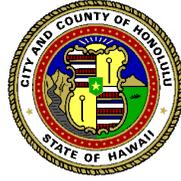


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091
PHONE: (808) 768-7787 • FAX: (808) 768-7768 • EMAIL: ethics@honolulu.gov • INTERNET: www.honolulu.gov/ethics



KIRK CALDWELL
MAYOR

JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

September 19, 2016

TO: CHAIR VICTORIA MARKS, VICE CHAIR MICHAEL LILLY AND
MEMBERS OF THE ETHICS COMMISSION

FROM: JAN K. YAMANE, EXECUTIVE DIRECTOR AND LEGAL COUNSEL

SUBJECT: AGENDA ITEMS FOR THE SEPTEMBER 21, 2016 MEETING, **OPEN SESSION**

I. CALL TO ORDER, PUBLIC NOTICE, QUORUM

II. NEW BUSINESS

A. Chair's Report

1. Announcements, Introductions, and Correspondence
2. For Action: Approval of Open Session Minutes of August 31, 2016
3. For Action: Approval of Executive Session Minutes of August 31, 2016

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.

B. Executive Director and Legal Counsel's Report.

1. Staff Work Reports Summary

The staff meets weekly on the Ethics Commission Program of Work – FY2016-2017. **Agenda Item II.B.1., Page 1, OPEN – 1 [EC Program of Work FY2016-2017]**. Details are updated weekly and reflect planned, work-in-progress, and completed work. Staff discuss issues, challenges, work load, and completion dates/targets.

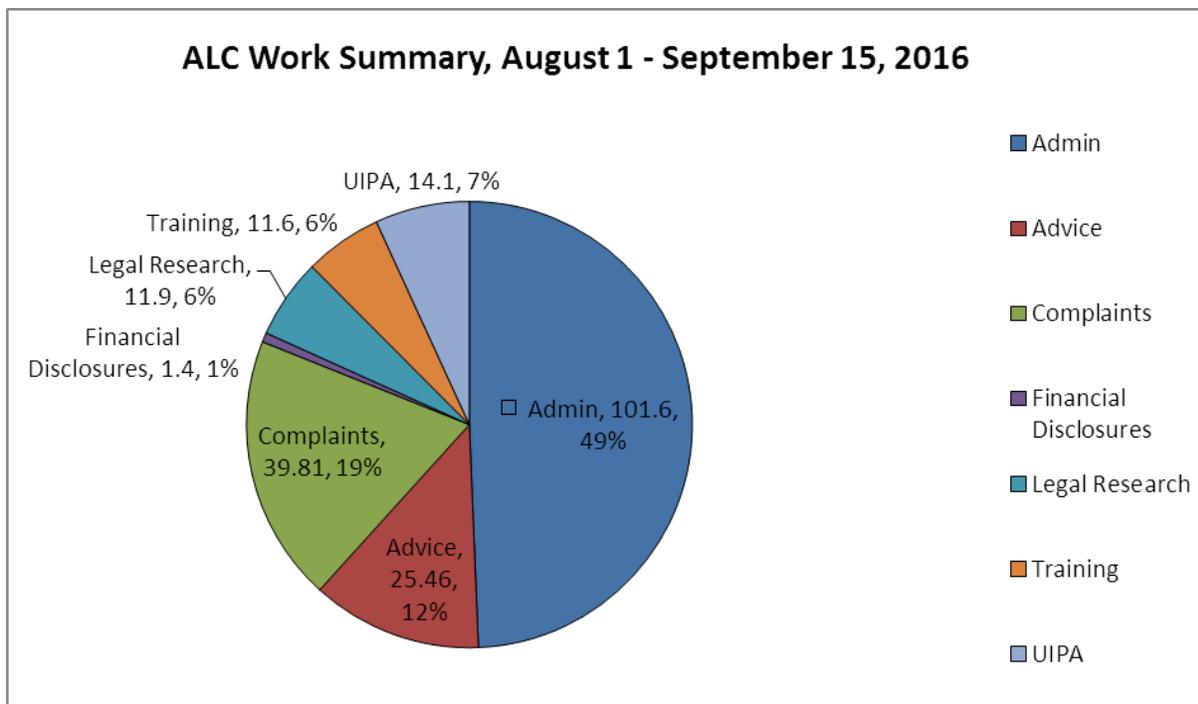
Legal Clerks LParker and KBigornia continue to carry out their administrative responsibilities. Legal Clerk III Parker performs P-Card administration, sorts and files incoming requests for advice, complaints, and other matters, assists with budget and other submittals, and coordinates meetings and meeting materials. Legal Clerk I Bigornia compiles statistics, assists Associate Legal Counsel (ALC) LWong-Nowinski with complaints by gathering data and other information, updates the website and resource binders, monitors the UIPA log, as well as coordinates meetings and meeting materials. For this meeting, Legal Clerk I Bigornia developed budget charts that will be presented during the budget discussion under Agenda item II.B.3. For future meetings, we hope to develop additional charts utilizing cases and requests for advice statistics.

Significant legal clerk time has been allocated to scanning and shredding records ahead of moving to Kapālama Hale, now targeted for mid-October 2016. Both legal clerks have been instrumental in processing documents for scanning and shredding and their coordinated effort is commendable and greatly appreciated. Fewer hard-copy records will ease packing and moving to Kapālama Hale. Legal Clerk III Parker also has attended Kapālama Hale coordination meetings with me, secured staff parking (3 confirmed, 1 wait-listed), secured additional furniture for our new space, and arranged a meeting with the City’s moving coordinator. Upon selection of the moving vendor, boxes will be delivered and we will begin packing up the office. We will keep the Ethics Commission apprised of moving dates as they may impact our October meeting.

ALC Wong-Nowinski continues to carry much of the complaints, requests for advice, and legal research workload to allow me time to transition to City government. Her workload summary is reflected in the chart on page 2—ALC Work Summary, August 1 – September 15, 2016—which reflects both actual and percentage of time spent in various categories. The majority of her time has been spent in administration, which includes a variety of tasks such as attending meetings with cabinet and councilmembers, preparing indexes and reviewed case status and reports, preparing form templates, and reviewing position descriptions, investigator applicant resumes, and interview questions, among other responsibilities.

Additionally, ALC Wong-Nowinski has reviewed, investigated (as needed), drafted, and closed 20 complaints and 35 requests for advice. At present, there are 69 outstanding complaints, five requests for advice, and three cases for appeal.

[SEE ALC’s Work Summary, August 1-September 15, 2016 Chart on Next Page]



Source: ALC Wong-Nowinski Time Sheets for August and September (Partial), 2016.

2. Statistics – Complaints, Requests for Advice

There are no updated statistics for the September 2016 meeting. We will report FY2017 1st Quarter statistics at the October 2016 meeting.

3. Budget

a. FY2017 Operating Budget

We submitted a draft FY2018 operating budget request to Corporation Counsel (COR) on September 1, 2016. COR submitted its operating budget request, including Ethics' request, to Budget and Fiscal Services (BFS) on September 6, 2016. **AGENDA ITEM II.B.3.a., Page 3, OPEN – 2 [Memo-BFS - FY2018 OP Budget Request]**. Both submissions met established deadlines.

b. FY2018 Operating Budget Request

Ethics' FY2018 operating budget request of \$486,273 is very similar to its FY2017 appropriated budget of \$485,305. Both budgets reflect an increase of a little more than \$110,000 over FY2016 actual numbers. **AGENDA ITEM II.B.3.b., Page 3, OPEN – 3 [Budget Charts]**. Total salaries (A) increased approximately \$36,000, while total expenses (B) increased by almost \$74,000. Increased expenses are attributable, in part, to attorney fees and professional and consultant services for litigation, investigation, hearings, and conflicts. Transition to shared LexisNexis services with COR achieved some savings, which were reallocated to other cost items.

We have three FY2018 budget requests that are issues for discussion: 1) travel for one staff and one commissioner to the annual Council on Government Ethics Law (COGEL) conference; 2) funding for 1000 seats of Mindflash; and 3) funding for parking validations at Kapālama Hale. Justification has been provided to BFS. Including these requests, our FY2018 Operating Budget Request is approximately \$507,000.

4. Ethics Training Program

Final edits are being made to the pilot Mindflash training. A memorandum requesting approval to use the cloud-based software has been sent to the Department of Information Technology (DIT). We hope to launch pilot training in late 2016 or early 2017.

5. Charter Amendments

The City Council's Committee on Executive Matters and Legal Affairs has scheduled a public hearing on Tuesday, September 20, 2016 at 1:00 p.m.

6. Audit

Resolution 16-164, CD1, was adopted on September 7, 2016. **AGENDA ITEM II.B.6., Page 4, OPEN – 4 [City Council Reso No. 16-164, CD1]**. The City Auditor will meet with ALC Wong-Nowinski and me on September 22, 2016, for preliminary planning. This meeting is not a formal entrance conference.

7. COGEL Conference – December 2016

This item was discussed under Budget. **AGENDA ITEM II.B.7., Page 4, OPEN – 5 [2016 38th Annual COGEL Conference Brochure]**.

C. For Discussion and Action: Strategic Planning

D. For Discussion and Action: Create Standing Committee for Rule-Making

AGENDA ITEM II.D., Page 4, OPEN – 6 [Confidential Memorandum – Rulemaking on Gift Laws-Background & Issues to Consider].

AGENDA ITEM II.D., Page 4, OPEN – 7 [Memorandum – Civil No. 1CC 15-1-2453-12, *HSTA v. Hawaii State Ethics Commission*].

E. Expectations for the Executive Director and Legal Counsel

F. For Discussion and Action: Personnel Evaluation Form for the Executive Director and Legal Counsel

G. For Discussion: Kealoha v. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawaii

The Commission may convene an executive session pursuant to Section 92-5(a) (4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities. **AGENDA ITEM II.G., Page 5, OPEN – 8 [City Council Reso No. 16-221].**

III. Executive Session

A. For Discussion and Action: Independent Ethics Investigator Retained Due to Conflict of Interest

Pursuant to Section 92-5(a), HRS, the Commission will consider the hire, evaluation, dismissal, or discipline of an officer or employee where consideration of matters affecting privacy will be involved; and pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

Should you have any questions on these matters, please contact me.

OPEN – 1
Agenda Item II.B.1.,
Page 1
[EC Program of Work
FY2016-2017]

HONOLULU ETHICS COMMISSION
PROGRAM OF WORK – FY2016-2017
Staff Meeting – Week of 19 Sep 2016

Complaint Intake/Evaluation (on-going)

- Ethics2 mailbox – Open/review/sort (LP)

Ethics Commission (on-going)

- Meeting schedule – set CY2017 schedule (meetings usually 3rd Wed ea/mo) (LP)
- Honolulu Ethics Commissioners Resource Guide – revision/update pending (KB); Cmr Adler's binder done, used for training/discussion 15 Sep 2016
- Target timeframes – EC Mtg docs (new)
 - COB Fri before Wed agenda filing – draft minutes to LAWN/JY for review (LP)
 - COB Mon before Wed agenda filing – draft agenda to Chair r/c (agenda drafted in amended format) (JY)
 - COB Thurs after Wed agenda filing – meeting handouts from staff to KB
 - COB Fri after Wed agenda filing – meeting handouts 1) upload to Drop Box (LP/KB); 2) upload to website (KB)

Strategic Planning

- Operating Plan (updated 6 Oct 2014) for FYs 2014 – 2016
- Strategic Plan (new) – discuss/vote @ next EC mtg (21 Sep)

Rulemaking – Art. 6, Sect. 3-6.3(i) via Ch. 91 (HAPA), HRS

- Legal research on ethics issues (LAWN finalizing)
- Begin preliminary drafting (new)
- Suggest Laws and Rules Subcommittee – open forum to vet rules, meeting logistics; discuss/vote @ next EC mtg (21 Sep)

Request for Legal Advice

- clear backlog (pending) (LAWN)
- Statistics (LAWN/KB); charts (new) (KB – pending)
- Log – refinements, p&ps needed (all)

Education and Outreach

- Web-based training for City emp'ees (Mindflash), annual cost estimate \$14,388 (\$1199 x 12 mos) justification drafted (JY); JY Mindflash r/c to LAWN/KB; Comm Adler reviewed; memo to MWong/DIT sent
- Training mandate – emp'ee; mgr/supervisor; bd/comm; Council; dept-specific
- Informational notices at benefits training (provide website and instructions to new employees for disclosure e-filing) (LAWN/KB drafted; JY r/c done)

- Post-Nov 2016 election ethics training; Mayor's request for Cabinet refresher (new – pending election)
- Newsletter (new – pending)
- Annual Report (new – pending)
- Statistics (new – pending) (KB)

Financial and Other Disclosures

- December – reminders for annual filings (LP rec'd printout of names):
 - Financial disclosure eFiling – candidates to office (w/i 10 working days after deadline for filing as candidate for office); exec/leg branch officers (w/i 20 working days of taking oath of office or before 31 Jan each year); employees (w/i 20 working days of eff date of sect. or before 31 Jan each year)
 - Lobbyist Registration – w/i 5 days of engagement (w/i 10 days, ETH issues certificate of registration); annual report by 10 Jan (w/i 10 days, ETH issues renewal of certificate of registration)
- Disclosure of Conflicts of Interest – w/i 5 working days of entering employment, promotion, transfer, new non-city employment, other circumstances File scanning/shredding (LP/KB – pending)

92F UIPA Requests (on-going)

- 1 request → COR; others handled in-house
- Protocol – ETH responds to requests for ETH records; if need COR assistance, submit RLS to COR for assignment (amended 20 Aug 2016)

Relocation to Kapālama Hale

- Mid Oct 2016 (as of 15 Sep 2016) – ETH will be first among agencies in Standard Financial Plaza to move or ETH moving with DCS (pending – DKodama/DDC)
- Parking – 3 spaces confirmed; 1 wait-listed; 1 pending Investigator hire (LP)
- Walk-through on 7 Sep; additional furniture secured 8-9 Sep; IT drops/wi-fi discussed; view other furniture at off-site storage, contact DKodama/DDC (LP/JY)
- Mtg w/ move coordinator 9 Sep; boxes to be delivered after vendor selected
- File scanning/shredding (1st round scanning done 7 Sep (LP/KB); 2nd round shredding done (KB); financial disclosure scanning pending (to do after relocation to Kapālama Hale)

Personnel

- Investigator – recruit, hire (interview questions amended; interviews scheduled) (LAWN/JY)
- Reassess/redescribe positions, ETH staff organizational structure (JY)

Budget

- 6 Sep 2016 operating budget request transmitted under JY/ETH signature via COR to BFS; visuals developed for 21 Sep EC mtg (JY/KB)
- Training request – COGEL conference, ETH commissioners/staff (2)
- Resources – LexisNexis with COR, Westlaw contract exp's Mar 2017, reallocate savings, letter drafted re non-renewal of service (JY)

- Reassess – LexisNexis tools replace CLEAR, contract exp’s Dec 2017; if yes, reallocate savings; letter drafted re non-renewal of service (JY)

General Records Schedule (GRS)

- ETH records schedule – received from GKam/COR; review/revise? (pending JY/LAWN)

Litigation

- 3 outside counsel retained (3 x \$100K); Council adopted resos @ 7 Sep 2016 mtg
- File compilation/completion/closing (LP)

Office Procedures

- Standard Operating Procedures (SOP) – incomplete draft, update needed (pending)

Ethics Commission Statistics, Data

- Develop visuals, target presentation @ 19 Oct meeting (pending – JY/KB)

Audit Request – Reso. 16-164

- Council adopted @ 7 Sep 2016 mtg
- Preliminary meeting with City Auditor Young on 22 Sep 2016

OPEN – 2

Agenda Item II.B.3.a.,

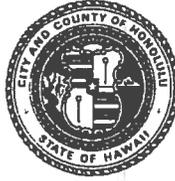
Page 3

**[Memo-BFS – FY2018 OP
Budget Request]**

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

HONOLULU
ETHICS COMMISSION
RECEIVED



KIRK CALDWELL
MAYOR

'16 SEP 13 P1 :29

DONNA Y. L. LEONG
CORPORATION COUNSEL

PAUL S. AOKI
FIRST DEPUTY CORPORATION COUNSEL

September 6, 2016

TO: NELSON H. KOYANAGI, JR., DIRECTOR
DEPARTMENT OF BUDGET AND FISCAL SERVICES

VIA: DONNA Y. L. LEONG, CORPORATION COUNSEL
DEPARTMENT OF THE CORPORATION COUNSEL 

FROM: JAN K. YAMANE, EXECUTIVE DIRECTOR/LEGAL COUNSEL
ETHICS COMMISSION

SUBJECT: Ethics Commission FY2018 Operating Budget Request

Attached for your review is the Ethics Commission's (ETH) FY2018 Operating Budget Request. Related entries have been submitted via the Advantage Budgeting System.

Ethics Commission

The Ethics Commission's FY2018 Operating Budget (see attached) was reviewed by COR's Administrative Services Officer (COR ASO) for consistency with BFS's FY2018 Operating Budget Guidelines and changes consistent with those guidelines have been recommended by the COR ASO as current service requests. All other ETH requests are included as Budget Issues.

Should you require additional information, please contact me at extension 87786, or your staff may contact COR ASO Cathy Maki at extension 85123.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan K. Yamane".

JAN K. YAMANE
Executive Director/Legal Counsel

Attachments

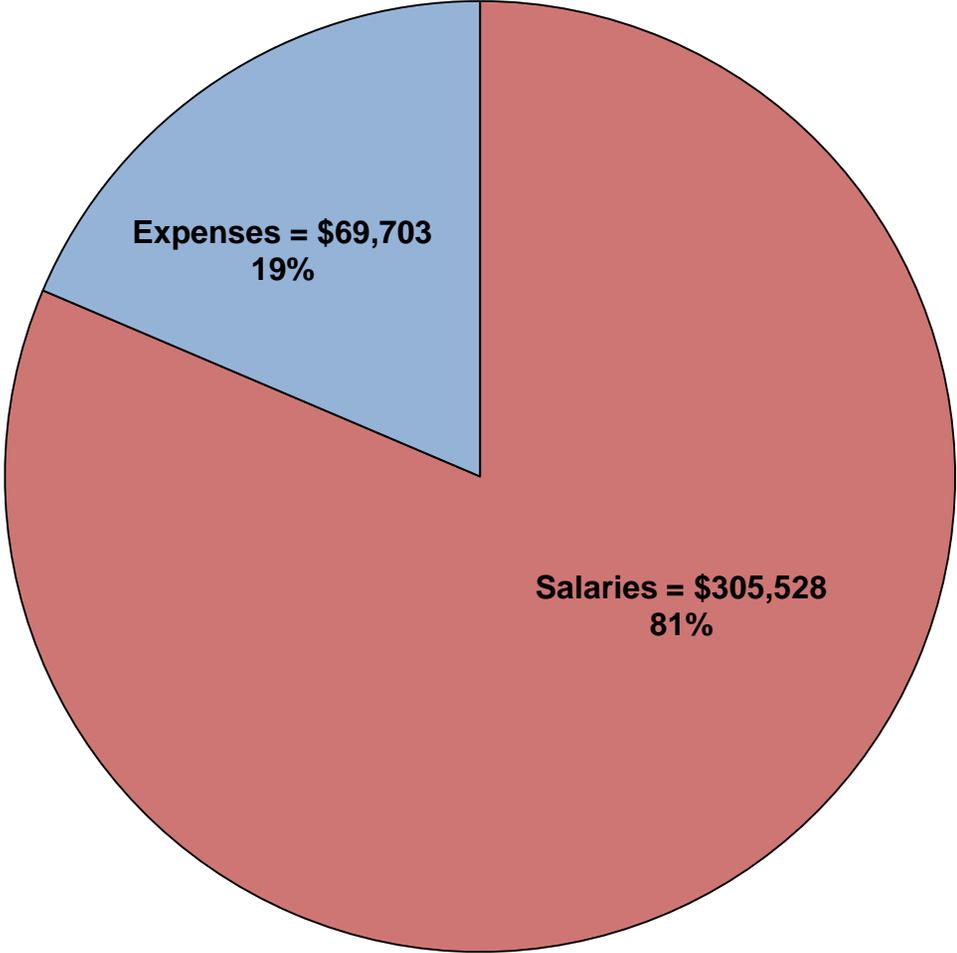
OPEN – 3

Agenda Item II.B.3.b.,

Page 3

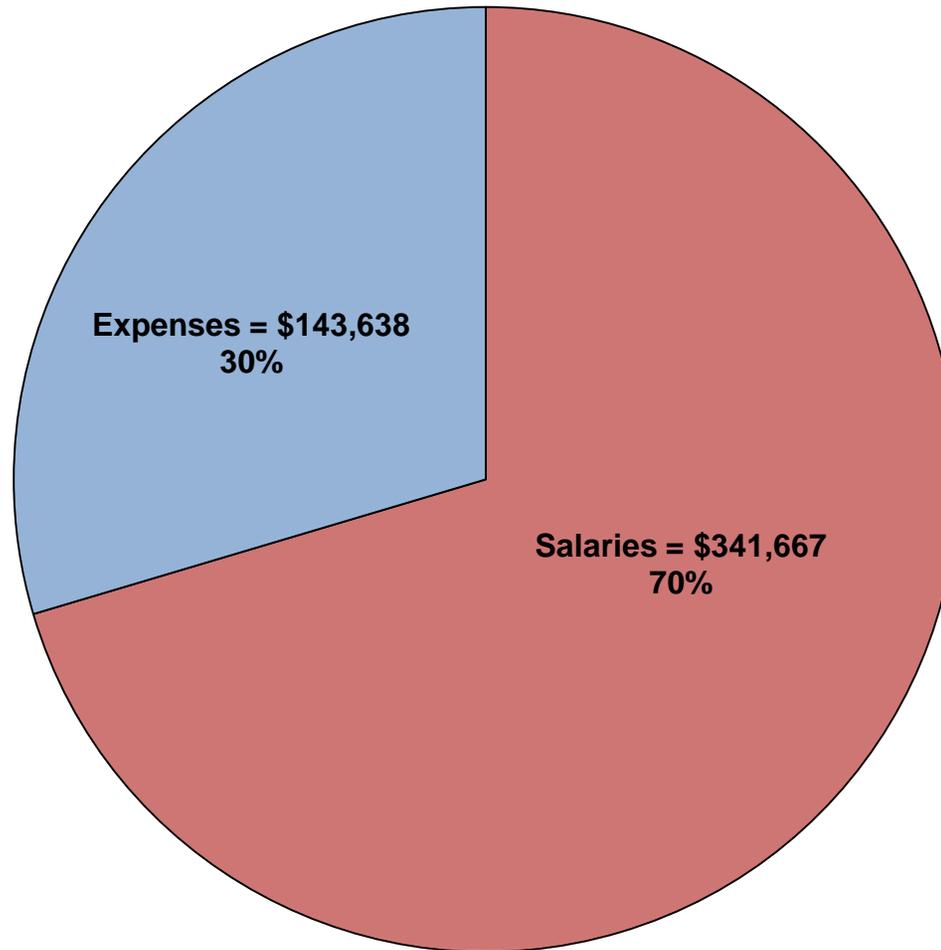
[Budget Charts]

FY2016 - Actual Budget



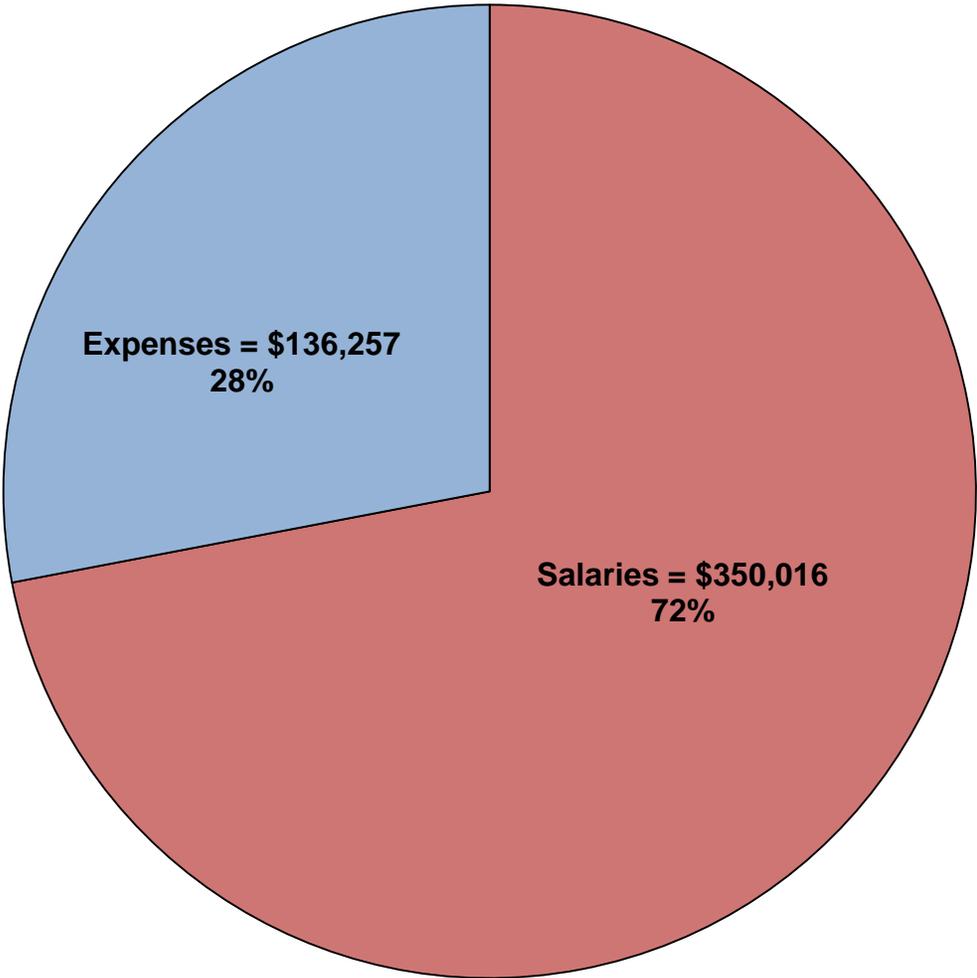
Total: \$375,231

FY2017 - Appropriated Budget



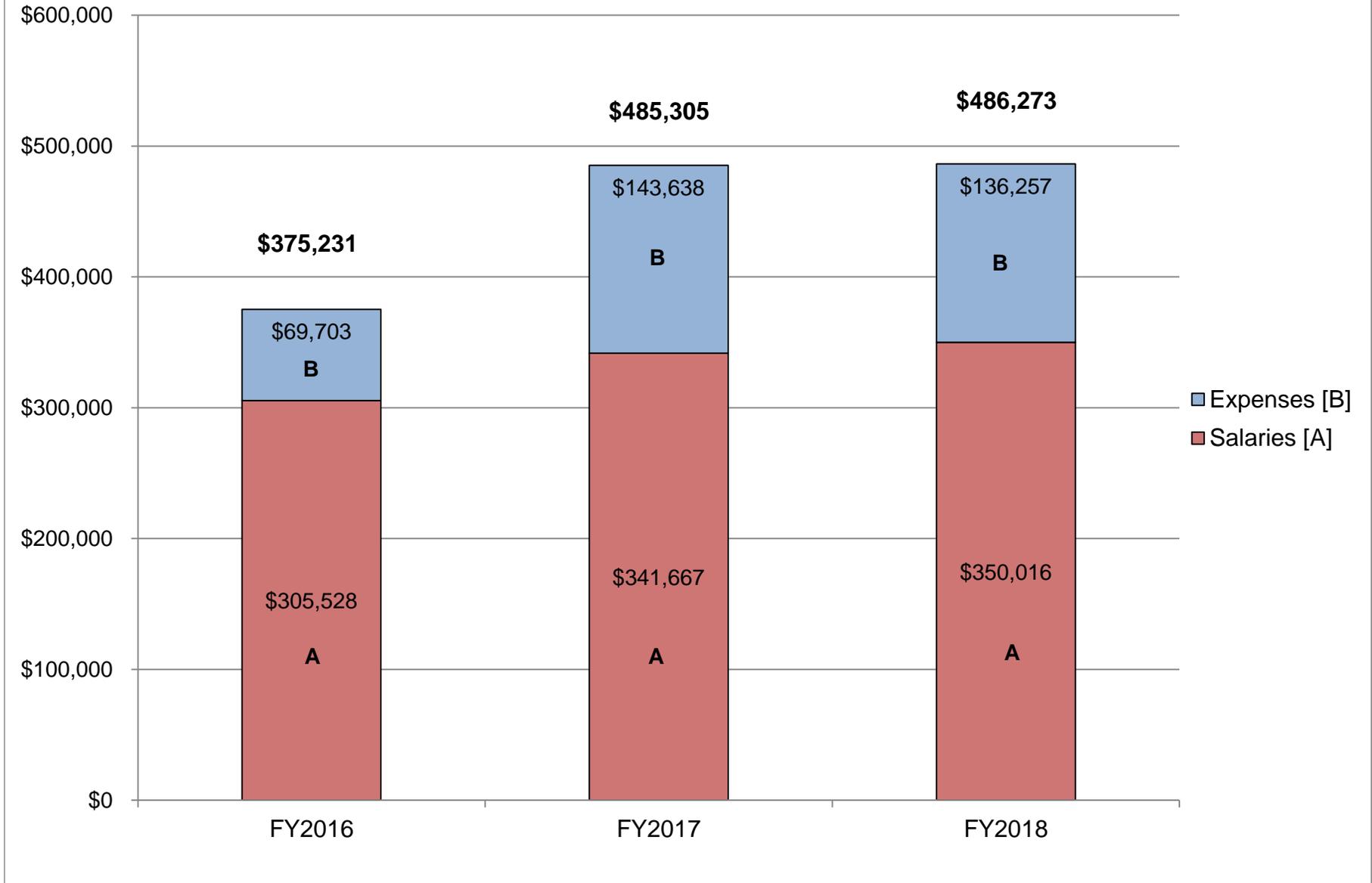
Total: \$485,305

FY2018 - Requested Budget



Total: \$486,273

Ethics Commission Budget, FY2016 - FY2018



OPEN – 4

Agenda Item II.B.6.,

Page 4

**[City Council Reso
No. 16-164, CD1]**



RESOLUTION

'16 SEP 14 P 1 :01

REQUESTING THE CITY AUDITOR TO PERFORM A COMPREHENSIVE MANAGEMENT AND PERFORMANCE AUDIT OF THE HONOLULU ETHICS COMMISSION.

WHEREAS, Section 11-107 of the Revised Charter of the City and County of Honolulu 1973, as amended ("Charter"), establishes an Ethics Commission ("Commission"), within the Department of the Corporation Counsel for administrative purposes, comprised of seven members appointed by the Mayor and confirmed by the Council to five-year terms; and

WHEREAS, the Commission has the basic duties of rendering advisory opinions and conducting investigations concerning the application of the City's standards of ethical conduct and recommending appropriate disciplinary action against City officers and employees who violate the standards; and

WHEREAS, the Commission's stated goal is to establish and build an ethical culture in City government so that the public may justifiably trust City government officers and employees and their respective actions; and

WHEREAS, recent events have strained the relationship between the Commission's former Executive Director and staff members, Commissioners, and the City administration; and

WHEREAS, the public's trust in the Commission's ability to carry out its duties has been undermined, as media reports have indicated, by events such as:

- A. The imposition of a media policy that, among other things, prohibited the Commission's staff members from engaging in media activities to air their concerns or grievances regarding the Commission's operations or comment on the Commission's decisions and opinions;
- B. The suspension of the Commission's former Executive Director following an internal personnel investigation;
- C. The implementation of a requirement for Commission's staff members to complete daily timesheets that detail by tenth-of-an-hour increments legal and administrative tasks performed; and
- D. The resignation of the Commission's former Executive Director and staff members; and



RESOLUTION

WHEREAS, the City Council finds that, given the current state of the Commission, a comprehensive management and performance audit is necessary to determine how to improve the Commission's operations and efficiency in carrying out its duties and to help restore the public's trust in the Commission; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the City Auditor is requested to perform a comprehensive management and performance audit of the Honolulu Ethics Commission; and

BE IT FURTHER RESOLVED that the Council requests the City Auditor to report its findings and recommendations for improving the Commission's operations and efficiency in carrying out its Charter-prescribed duties; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Managing Director, the Chair of the Honolulu Ethics Commission, and the City Auditor of the City and County of Honolulu.

INTRODUCED BY:

Trevor Ozawa

DATE OF INTRODUCTION:

June 29, 2016
Honolulu, Hawaii

Councilmembers

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 16-164, CD1

Introduced: 06/29/16 By: TREVOR OZAWA

Committee: EXECUTIVE MATTERS
AND LEGAL AFFAIRS

Title: RESOLUTION REQUESTING THE CITY AUDITOR TO PERFORM A COMPREHENSIVE MANAGEMENT AND PERFORMANCE AUDIT OF THE HONOLULU ETHICS COMMISSION.

Voting Legend: * = Aye w/Reservations

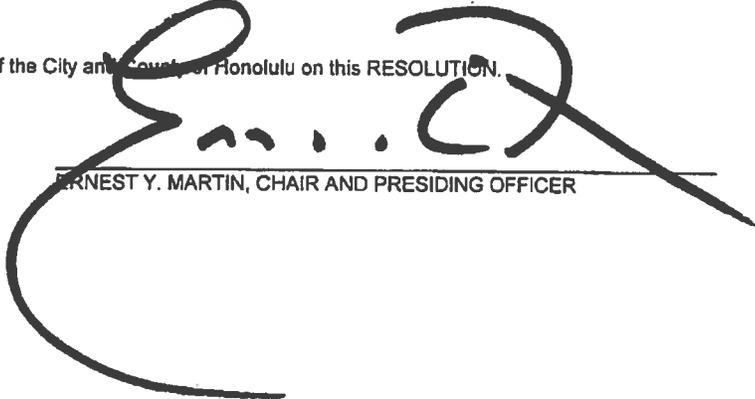
08/23/16	EXECUTIVE MATTERS AND LEGAL AFFAIRS	CR-251 - RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION AS AMENDED IN CD1 FORM.
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09/07/16	COUNCIL	CR-251 AND RESOLUTION 16-164, CD1 WERE ADOPTED. 9 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE.
----------	---------	--

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN J. TAKAHASHI, CITY CLERK



ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER

OPEN – 5

Agenda Item II.B.7.,

Page 4

**[2016 38th Annual COGEL
Conference Brochure]**

38th ANNUAL COGEL CONFERENCE

NEW ORLEANS, LOUISIANA | DECEMBER 11-14, 2016



HONOLULU HI 96813-3021
715 S KING ST STE 211
HONOLULU ETHICS COMMISSION
EXECUTIVE DIRECTOR & LEGAL COUNSEL
[REDACTED]

The Council on Governmental Ethics Laws (COGEL) is a professional organization for government agencies, organizations, and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. COGEL is an active organization that works to ensure that professionals in these areas are connected to each other and aware of new developments in these fields. By offering opportunities to connect in person and online, COGEL enables networks to grow and strengthen, and aims to share knowledge and foster debate.



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ATHENS, GA



38th ANNUAL COGEL CONFERENCE

NEW ORLEANS, LOUISIANA | DECEMBER 11-14, 2016

CONFERENCE REGISTRATION NOW OPEN

Don't miss the four-day, 38th Annual COGEL Conference in the Big Easy, one of the most authentic and culturally rich cities in North America! Join colleagues and experts from the U.S. and Canada for the premier event for professionals in the fields of campaign finance, governmental ethics, elections, lobbying, and freedom of information.

Register today to take part in four days of inspiring networking opportunities, incredible workshops, and informative panel discussions.

FIRST RATE PLENARIES AND BREAKOUT SESSIONS

You'll find the COGEL conference full of educational and engaging sessions that directly relate to the work you do. In addition to our always extraordinary plenary speakers, the New Orleans COGEL conference offers an amazing line-up of more than 45 educational sessions, 25 breakfast table topics, and over 125 expert presenters. No matter what your chosen COGEL discipline, there is a wide variety of sessions designed to educate you, challenge you, and encourage you.

The conference kicks off at 1:30 p.m. on December 11th, with a robust agenda of breakout sessions, including the invaluable "Speed Mentoring Roundtable", two illuminating conversations about the past and future of campaign finance litigation, as well as spirited discussions on bribery, ethics, and technology. Of course, COGEL's first-rate programming continues through noon on Wednesday, December 14th. We always save some of the best sessions for last, and this year is no exception, with "The Quest for the Perfect Coordination Rule", "Advice Jambalaya", "Collaborating with Civic Hackers", "Geaux Vote", and "How to Avoid Death by PowerPoint", just to name a few.

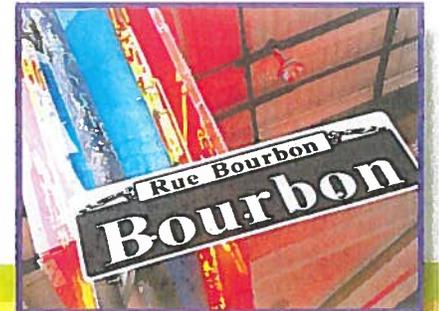
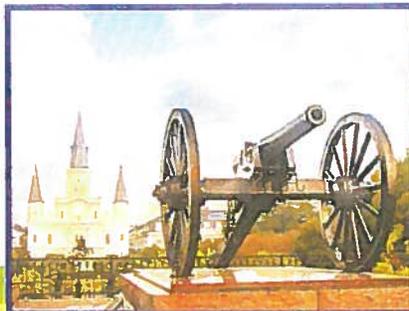
Why this is a must-attend event for you and your team:

- ✦ Gain invaluable insights as experts from 85+ jurisdictions debate and discuss the most critical issues in the fields of campaign finance, governmental ethics, elections, lobbying, and freedom of information.
- ✦ Hone your professional skills via numerous interactive trainings.
- ✦ Learn about the latest legal developments in your field from leading lawyers at the most prominent U.S. and Canadian law firms and law schools.
- ✦ Expand your connections during multiple networking opportunities throughout the conference, including extended networking breaks, luncheons, and receptions.

WELCOME TO THE BIG EASY!

A city of many monikers and many cultures, New Orleans lingers on the threshold between the Old World and the New, between history and legend. Here, in this little corner of the American South, the history is as colorful as the architecture and the local cuisine is the stuff of legend.

Our host hotel is the New Orleans Marriott, a perfect location from which to explore a magical city. This 41-story French Quarter hotel, rising high above the mighty Mississippi River, offers easy access to the city's best restaurants as well as an array of live music venues and Bourbon Street nightlife.



2016 ANNUAL COGEL CONFERENCE | SESSION SCHEDULE

SUNDAY, December 11

12:00 pm - 5:00 pm	Conference Registration
1:30 pm - 3:00 pm	Tech Tips: What You Should Know About IT Local Agency Roundtable The Campaign Finance Crystal Ball: Predicting Future Litigation
3:15 pm - 3:45 pm	Kay Williams First Timers Session & Conference Preview
4:00 pm - 5:15 pm	In Search of Best Practices: ALI's Principles of Government Ethics Speed Mentoring Roundtables A (Very) Brief History of Bribery Cases by the Clock: A Review of the Campaign Finance Cases You Need to Know Certifiably COGEL
5:30 pm - 7:00 pm	Welcome Reception Presentation of the COGEL Outstanding Service Award

MONDAY, December 12

7:30 am - 8:30 am	Breakfast - Table Topics
8:45 am - 10:15 am	Plenary Session
10:25 am - 11:55 am	Ethics Update I: Legislation & Litigation FOIA Session The Looming Voting Machine Crisis: What Should We Do? Two Hats, One Shoestring: Managing with Limited Resources Campaign Finance Update I: Litigation
12:00 pm - 1:30 pm	Plenary Session 2016 COGEL Award Presentation
1:45 pm - 3:15 pm	FOIA Session Shining a Light on Money & Influence: The Power of Data Visualization How Big Money Corrupts Our Democracy & What We Can Do About It Whistles Are Not Just for Refs: Encouraging Whistleblowing Enforcement Update: A Look Across the COGEL Disciplines
3:30 pm - 4:45 pm	Make Them Laugh: Training with Humor Ethics Update II: Enforcements Election Update Investigating from Your Office: Using Data Mining Tools & Techniques Digging Up The Truth About Grassroots Lobbying

TUESDAY, December 13

7:30 am - 8:45 am	Breakfast - Table Topics
9:00 am - 10:00 am	Plenary Session
10:15 am - 11:45 am	Campaign Finance Update II: Legislation Voter Registration in the Digital Age FOIA Session Leadership DNA: How to Cultivate & Lead High Performance Teams Lobbying Update
11:45 am - 1:30 pm	Lunch - On Your Own
1:00 pm - 3:15 pm	Shiny New Toys: COGEL Agencies Demonstrate Amazing IT Solutions
1:45 pm - 3:15 pm	The Quest for Ethics Reform Preparing the Case I: The Nuts & Bolts of Thorough Investigations Meet the Press: The Sequel FOIA Update: Legislation & Litigation Promoting Small Donor Democracy
3:30 pm - 4:30 pm	Plenary Session
4:30 pm - 6:00 pm	Bonus "Mix & Mingle" Reception

WEDNESDAY, December 14

8:00 am - 9:00 am	Breakfast Annual COGEL Business Meeting
9:15 am - 10:30 am	How to Avoid Death by PowerPoint Preparing the Case II It's Not Your Money: How to Spot the Embezzlement & the Personal Use of Campaign Funds Collaborating with Civic Hackers to Further Your Agency's Mission Geaux Vote! How to Encourage Citizens to Register & Vote
10:45 am - 12:00 pm	Advice Jambalaya: The Secret Ingredients for Drafting Consistent & Understandable Advice FOIA Roundtable Dark Money & the Quest for the Perfect Coordination Rule Public Employee Political Activity: Walking a Fine Line What Price for Convenience Voting?





COUNCIL ON GOVERNMENTAL ETHICS LAWS

38th Annual Conference
December 11 - 14, 2016
REGISTRATION FORM

Name
First Name for Badge Title
Organization
Mailing Address
City State/Province
Zip/Postal Code Country
Phone Email
First Time Attendee? [] Yes [] No Dietary Restrictions:

REGISTRATION FEES

Full Registration through October 31, 2016 [] \$580
after October 31, 2016 [] \$625

(includes sessions, receptions, and meals, where indicated)

Guest Registration [] \$175

Must accompany completed attendee registration.
Sunday and Tuesday receptions only.

Session attendance requires Full Registration.

Member

Non-Member

HOTEL ACCOMODATIONS

New Orleans Marriott

555 Canal Street
New Orleans, LA 70130
504-581-1000
Reservations by phone: 800-654-3990

Reserve your room online at:
https://resweb.paskey.com/Resweb.do?mode=we
lcome ei new&eventID=14667582

Room Rate: Gov't Per Diem Rate

Room Block Release: November 18, 2016, or
when room block is full, whichever occurs first.

Handwritten notes: 170.01, 158.00, change of night, 150.00 per

METHOD OF PAYMENT

- [] Check (payable to COGEL in US Dollars) (Federal ID No: 61-1250285)
[] Visa [] MasterCard

Credit Card # _____ Card ID # _____

Name on Card _____

Expiration Date _____

Signature _____

If paying by credit card, you may register online at www.cogel.org
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COGEL
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Athens, GA 30608

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credit card information to 706-548-7079.

CANCELLATION POLICY

Cancellations received prior to
November 15, 2016, will be charged
a \$100.00 administrative fee. No refunds
will be made for cancellations after
November 15, 2016, and for "no shows".

BILLING POLICY

Payment must accompany the registration
form. Registration forms will not be accepted
without payment.

ITEMS OF NOTE: If you have specific dietary or
other needs, please call us at 706-548-7758 at
least one week prior to the conference. By regis
tering for this event, you are demonstrating you
permission to allow your photo to be taken and
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QUESTIONS? Director Long, Gill
Call 706-548-7758 or email director@cogel.org.

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**[ICC 15-1-2453-12, *HSTA v.
Hawaii State Ethics
Commission*]**

MEMORANDUM

DATE: September 18, 2016
TO: HON. VICTORIA MARKS, CHAIR, MICHAEL LILLY, VICE CHAIR AND COMMISSIONERS
VIA: JAN K. YAMANE, EXECUTIVE DIRECTOR AND LEGAL COUNSEL
FROM: LAURIE A. WONG-NOWINSKI, ASSOCIATE LEGAL COUNSEL
RE: Civ No. 1CC15-1-2453-12, *HSTA v. Hawaii State Ethics Commission*.

As requested on August 9, 2016, this memo briefs the above-referenced case. To date, no written order has been issued by the court. However, court minutes reflect that on June 17, 2016, Judge Rhonda Nishimura rendered an opinion after hearing oral argument from the parties. This brief is based upon my review of the documents in the court record and minutes.

I. BACKGROUND

As early as January 2015, State of Hawaii, Department of Education (“DOE”) personnel sought advice from the State Ethics Commission (“State EC”) on whether teachers can accept free trips from tour companies when they arrange a tour through the company for student groups in order to chaperone such groups. There is usually one free trip given (includes airfare, lodging) for every ten students going on the trip. Appellant’s Notice of Appeal to the Circuit Court; Statement of the Case (“Statement”), ¶ 6.

The process of a student trip requires approval of DOE administration, including the complex area superintendent. Teachers send information on cost and destination to parents/guardians who decide whether to allow their children to participate. DOE policies on travel and field trips require that the trip “satisfy educational benefits that are clearly linked to and support ongoing standards-based classroom studies.” Statement, ¶ 20.

The State EC formally responded to the DOE personnel inquiries by issuing a Memorandum re: Free Travel Offered to Teachers by Travel Companies (Aug. 4, 2015) (“Memo”). The Memo provides:

With regard to upcoming student educational trips (*i.e.*, travel that was not completed before July 31, 2015), including trips that are already planned and scheduled and trips for which students have already paid, the Commission reminds teachers that the State Ethics Code prohibits teachers from accepting free travel and other benefits from the tour companies if the teachers were involved in planning the trip itinerary and selecting the tour company, promoting the trip to students and their parents, deciding who will chaperone the students, and/or requesting DOE approval of the trip.

Memo at Sec. 2. The State EC later issued Advisory Opinion No. 2015-1 (Aug. 19, 2015) (“AO”) to further clarify the issue. Regarding upcoming trips, the AO provides:

The Commission is aware that teachers have been offered free travel and other benefits by tour companies for a number of upcoming trips that are scheduled or are being

planned, including trips for which students have already paid. For the reasons discussed above, the teachers are prohibited from accepting the free travel and other benefits from the tour companies.

AO at Sec. III. The Hawaii State Teachers Association (“HSTA”) filed a Petition for Declaratory Order Repealing the Memo and the AO or Alternatively for a Contested Case with the State EC on August 26, 2015 (“Petition”). The State EC issued an Order denying the Petition on December 2, 2015, because it was not the appropriate administrative procedure for the remedy sought.

HSTA filed a Notice of Appeal, Statement of the Case, Designation of Record on Appeal, Order for Certification and Transmission of Record with the Circuit Court on December 28, 2015.

Additional pleadings were filed with the court and on June 17, 2016, the court made its decision after hearing oral argument from the State EC and HSTA.

II. ISSUE AND SHORT ANSWER

The relevant issue is whether the State EC failed to comply with the provisions of Chapter 91, the Hawaii Administrative Procedures Act (“HAPA”), Hawaii Revised Statutes (“HRS”), by using the Memo and AO in lieu of adopting administrative rules.

Yes. The Memo and AO have “general applicability... [they embrace] a broader group than just those teachers who have plans scheduled but had broader application with respect to teachers who intend to take a trip.... Therefore it is subject to rulemaking.” Court Minutes List at Seq. 2 Oral Argument (Agency Appeal).

III. ANALYSIS

Because no order has been issued to date, I will summarize HSTA’s argument on the above-referenced issue and assume that the Court agreed with HSTA’s position when rendering its opinion after oral argument.

HSTA explains that the Hawaii State Constitution requires procedural protections of due process in administrative proceedings. Appellant’s Opening Brief (“Op. Brief”) at 11. HAPA was enacted to provide this due process via a uniform administrative procedure for all state and county boards, commissions, departments, or offices, which would encompass the procedure of rulemaking and the adjudication of contested cases. *Id.* Cases have held that an agency’s failure to comply with HAPA will invalidate the action taken. *Id.* at 12. A “rule” is defined as:

Each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency....

Id. citing *Aguiar v. HHA*, 55 Haw. 478, 482 (1974). Rulemaking under HAPA requires notice and opportunities for public participation, whereas issuance of AOs and Memos do not.

HSTA argues that the Memo and AO have “affected the rights of individuals and were intended to have prospective application.” Op. Brief at 10. The law specifically binds the State EC to the opinion as to that particular individual and fact pattern. *Id.* at 14.

The Memo and AO distinguish between “upcoming trips” and “travel already completed” and treat teachers disparately depending on an arbitrary cut-off date. *Id.* at 10.

Regarding *upcoming* trips (travel had not occurred by July 31, 2015), teachers are prohibited from accepting free travel and other benefits from the tour companies.” AO, Sec. III. **“Teachers who accept free travel and other benefits after July 31, 2015, that are prohibited under the State Ethics Code may be subject to action by the Commission.”** Memo, Sec. II (emphasis in original).

Regarding travel that has *already been completed* by July 31, 2015, the State EC will take no administrative action against teachers for accepting free travel and other benefits from tour companies. AO, Sec. IV.

IV. CONCLUSION

The prohibitions on acceptance of future travel and benefits by teachers who chaperone educational trips as stated in the Memo and AO are invalid. The State EC must adopt rules under HAPA implementing such prohibitions as such prohibitions affect matters of general applicability and future effect that implement, interpret, or prescribe State EC law or policy.

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**[City Council Reso No.
16-221]**



RESOLUTION

TO RETAIN THE SERVICES OF CHONG, NISHIMOTO, SIA, NAKAMURA & GOYA AS SPECIAL COUNSEL TO REPRESENT DEFENDANTS HONOLULU ETHICS COMMISSION AND THE CITY AND COUNTY OF HONOLULU IN A LEGAL ACTION ENTITLED KEALOHA, ET AL. V. TOTTO, ET AL., CV16-1-1166-6 GWBC.

WHEREAS, Plaintiffs Louis M. Kealoha, Katherine E. Kealoha, and Kristina Kealoha have named Charles W. Tutto, individually and as Executive Director and Legal Counsel of the Honolulu Ethics Commission; Letha A.S. Decaires, individually and as investigator for the Honolulu Ethics Commission; Honolulu Ethics Commission; and The City and County of Honolulu, as Defendants in a civil lawsuit entitled Kealoha, et al. v. Tutto, et al., CV16-1-1166-6 GWBC ("Lawsuit"); and

WHEREAS, pursuant to Section 5-203 of the Revised Charter of the City and County of Honolulu 1973 (2000 ed.), as amended ("RCH"), the Corporation Counsel "shall represent the city in all legal proceedings, except as otherwise provided in this charter. The corporation counsel shall perform all other services incident to the office as may be required by this charter or by law[;]" and

WHEREAS, the Department of Corporation Counsel has determined that it is disqualified from representing the Honolulu Ethics Commission and the City and County of Honolulu in the Lawsuit; and

WHEREAS, based upon the foregoing, it is necessary to retain special counsel to represent the Honolulu Ethics Commission and City and County of Honolulu in the Lawsuit; and

WHEREAS, pursuant to Section 5-204.3, RCH, "Where the corporation counsel has been disqualified, special counsel may be retained by any officer or employee in matters relating to the official powers and duties of such officer or employee....The council shall appropriate the necessary funds to pay reasonable fees for such legal services[;]" and

WHEREAS, the Department of the Corporation Counsel seeks to retain Chong, Nishimoto, Sia, Nakamura & Goya to represent the Honolulu Ethics Commission and the City and County of Honolulu in the Lawsuit; now, therefore,

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RESOLUTION

BE IT RESOLVED by the Council of the City and County of Honolulu that:

1 Pursuant to Sections 5-203 and 5-204.3, RCH, the City Council authorizes the retention of Chong, Nishimoto, Sia, Nakamura & Goya as Special Counsel to represent the Honolulu Ethics Commission and the City and County of Honolulu in the Lawsuit; and

2 The City and County of Honolulu shall pay the Special Counsel at the rate of \$200.00 - \$225.00 per hour for partners including Richard F. Nakamura, Esq., \$175.00 per hour for associates, and \$100.00 per hour for paralegals, for preparation, research, and representation in legal proceedings, with these rates to apply at least through the conclusion of any court proceedings, together with reasonable costs incurred in connection with the litigation and appellate proceedings, but not to exceed the total sum of One Hundred Thousand Dollars (\$100,000.00), provided that this total amount may be increased by the Council if it is satisfied with the justification made upon the recommendation of the Corporation Counsel for an increase in the stated maximum amount; and

3 The Special Counsel may be paid monthly for its services, provided that it submits to the Corporation Counsel an itemized monthly statement reflecting the specific services rendered, together with the total number of hours billed for the specific services at one-tenth of an hour, and such monthly statements shall be reviewed and approved by the Corporation Counsel before any payments are made by the City;

4 The Director of Budget and Fiscal Services is authorized to execute a contract with Chong, Nishimoto, Sia, Nakamura & Goya for the legal representation of the Honolulu Ethics Commission and the City and County of Honolulu and the in the Lawsuit and for the scope specified above; and

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RESOLUTION

BE IT FINALLY RESOLVED by the Council that the Clerk be and is hereby directed to transmit copies of this Resolution to the Department of the Corporation Counsel and the law firm of Chong, Nishimoto, Sia, Nakamura & Goya, 1003 Bishop Street, Pauahi Tower, Suite 2500, Honolulu, Hawaii 96813.

INTRODUCED BY:

[Signature] (or)

DATE OF INTRODUCTION:

AUG 24 2016
Honolulu, Hawaii

Councilmembers