting services and procurement of officers and special prosecutors for conflict cases.

Commissioner Monk inquired about the audio recording of the OAH training; the EDLC informed the Commission that the recording and materials have been uploaded to Dropbox. Members should inform the EDLC if they listen to training as she tracks commissioner training hours.

Commissioner Amano complemented the EDLC’s tracking of commissioner training, which creates a compiled visual of the Commissioners’ participation. The EDLC brought up another training opportunity for the Commissioners: the Weinstein Ethics Conversation series at the University of Hawai`i, Richardson School of Law, which is a free, seven (7) part series in the evenings from 6:00 p.m. to 7:30 p.m. Attorneys will receive Continuing Legal Education (CLE) credits and the only cost is \$6.00 to park on campus.

The EDLC asked Commissioners to let her know if they attend. The EDLC will continue to look for training opportunities for commissioners.

#### 8. Executive Director and Legal Counsel Evaluation Form – Update

The EDLC reminded commissioners to send comments to Vice Chair Lilly.

Vice Chair Lilly stated that he has received Commissioners’ comments and requested to schedule the evaluation for discussion at the July meeting in executive session.

Vice Chair Lilly suggested the Commission give the EDLC overall/average scores in each category. In the past, each Commissioner gave their evaluation to the EDLC. Vice Chair Lilly’s preference would be to include individual Commissioners’ scores on each item. If the Commissioners concur, Vice Chair Lilly stated he would like to request a motion to that effect.

**Commissioner Monk made and Commissioner Suemori seconded a motion to**

**give Commissioners' scores in each category to the EDLC during the evaluation. The motion carried unanimously.**

Commissioner Amano asked if Commissioners would be identified with their scores, to which Vice Chair Lilly confirmed and explained that with the write-up, the EDLC would not know who said what. Vice Chair Lilly would just be listing the write-ups; however, the individual Commissioner scores—that is, the numbered scores—would be revealed to the EDLC.

Commissioner Adler asked if there was any “downside” to this. Vice Chair Lilly stated he sees value in it and explained that with the Missouri, the reason they did not get the numbered scores is anonymity, so that each board member was free to give what they felt was an honest score without the president knowing.

Commissioner Adler stated that if an EDLC is “hated” or not performing or not fit, it could get “dicey” if Commissioners and their comments were known. Vice Chair Lilly reasoned that is why yearly evaluations are appropriate, so that the evaluated person is not blindsided.

Deputy Yost suggested limiting the decision to this year and talk about it again next year. Deputy Yost further explained it would be out of caution in setting a precedent that may not be what the Commission wants, to which the Commissioners agreed. Deputy Yost stated this was out of understanding for Commissioner Adler’s concern. Vice Chair Lilly understood that Commissioners might be more honest in the evaluation, to which Deputy Yost added that blocking out the Commissioners’ names could be an option in the future. While the EDLC may receive all of the information, there is a variety of ways to present the information. If it is to be done that everything is going to be submitted with the names of the Commissioners, that is up to the Commission; however, Deputy Yost pointed out that perhaps, it be limited to this year.

**Commissioner Adler made and Commissioner Monk seconded a motion to amend the prior decision by limiting it to one year. The motion carried unanimously.**

Commissioner Kanda added that it would be helpful if Commissioners were told ahead of time how scores will be reported, to which the Commissioners agreed.

**\*\*\*AGENDA ITEMS TAKEN OUT OF ORDER\*\*\***

**At 12:30 p.m. Commissioner Suemori made and Commissioner Monk seconded a motion to move into executive session. The motion carried unanimously.**

III. Executive Session (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission’s attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities.)

- A. For Discussion: Kealoha vs. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawai‘i, and Civil No. 1:16-CV-16-00682 JMS-KSC in the United States District Court for the District of Hawai‘i

**At 12:56 p.m., Commissioner Suemori made and Commissioner Monk seconded a motion to move out of executive session and return to open session. The motion carried unanimously.**

Vice Chair Lilly reported that for agenda item III.A., the Commission discussed litigation with its counsel.

#### IV. Strategic Planning

- A. For Discussion: Media Policy (dated July 23, 2015) and Crisis Management

Commissioner Monk commented on the policy paragraph, stating that the paragraph is supposed to be an overview of the principles under which the procedures are established. He continued that it says nothing about response to media queries and only talks about news releases. Commissioner Monk suggested adding a sentence, “In response to media queries, the Commission will strive at all times to convey accurate information while maintaining required confidentiality.”

**Commissioner Monk made and Commissioner Amano seconded a motion to amend the Media Policy dated July 23, 2015, to include the language proposed by Commissioner Monk and that the policy reflect an amended date of June 20, 2018. The motion carried unanimously.**

Commissioner Monk stated that he believes it is good to have a media policy and tried to find a city media policy, but could not find one online.

Commissioner Monk added that he did find that the City of San Jose has a six-page media policy, which he will review. He may have suggestions for future amendments.

The Commission generally discussed the importance of the media in educating the public about what the Commission does. Commissioner Adler added that the Ethics Commission is not a “surveillance” system, but a “complaints” system. Commissioner Adler summarized that the public misunderstands what the Ethics Commission does and does not pay attention, until they have an issue.

The Commission discussed prior cases and the issue of self-initiating cases on an inquiry or a rumor and whether the Commission had a policy on initiating such cases. Commissioner Suemori asked for the definition of a “complaint.” Knowing that this had created issues in the past, the EDLC responded that staff is using the terms “concern” and “reporter” rather than “complaint” and “complainants.”

Commissioner Amano explained that this was attacked during strategic planning and the Commission needs to drill down more of what this means because of past examples. The EDLC added that part of the problem is when does a “concern” become a “complaint,” and hence trigger the process. Commissioner Suemori agreed that her issue is when does it start and when does it turn into a complaint. Commissioner Suemori reiterated that she is “okay” with going after rumors, as long as it is in policy.

Vice Chair Lilly restated that the media policy is a way to communicate with the public. The Commission was put into the constitution because the public needed confidence that things were being watched and handled in an ethical manner and that government is operating correctly.

Commissioner Amano shared her perspective that the media policy was to avoid confusion and make sure there is clarity. She pointed out that she likes that reporters can pick up the phone and call the EDLC and not expect a stone wall, to which the EDLC stated that she will always speak with them. The EDLC stated that training at the 2017 Society of Corporate Compliance and Ethics Institute was especially helpful because it gave attendees tools to use when speaking with the media.

Commissioner Kanda asked whether there is a Frequently Asked Questions (FAQ) on the website which might inform a person where to go to file a complaint and whether it would be in the purview of the Ethics Commission, to which the EDLC responded that the Staff is currently developing a resource page. The EDLC is working on referring out cases that are not in the Commission’s jurisdiction as soon as they are received and informing people where they might go for their issue.

Commissioner Kanda volunteered to help develop a list, as she could write all the questions she thinks the public needs to know. The Commissioners expressed enthusiasm and Commissioner Adler volunteered to assist Commissioner Kanda.

Commissioner Kanda believes that part of the dilemma is that the public feels like the Ethics Commission is not active enough or not transparent enough, so part of it is being clear about jurisdiction.

Commissioner Adler’s interpreted the problem as being able to navigate complex systems; simply put, “I have a problem, where do I go?” Commissioner Adler summarized that people do not know how to navigate when they actually have a legitimate problem.

Commissioner Suemori asked Commissioner Kanda whether she could bring up her questions by the next meeting, to which Commissioner Kanda responded that she would.

Commissioner Kanda asked the EDLC if it was clear to her, whenever something happens, do we have to check with the city? Commissioner Kanda clarified that she wanted to bring up the question so that the Commission would have a plan, explaining that her experience comes from the “corporate side.” For example, if someone tries to shoot an employee, or a

disgruntled spouse, what does the corporation start doing and if they have plans, what do they do? Who do you call? It is operations, plus talking to the media.

Vice Chair Lilly stated that it is not an ethical issue, it just happened that the Commission was the subject of it, but it is the same thing, whether it was Department of Parks or Health, or other department. Vice Chair Lilly questioned the necessity of the Commission having one separate from the city.

The EDLC stated that when the Commission's media policy informs "who does what, when, where, how," to which Commissioner Suemori added, "on ethics." The EDLC confirmed, stating that the question was whether to have a "game plan" in place.

Commissioner Kanda referred to what Vice Chair Lilly said, that if our action plan has to be dictated by the city, then we do not really need a separate one, we just have to follow the city guideline.

Vice Chair Lilly stated that all the questions posed should be answered by the city, to which Commissioner Suemori suggested asking the Managing Director (MD). Commissioner Suemori asked the EDLC to find out if the city has a plan, and if not, why not.

Commissioner Suemori asked if it could be left on the agenda, but as an independent item, "crisis action protocol."

The Commissioners discussed the meaning of "crisis." Commissioner Kanda understood the discussion to be an offshoot of the media policy; that is, when do we want to talk to the media, how we would want to react, and at what point it would have to be turned over to the city for comment.

Commissioner Amano asked to keep this on the agenda, to which the EDLC agreed, adding that she would inquire with the MD, and if they have such a policy, obtain a copy.

Commissioner Adler added that the larger issue may go to strategic planning, and proposed the possibility of a crisis of public confidence in the Ethics Commission. Commissioner Adler wanted the Commission to think about how the Ethics Commission is considered the keepers of some level of public trust, and if the public does not trust the Ethics Commission, it could lead to a kind of crisis.

#### B. For Discussion: Social Media Policy

The EDLC reported that staff is using Twitter and encouraged Commissioners to "follow" the Ethics Commission. Twitter allows Staff to push information out in the form of sharing of articles, sending out agendas, "thoughts of the day," and other ethics-related materials.

The EDLC reported that the Commission has approximately 40 followers on Twitter. The Commissioners discussed how to use the application and set up an account.

Commissioner Suemori expressed that she does not want the Commission to have Facebook and asked whether the Commission could vote on whether they want Facebook or not. The Commission discussed social media, a social media policy, and whether social media would reach the Commission's audience. Generally, the Commission expressed disinterest in Twitter.

As to the social media policy, the EDLC explained that due to recent events, the City is advancing a social media policy. Hence, the Commission should wait until the City develops its policy.

LCIII Bigornia stated that the Commission's Twitter handle is @HONETHICSCOMM.

The Commissioners discussed social media platforms and how each is used. Commissioner Monk commented that the more social media capacity Staff tries to build, the more demands on Staff's resources, to which the Commissioners agreed.

The EDLC explained that tweeting does not take additional capacity as she reviews local and national media and organization feeds, such as Governing, Society of Corporate Compliance and Ethics (SCCE), and Center for the Advancement of Public Integrity (CAPI) on a daily basis. The EDLC excerpts articles or items of interest, including resources and webinars, and pushes them to Staff and Deputy Yost. The ALC also reviews a variety of materials and may excerpt and tweet that content.

Commissioner Suemori expressed concern that the tweets were taking priority over the Ethics Commission email list. Commissioner Suemori wondered whether the Staff was duplicating work by tweeting and sending it out to email subscribers, such as herself and other Commissioners.

The EDLC explained that the email lists are for the agenda, to which Commissioner Suemori questioned why the people on Twitter receive more. The EDLC reiterated that it is a daily push and intended to heighten ethics awareness. The Commissioners had a discussion on what Twitter is used for and Commissioner Suemori continued to question what the value is to Staff's time and to the public of pushing this information. Commissioner Suemori argued that millennials who use Twitter and are not interested in politics are getting more information than the people who are using email and are interested in politics.

The EDLC explained that with Twitter, the more activity you have that is content rich, the more you are able to build followers. The EDLC explained that with Twitter, one might start with 40 followers, and after a year, grow that number to 400, thereby expanding the ethics message. The Ethics Commission has been on Twitter for approximately two (2) months.

The EDLC summarized that Staff would continue to tweet and hold off on the social media policy until the city adopts its policy.

Commissioner Adler brought up his interest in public confidence and public trust and stated that if this is a vehicle for doing that in a cogent way, then it makes sense. If it does not, it is just a lot of extra work, to which the Commissioners agreed. The EDLC explained that it is not extra work as scanning media and articles is part of what she does anyway, and once she sends the email to Staff with all the links and embedded articles, the ALC can select and tweet.

Commissioner Adler summarized the issue as “what is the payoff?”

The EDLC explained that the benefit is that the Commission’s followers are getting the Commission’s ethics message on a daily or every-other-day basis.

Commissioner Suemori understood, but reiterated that she did not want Twitter followers to get priority over email or other types of messaging because she thinks that the people who are interested in ethics right now are other generations, not millenials.

LC III Bigornia added that in keeping with the requirement of the Sunshine Law, effective July 1<sup>st</sup>, after sending the agenda and the meeting materials to the Commissioners, she releases it to the public. LC III Bigornia always emails before tweeting.

V. Adjournment

**At 1:23 p.m., Commissioner Suemori moved and Commissioner Amano seconded the motion to adjourn the Ethics Commission meeting. The motion carried unanimously.**