

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR

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EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: December 20, 2017
Kapālama Hale
1st Floor Conference Room
and
371 Alae Road
Kula, Maui, Hawaii 96790

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair (*via video conferencing*)

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
Laurie Wong-Nowinski, Associate Legal Counsel
Janice Yonamine, Investigator
Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I

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

Absent: Peter S. Adler, Commissioner

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:39 a.m., stating that all Commissioners were present except for Commissioner Adler, and that Vice Chair Lilly was participating by video conference from Maui. Vice Chair Lilly announced that his wife was present.

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution

Chair Marks announced that Lisa Parker, Legal Clerk III, was leaving the Ethics Commission, effective December 29, 2017, and wished her well and thanked her for everything she had done for the Commission.

2. For Action: Approval of Open Session Minutes of November 15, 2017

Commissioner Monk made and Commissioner Amano seconded a motion to approve the open session minutes of November 15, 2017. The motion carried unanimously.

3. For Action: Approval of Executive Session Minutes of November 15, 2017

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 Kanda made and Commissioner Monk seconded a motion to approve the executive session minutes of November 15, 2017. The motion carried unanimously.

4. For Action: Nomination and Vote for Chair and Vice Chair, Calendar Year 2018

Commissioner Amano made and Commissioner Suemori seconded a motion to nominate and vote for Chair Marks and Vice Chair Lilly, for chair and vice chair, respectively, for calendar year 2018 of the Ethics Commission. The motion carried unanimously.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC reported that staffs' work reports were stable and that all file boxes had been sorted and delivered to the Department of Information Technology (DIT) for scanning and archiving. The EDLC thanked staff for their efforts and hard work in prepping the boxes.

Thank you letters were sent to the two (2) University of Hawaii (U.H.) law school interns. The EDLC also stated she would contact the U.H. law school for another intern to finish briefing the remaining opinions.

2. Statistics

a. Website Sessions, November 2017

The EDLC reported that there were 457 website sessions in November 2017.

3. Budget
 - a. FY2018 Operating Budget
 - b. FY2019 Operating Budget Request – Update

The EDLC reported she met with the Managing Director (MD) and the Director of Budget and Fiscal Services (BFS). The EDLC briefed the Commission on the EC's budget items and stated that the City's budget forecast for 2019 was good. The BFS director was concerned about the out-years, however, so the current thought was to tighten spending now. Fiscal prudence in all spending was encouraged.

This year's EC requests included funding for prior and future fiscal year salary adjustments for EDLC and ALC as determined by the Ethics Commission, one laptop to support staff in the EC meetings and field investigations, microphones for the conference room, intrastate and interstate travel, and an increase in membership and conference fees.

The EDLC reported that of these requests, MD and BFS supported salary increases as determined by the Ethics Commission for the prior fiscal year (FY2018), one out-of-state travel and related registration fees, and the cost of one laptop. Although the laptop cost had been reduced from \$2,009 to \$1,000, she was hopeful that the full request would be reinstated after clarifying that the request reflected one laptop at the City's equipment schedule rate.

The EDLC further reported that \$20,000 of funding for professional services had been cut, but that BFS may not have understood that those funds are used for outside hearings officers and prosecutors for conflict work. Corporation Counsel assisted with explaining the need for professional services funding. The EDLC was hopeful that it would be reinstated.

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

The EDLC explained that training was being deployed to more board and commission members and that it was going fairly well. Members are providing feedback.

Regarding all-city employee training, there were a few glitches that had been worked out with DIT. Fixes are on-going.

- b. Newsletter – The Compass: Navigating Ethics for the City and County of Honolulu (December 2017)
 - c. Gift Quick Reference Guide

The EDLC informed the Commission that a newsletter and gift guide had been distributed. The three-colored gift guide received a lot of positive feedback, indicating that it was easy to read and understand. In addition, the EDLC and the ALC recently met with Councilmember Ikaika Anderson, who also had positive comments on the gift guide.

7. Education Opportunities
 - a. Council on Government Ethics Laws (COGEL) Annual Conference, December 3-6, 2017, Sheraton Centre Toronto – Report

The EDLC reported that the COGEL conference was a little different from the SCCE conference. The COGEL conference included topics relating to government ethics, campaign spending, and open records. The conference was disappointing, however, because sessions focused largely on what an agency did last year, rather than training on best practices and strategic thinking. The SCCE conference was better in these areas.

The EDLC also commented that if the training budget is approved, at least one of the conferences could be attended next year. Both conferences have value and should be attended, even if one would have to be paid for out-of-pocket.

Chair Marks asked if the EDLC was able to get together with the Hawaii attendees and the EDLC responded in the affirmative, stating that most of the Hawaii attendees attended a dinner. She also spoke directly with Dan Gluck, Executive Director, State Ethics Commission about political action committees (“PACs”) and learned that State Ethics does not get involved and refers such questions to the Campaign Spending Commission. Executive Director Gluck told the EDLC that it would be best to contact the Campaign Spending Commission for more information.

The EDLC also discussed PACs with one of the conference presenters from Missouri, who had faced federal PAC issues. A lot of federal PAC moneys are being spent in the states. The EDLC reported that it was very difficult to have a PAC disclosure requirement when officials may not know who contributors are. In some cases, federal PACs fund other PACs and organizations—it can be difficult to tell where the money is coming from. In Missouri’s governor’s race, there was a lot of money coming in, but candidates did not know who contributed. The EDLC concluded that the Ethics Commission needs to be mindful of these examples because candidates and officials may not know the contributor.

b. Strategic Communication (Commissioner Kanda)

The EDLC will be in contact with Commissioner Kanda to plan the training session. Commissioner Kanda responded that the Ethics Commission should meet an hour before or after the Commission meeting, either in January or February 2018.

8. Integrity Hotline for City and County of Honolulu Employees – Update

The EDLC reported that the Integrity Hotline had already been in existence with the City, but was recently rebooted in Fall 2017. Three (3) agencies form the Integrity Hotline Committee: Internal Control Division (Budget and Fiscal Services), Equal Opportunity Office (Department of Human Resources), and the Ethics Commission (Corporation Counsel). There is a third-party service that employees can report misconduct 24/7 either by calling or going to the website. This service is only for City officers and employees and not for the public. New posters and pocket-cards are being printed.

The service uses a case management software database from Navex Global called “EthicsPoint.” This case management database and its analytic features may fit the Commission’s need. Currently, the caseload is managed with a spreadsheet.

At 11:59 a.m. Commissioner Monk made and Commissioner Amano seconded a motion to move from Open Session 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)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; 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; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

A. For Discussion: 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 Hawaii

The Commission discussed the litigation with their counsel.

B. Independent Ethics Investigator Retained Due to Conflict of Interest – None

C. For Discussion: Administration of the Ethics Commission Budget and Research on the Term *Administrative Purposes* in Revised Charter of Honolulu Section 11-107

Deferred to the January 17, 2017, Ethics Commission meeting.

D. For Decision: Whether There Is Probable Cause to Believe That a City Employee Violated Revised Charter of Honolulu Section 11-104

The Commission determined that there is probable cause that a city employee violated the Standards of Conduct.

E. For Action: Approval to Issue a Notice of Alleged Violation of Revised Charter of Honolulu Section 11-104

The Commission recommended the issuance of a Notice of Alleged Violations of the Standards of Conduct.

F. For Discussion: Memorandum Regarding Procedural Issues Relating to Reconsideration of Staff's Preliminary Determination of April 19, 2017 Ethics Commission Meeting Agenda Item III.A.: Whether Officer Knew or Should Have Known That Officer's Alleged Partisan Advocacy for Charter Amendment on the November 8, 2016, Ballot Violated RCH Section 11-104

Deferred to the January 17, 2018, Ethics Commission meeting pending additional research and information.

IV. For Discussion: Strategic Planning

A. Exposure Draft (dated November 15, 2017) – Update

The EDLC asked to defer discussion until next month. The EDLC was still amending the draft and developing a list of accomplishments for FY2017.

V. Adjournment

The EDLC informed the Commission of a new phone line for the Ethics Commission: 768-9242.

Chair Marks asked that a message be sent to all Commissioners and Attorney Richard Nakamura confirming the 2018 meeting dates.

At 1:46 p.m. Commissioner Monk moved and Commissioner Amano seconded to adjourn the Ethics Commission meeting. The motion carried unanimously.