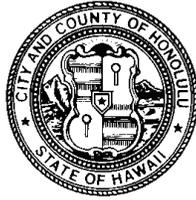


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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: September 17, 2014  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Michael A. Lilly, Esq., Commissioner  
Stephen Silva, Commissioner  
Jeffrey Burroughs, Ph.D., 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)  
Geoffrey Kam, Deputy Corporation Counsel, COR  
Paul Aoki, First Deputy Corporation Counsel, COR  
Catherine Maki, Administrative Services Officer (ASO), COR

Excused: Charles W. Gall, Esq., Chair  
Katy Chen, Esq., Vice Chair

Stenographer: Lisa P. Parker, Legal Clerk III

**I. CALL TO ORDER**

The 482nd meeting of the Ethics Commission (“Commission” or “EC”) was called to order at approximately 11:39 a.m. by the EDLC as the Chair and Vice Chair were absent.

The Commission had before it the EDLC’s memorandum regarding the Agenda Items for the September 17, 2014 Meeting, Open Session, dated September 10, 2014.

The EDLC explained that first, he wanted to express his gratitude to outgoing Commissioner and Vice Chair Rachael S. Wong for her service to the Commission and the community. The EDLC thanked Commissioner Lilly for accepting the Certificate on her behalf. The ALC presented the certificate to Commissioner Lilly who then read the Certificate for the record.

The EDLC also stated that he was pleased to introduce a new Commissioner, Judge Riki Amano who has already been of great assistance to the Commission even before her first official meeting.

The EDLC then asked for a Commissioner to voluntarily act as Chair of the Commission for the meeting as Chair Gall was out of town, and Vice Chair Chen was sick. Commissioner Lilly graciously accepted his nomination by the Commission and volunteered to act as Chair.

## **II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE JUNE 26, 2014 MEETING**

**Commissioner Yuen moved that the minutes be accepted. Commissioner Silva seconded the motion. Commissioners voted unanimously to approve the minutes.**

## **III. OLD BUSINESS**

The Commissioners agreed that the next meeting date would occur on October 29, 2014 at 11:30 am. The Commissioners then agreed to set a tentative meeting date on November 21, 2014 at 11:30 am.

## **IV. NEW BUSINESS**

### **A. For Discussion: Administrative News.**

1. Complaints and requests for advice statistics through last month. The EDLC stated that 105 investigative complaints have been opened which has been a 22% increase from the prior year. He attributed this to increased training and also having a dedicated investigator.

Commissioner Silva asked if staff was going to provide training for lobbyists. The EDLC responded that staff has been asked by attorneys who represent lobbyists from the contested case, if we would offer training for lobbyists. We may offer this training in November. Staff is trying to coordinate this training with the State Ethics Commission before the State Legislature starts its session in January 2015.

2. Website Statistics. (Please see Open Session Memo, Attachment OPEN-1 for statistics.)

3. Fiscal Year 2014 Year-End Statistics. (Please see Open Session Memo Attachment OPEN-1 for statistics.) The EDLC reported that he has not received an annual report back from COR at this time.

4. Fiscal Year 2016 Budget Request. The EDLC referred to Open Session memo attachment OPEN-2 which was a memo to Donna Leong, Corporation Counsel, from the EDLC dated September 9, 2014. He stated that he did receive budget approval for the Legal Clerk I position. Currently our former Po`okela intern, Darlene Nases, is filling the temporary position

until the permanent civil service position description is approved by the Department of Human Resources, and we can have the position open to the public for formal filling. In addition, the EDLC wanted to reallocate the current Investigator II position to a IV to ensure that the Commission has an investigator that is capable of handling complex and super complex cases. The EDLC stated that he is currently working on a position description for the Investigator IV position with Cathy Maki, ASO, for COR. The EDLC stated that the third position he is asking for is to create the Assistant EDLC position that would be responsible for some of the major cases and major policy recommendations and administration issues. He stated that the office has made the least progress on this position so far, but shall continue to work on it.

In regard to the location of the office, staff has not been informed of when we are going to be moved. Therefore, staff had to work with Ms. Maki to create two budgets: one if we stay in the current location, and the other if we move to the Sprint Building on Dillingham Boulevard.

Commissioner Silva asked for confirmation that the rent at the Sprint Building was half the price as the rent at the current location. The EDLC responded that it was his understanding, but has come to his attention that at the current location, we do not pay the common area maintenance fees (CAMF) but, at the Sprint Building we may have to pay the CAMF which would decrease considerably the savings for the city if we move.

The EDLC added that staff met with investigators and the Division Chief for the Department of the Attorney General, Criminal Investigation Division, yesterday. They informed us that each investigator investigates approximately 20 cases each year. This agrees with the amount of administrative investigations the HPD Professional Standards Office detectives investigate each year, which is 18. Therefore, our one investigator who investigates 105 cases this year is far beyond capacity, and the workload has taken its toll on staff. If staff could obtain a second investigator soon, they could be trained by our very experienced investigator.

Another item requested on the budget is the reallocation of the Legal Clerk III position to a Legal Clerk IV position. The justification for this reallocation is that the current Legal Clerk has an exceptionally busy work load, scheduling meetings and training, gathering and distributing meeting and training materials, news releases, advisory opinions, maintaining information from media, cabinet and council. The office also has 600 financial disclosures that need to be reviewed for completeness every year. In addition, the clerk must assist two busy attorneys. The EDLC believes that there would be an additional cost of \$3,900 to reallocate this position.

The EDLC also stated that our current office space is inadequate to house our current investigator. The ALC has been sharing her office with the interns for the last year so, that the Investigator can have a desk next to the Legal Clerk III. Now, Department of Community Services has been kind enough to let our investigator use one of their empty offices on the floor above. This way, the ALC has her office back.

Finally, the EDLC stated that he is asking for an additional ALC position, which means that the office would have three attorneys. The new attorney would either be a junior attorney hired full-time or an experienced attorney hired part-time. This position would cause the highest

increase in the budget from last year, up to 46%. The budget increase without this position is only about 20%. The EDLC explained his justification for the new attorney position. He stated that for the last two months, staff has only worked on one case – preparation for the contested case hearing that was set for August 27. Based on that, the office currently has about 90 outstanding complaints and requests for advice instead of approximately 45 which is the average. This backlog is due to having to exclusively work on one case for two months.

Commissioner Amano asked why the office used Westlaw for legal research purposes? She recommended that the staff use “Fast Case” which is a free service offered by the State Bar. She stated that this could save the office several thousand dollars which could mean the reallocation of the Legal Clerk position. The EDLC responded that the office followed COR’s standard contract with Westlaw, but we would look into “Fast Case” per her recommendation.

Commissioner Amano also stated that in regard to the contested case hearing that occurred on August 27, 2014, she was concerned about the process. She stated that “we are the Ethics Commission” and that the administrative process we use must be fair to everyone. She stated that the administrative process used for this past contested case hearing could not be replicated. She had concerns that the EDLC was also the prosecutor in the case and that the Legal Clerk was distributing documents and information to the Commissioners, while also supporting the prosecutor in the case. She stated that she was very uncomfortable with this administrative process. The EDLC responded that this is why Deputy Corporation Counsel Geoff Kam advises the Commission during contested cases where the EDLC has to be the prosecutor in this matter.

Commissioner Amano further stated that if a change in this administrative process is going to affect the budget, it needs to be addressed now. The administrative process should always remain the same.

Acting Chair Lilly stated that it is rare for the Commission to have to adjudicate at a contested case hearing, and this is the first one he has had to do since he has been on the Commission.

The EDLC stated that at the prior contested case hearing in October 2013, the office used a Hearing Officer. In the past, the office has also had a few other contested cases that only lasted about an hour and the Commissioners had adjudicated the matter. The EDLC didn’t believe that having the Hearing Officer was particularly helpful because the Commission still had to review the report and the evidence. The EDLC stated that he has talked about this issue with the Hawaii State Ethics Commission. They have a bigger staff of ten people and can split the staff into divisions: advisory and advocacy. But, we don’t have the same amount of staff, and are unable to do the same.

Commissioner Burroughs asked how other medium sized cities deal with this issue. The EDLC replied that he can ask the other cities how they deal with this. Commissioner Amano stated that she thought that speaking with the other cities is a good idea. She asked how the office handled the other contested cases that the EDLC mentioned.

The EDLC responded that, like in civil cases, most of our cases settle. Commissioner Burroughs added, that even if the cases settle, the preparation of the cases leading up to contested case hearing is the process that is at issue and settlement does not resolve the administrative process in the preparation of the case.

Commissioner Amano reiterated that the process shouldn't change no matter what. She stated that if she were a lawyer representing someone who was accused of an ethics law violation, she would need to know where she's supposed to file documents, and who is supposed to distribute documents to her. She stated that the process needs to be fair and transparent. Also, changes to the administrative process could affect the budget.

The EDLC stated that it was decided in the August 2014 contested case that the ALC would make the decision of having the Legal Clerk distribute documents because the ALC was not the lead attorney/prosecutor for the case. The office can start researching this now and even if we can't be prepared in time for this budget submission, we can always be prepared for the next budget submission.

Commissioner Amano stated that staff should consider that if we do not have enough resources to prosecute cases, then perhaps the prosecution needs to be outsourced. That way, the staff could concentrate on education, training and providing advice. This would impact the budget and it is something that needs to be addressed now. Commissioner Amano asked if the office has a Strategic Plan. The EDLC confirmed that the office does have a plan. The ALC confirmed that the Strategic Plan was not included in the Ethics Commissioners Resource Guide, but she would distribute it as another attachment for their reference.

Commissioner Burroughs asked the EDLC if in the past he has budgeted for a hearing officer, and the EDLC confirmed.

Acting Chair Lilly asked the EDLC to **prepare a report** for the Commissioners for the next meeting. The EDLC confirmed and stated that he appreciated Commissioner Amano's views as she had to deal with this situation immediately upon her confirmation as a Commissioner and due to her experience as a judge and mediator/arbitrator.

Acting Chair Lilly directed the discussion to conclude the agenda item related to the FY 2016 budget proposal. EDLC stated that the last item on the budget request was in regard to salaries. He stated that Ms. Donna Leong, Corporation Counsel, includes a limitation on the ALC's and EDLC's salaries. The ALC was supposed to receive \$78,996 in FY 2014. He was told that merit increases would be allowed for FY 15 if appropriate. At the beginning of FY 15, EDLC sent a memo to Ms. Leong stating that the ALC was entitled to a 4% merit increase for FY15. ALC has not received it. Now it appears that there is a new condition on the salaries.

Ms. Maki stated that there is a section in the Budget Guidelines in regard to salaries. In regard to merit increases, Ms. Leong says in staying with the Guidelines, she needs more information regarding calculations and justifications. As a rule of thumb, merit increases follow the collective bargaining increases of 4%.

Acting Chair Lilly asked if there was a percentage cap or if Ms. Leong just needed more justification.

Ms. Maki confirmed that COR is requesting further justification. She explained that this is the first time the city is doing a zero based budget. Now everyone has to justify every single line item. The city is using actual expenditures in FY 13 and 14 as a guide. Any expenses above that, the requesting agency needs to justify it in order to even get a fighting chance.

The EDLC told Ms. Maki that it would help if she could explain what she meant by more justification? Is the justification for COR or the Department of Budget and Fiscal Services? Ms. Maki explained that she will work with him on the upward review process.

Commissioner Amano asked if the EDLC had a copy of the "Budget Guidelines" that Ms. Leong was referring to. The EDLC responded yes, he does have a copy, but he is not sure if he understands the Guidelines. The EDLC stated that he believes he provided proper justification for another investigator by showing the increase in complaints and comparison of the other administrative investigator workloads that we need more resources there.

Commissioner Amano stated that she thinks the justifications need to be figured out between Ms. Leong and the EDLC. She further stated that the Commission's budget needs to start at the bottom in line with the Guidelines. The EDLC stated that even COR agrees that some of the Guidelines are impractical, for example, you cannot get a new position unless you get rid of an old position. But how can that be if the work load is increasing? The EDLC stated that COR is not saying that you "can't do it," it's just that the request needs to be justified.

Commissioner Amano stated that COR is an accommodating agency to us as the EC is not part of COR. She further stated that she does not want to deal with budget in a piece meal fashion and that the EDLC needs to create a budget that aligns with the guidelines, then makes a justification for the exceptions to the guidelines.

Commissioner Silva added that the justifications should include that the Commission is trying to alleviate unreasonable spending by enforcing the city's ethics laws, and the EC needs to include a dollar amount to justify that. Commissioner Amano confirmed.

Acting Chair Lilly asked Ms. Maki for confirmation that the 4% on the staff salary increase, mentioned in the memo, was not a cap, and that if the EC can justify it, the employees can get the raise?

Ms. Maki confirmed, "yes."

5. Annual Performance Appraisal for the EDLC. The EDLC stated that he was reminding the Commissioners to complete his evaluation by September 26, 2014 as he does not want to ask for a raise without getting feedback from the Commissioners. The EDLC instructed the Commissioners to return the evaluation to the Legal Clerk. **Commissioner Burroughs requested that the evaluation be sent as a Word document.**

6. Status of Corporation Counsel Legal Opinions to Ethics Commission. The EDLC stated that there is only one outstanding legal opinion request regarding the basis of COR's claim to have budget authority over the Commission. The EDLC stated that he has talked to the Deputy Corporation Counsel responsible for this memo and she stated that they are still working on the opinion and hopes to get it to us by the next meeting.

7. COGEL Conference. The EDLC explained that "COGEL" (Council of Government Ethics Laws) only has this one annual conference. He referred to the agenda (attached as OPEN-5 to the Open Session Memo) for this year's conference to be held in Pittsburgh in December. He stated that the Commission has no money budgeted to send anyone to COGEL. So they need to justify why they should pay to send someone by taking money from another account to pay for COGEL. He stated that the estimated cost of one person attending is approximately \$2,200 including roundtrip airfare, registration, and lodging. The EDLC stated that the difficulty with the COGEL Conference is that it is created for two audiences: The staff who wants to know the nuts and bolts of how things work, and the commissioners who are more interested from a policy perspective. This agenda for the conference this year showed courses that didn't seem to address either approach. The EDLC stated that the Commission has never sent a Commissioner at the end of their term, but that was the only restriction. He asked if any Commissioners were interested in attending the annual COGEL conference.

The EDLC also stated that the Commission is also an associate member of the Society of Corporate Compliance and Ethics. We need money to join as a full member. Based on the Federal Sentencing Guidelines, many corporations have started their own ethics and compliance programs over the last 15 years. Even though government used to be the leader in ethics, corporations have now taken the lead.

The EDLC continued that the corporate compliance conference agenda shows that they are able to get the best people in the country to make presentations. Instead of sending someone to COGEL, we could send a staff member to the Compliance and Ethics Institute conference instead. It would cost about \$500 more to send someone to this conference. He asked the Commissioners for their opinions.

Commissioner Yuen asked if the corporate compliance organization had any other offered trainings besides the annual training.

The EDLC responded that COGEL only had an annual training, but the Corporate Compliance group had regional trainings four times a year and an annual national conference. The COGEL conference is all based on volunteers because they don't have any money. The EDLC recommends the COGEL conference to the Commissioners. But, he believes that the ALC is past the point where she would receive any real benefit from attending the COGEL conference as she has been in the office for four years now.

Commissioner Yuen recommended that the ALC attend the conference. Commissioner Silva agreed that the ALC should attend a conference, but especially the Corporate Compliance conference. Commissioner Burroughs added that perhaps a regional training from the Corporate Compliance group may be cheaper, and that he believes that going to the corporate training

would be beneficial as the COGEL conference agenda did not look very helpful. Commissioner Silva added that since the office has been asked to provide lobbyists with training, and that since the lobbyists come from the private sector, then the ALC should attend the private sector conference. Commissioner Lilly stated that he concurred with the comments.

Commissioner Amano stated that she did not yet know enough about what staff did, but she supported attending the conference as a lot of the values of attending a conference are not in the agenda such as: networking, starting dialogues with other agencies and sharing information.

As this topic was being wrapped up, the EDLC asked if the Commissioners preferred to review documents provided by staff double-spaced or single-spaced. The Commissioners agreed that either way was amenable to them.

B. For Action: Letter from Mayor Caldwell in Response to Letter from Vice Chair Chen Regarding Concerns with Corporation Counsel's Budget Authority over Ethics Commission and Administration's Position Toward Commission.

The EDLC reminded the Commissioners that in July 2014, Vice Chair Chen sent a memo to Mayor Caldwell. The Mayor responded with a memo in August 2014 supporting the Commission's decisional independence. But, the memo indicates that COR's role in the Commission's budget will not change. The Mayor is also firm in his support of COR providing ethics advice to cabinet members. He stated that the Commission and COR need to work together to resolve the GPS situation. The EDLC continued, that he was not comfortable signing COR's June 2014 memo asking for the Commission to agree to certain conditions because the memo was very general. He stated that we can try to determine what the conditions are either formally or informally. Basically the Commission is back to where it was last Summer in regard to purchasing the GPS tracking system. The EDLC confirmed that he asked for it in the FY16 budget.

Acting Chair Lilly stated that he thought Vice Chair Chen needs to comment on the Mayor's memo before the Commission responds to it. He also stated that he was concerned that if COR had been cooperative, then the Commission would not have waited so many weeks until it was too late to investigate the complaint. He added that cooperation is a two-way street and that COR did not cooperate with us. He stated that he was disappointed in the Mayor's memo. He inquired about the Mayor asking about the Commission obtaining consent to use the device from the Department whose employee was the subject of the complaint. The EDLC explained that he did ask for and was granted permission by the Department Director.

Acting Chair Lilly stated that he wants to make a strong response to COR and that he wants to wait for Vice Chair Chen to weigh in on the issue. He wants to inform them that the Commission is being cooperative and that they want everyone else to be cooperative as well.

Commissioner Silva added that he didn't see what the problem was in regard to the GPS because all businesses have GPS tracking devices on their vehicles. Commissioner Burroughs added that even the vehicles at his university has the devices as well. The EDLC stated that he is

just trying to obtain GPS devices for City vehicles to determine if they are being used for work on City time.

Commissioner Amano asked if the Commission had responded to COR's memo from June 2014. The EDLC replied that he has emailed Ms. Leong a response. Commissioner Burroughs asked why Ms. Leong wants us to confer with the unions and that conferral seems like a requirement. The EDLC replied that conferring with the unions is a condition of approval.

Commissioner Amano stated that she was concerned about the timing issues in regard to the Mayor's memo also. She didn't think that the Commission should wait for two months to respond. She is inclined to have the response be short and sweet. She wants to keep the response simple. Something to the effect of: "Thank you for your interest in these issues. We are encouraging further discussion along the lines of your budget mandate and are working cooperatively with COR in order to better comply with your directive." In regard to the GPS issue, she suggested that one Commissioner be assigned to address the issue and if they reject it, we move on.

In regard to the last issue about giving ethics advice, Commissioner Amano stated that the office has enough work on its hands. She stated that she didn't have "pride of ownership" on the expertise. In her opinion, if she were a cabinet member, she would want to get advice from the expert. From our standpoint, she doesn't care, because she already knows that the office is the "best in the business." She offered some language: "With respect to you, Mayor, we will respect your opinion, but our doors are open to provide advice." Commissioner Amano stated that the response should be a one page memo. She stated that she doesn't like to fight about manini stuff and that she does not know why we are fighting.

The EDLC stated that **staff can draft a response** if the Commissioners were comfortable with that.

Commissioner Yuen stated that we could add that we look forward to working with you (Mayor) on these issues. Commissioner Amano nominated Acting Chair Lilly to be the point person to address the GPS issue. Acting Chair Lilly kindly volunteered for the position and confirmed that if there were instances where the EDLC felt that Commissioner Lilly's presence would be beneficial, to let him know so he could attend.

**Acting Chair Lilly asked for a Motion for staff to draft a memo in response to the Mayor and submit it to Vice Chair Chen to review and sign the memo. Commissioner Yuen so moved. Commissioner Burroughs seconded the motion. The motion passed unanimously.**

## **V. EXECUTIVE SESSION SUMMARY**

**Commissioner Silva moved to enter into Executive Session. Commissioner Amano seconded the motion. The motion was unanimously approved. The Commission entered into Executive Session to address the Executive Session Agenda Items.**

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the June 26, 2014 Meeting.

**Commissioner Burroughs moved to approve the minutes. Commissioner Silva seconded the motion. The motion passed unanimously.**

\*\*\*At 1:15 pm Commissioner Yuen recused himself from the meeting and left the room.\*\*\*

- B. For Action: Request for a Motion to Approve and Adopt Commission Staff's Proposed Advisory Opinion No. 2014-6 Regarding Violations of the Standards of Conduct by a Former City Officer.

**After discussion, Commissioner Burroughs moved to approve and adopt Advisory Opinion No. 2014-6 with revisions per discussion. Commissioner Silva seconded the motion. The motion passed unanimously.**

## **VI. ADJOURNMENT**

**Commissioner Burroughs moved to exit Executive Session and adjourn the meeting. Commissioner Silva seconded the motion. The motion passed unanimously.**

The meeting adjourned at approximately 1:30 p.m.