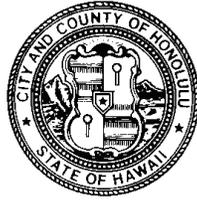


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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

MINUTES  
ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: February 13, 2013  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson  
Rachael S. Wong, Dr.PH, Vice Chairperson  
Stephen Silva, Commissioner  
Michael A. Lilly, Esq., Commissioner  
Katy Chen, Esq., Commissioner  
Stanford Yuen, Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Geoffrey Kam, Deputy Corporation Counsel (V.A through E.)  
Lyle Hosoda, Attorney for Respondent Tommy Perkins (V.B)

Absent: Jeffrey Burroughs, Ph.D., Commissioner  
Laurie A. Wong, Associate Legal Counsel (ALC)

Stenographer: Lisa Parker

I. CALL TO ORDER

The 465th meeting of the Ethics Commission ("Commission" or "EC") was called to order at 12:05 p.m. by Vice Chair Wong. Chair Gall entered the meeting at 12:10 p.m.

The discussion immediately began on whether to move into Executive Session, to discuss and decide Agenda Item V.B. Commissioner Yuen made a motion to move into the Executive Session, which was seconded. All were in favor.

**The open meeting resumed at 1:00 p.m.**

III. OLD BUSINESS (This item was taken out of order.)

- A. Request to Change the Date and Time for the Meeting on March 11, 2013 to Another Date During the Week of March 11

The meeting was rescheduled to Wednesday, March 13, 2013 at 12:00 noon.

- B. Setting the Date and Time for the Meeting During the Week of April 8, 2013

The meeting was set for Friday, April 19, 2013 at 11:30 a.m.

**Commissioner Lilly left the meeting at 1:09 pm.**

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE OCTOBER 1 AND 31, 2012, AND JANUARY 7, 2013 MEETINGS (This item was taken out of order.)

**Chair Gall asked if there were any questions, and if not, for a motion to approve the open session minutes of the October 1 and 31, 2012 and September 12, 2012 meetings. Chair Gall requested corrections to the roster, and that it be subject to confirmation by the EDLC.**

Vice Chair Wong referred to the Open Session Minutes of the January 7, 2013 meeting and requested track changes to pages 3 – 4, “Discussion: Recent cases, Follow-Up on Prior Cases”. The EDLC noted the requested revisions will be provided at the next meeting, scheduled for March 13, 2013.

**Commissioner Chen made a motion to approve the Open Session Minutes of the October 1 and 31, 2012 and September 12, 2012 meetings with the appropriate changes, and that the open session minutes of the January 7, 2013 meeting be revised and presented at the next meeting. Commissioner Silva seconded and all were in favor.**

The EDLC referred to his Memo dated February 6, 2013 for agenda items IV. A and B.

IV. NEW BUSINESS

- A. For Discussion: Administrative News

4. Report on mandatory ethics training for all City employees:

Our Train the Trainer program is in the process of recruiting trainers, per our “Mandatory Ethics Training for All City Employees” Memo, that was sent to all Directors for each City department on February 12, 2013.

Commissioner Chen asked if it is appropriate for the Commission to view the DVD, and the EDLC confirmed it is. Chair Gall asked if there would be any written materials in the training, and the EDLC confirmed that the trainers for each group will offer some additional information, as instructed by the Commission staff and refer questions from attendees to the EC staff. The employees will also be provided with EC contact information and the Ethics Checklist. At the end of the session, they will be tested on the basic concepts stated in the 12-minute DVD and the trainer's information, and sign their tests.

The EDLC informed the Commission that board or commission members will not be trained with the 12-minute DVD.

Chair Gall asked if the DVD video could be uploaded on the website. The EDLC confirmed it should be done and informed the Commission that we were having some problems with our website. Henry Wu, our Po'okela intern, is very knowledgeable with websites and that he is helping us work on the problems. Henry's internship with us will end in May.

5. Update on the Fiscal year 2013 and Fiscal Year 2014 budget issues:

The EDLC informed the Commission that the FY 2014 budget from the administration should enable us to hire an investigator and have funds for hearings officers, as well as transcription and outside investigative and audit services. Chair Gall asked if we would be hiring another attorney, and the EDLC responded that we will not be funded for that. Because the investigators we are using from the Equal Opportunity Office do not have enough time to handle our case work, we should first focus on hiring our own investigator. Chair Gall asked if it will be a full-time position and how much would it pay. Per the EDLC the position would be an Investigator II, with a salary of \$42K, plus benefits.

6. Budget request news release:

This item was moved to the executive session because it related to the job performance evaluation of the EDLC, which is a personnel matter.

7. Report on financial disclosure annual filings:

The Legal Clerk informed the Commission that there were approximately 14 Council staff, 47 administrative staff, and 102 board and commission members that have not filed their Financial Disclosures to date.

8. Report on lobbyist gift advisory:

The EDLC reported that the lobbyists who have registered for 2013 were mailed an advisory letter to help prevent unlawful gifts to city officers and employees, and the administration and councilmembers were copied.

- B. For Discussion: Position of Department of Corporation Counsel Regarding its representation of City Officers and Employees before the Ethics Commission

Deputy Corporation Counsel Kam had nothing to report for Item IV.B.

V. EXECUTIVE SESSION SUMMARY

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the October 1 and 31, 2012 and January 7, 2013 Meetings

Vice Chair Wong requested that the first page of the January 7, 2013 Minutes, include that Commissioner Chen was also absent that day. Commissioner Yuen mentioned that he was in attendance at the January 7, 2013 meeting, and to include him.

Commissioner Chen requested that the wording, "Since the requester was a nag," should be revised or re-worded. See January 7, 2013 Minutes, Page 5, last paragraph, fifth line.

The EDLC noted the foregoing requested revisions and stated that the changes will be provided at the next meeting, scheduled for March 13, 2013.

**Chair Gall asked for a motion to approve the October 1 and 31, 2012 Minutes, and that the January 7, 2013 Minutes be revised and presented at the next meeting. Commissioner Lily made a motion to that effect, Commissioner Chen seconded, and the motion was unanimously adopted.**

- B. For Action: In EC No. 12-186, Alleging Misuse of City Position by Former City Officer in Violation of RCH Sec. 11-104. Request for: (1) A Motion to Schedule a Contested Case Hearing, and (2) A Motion Determining Whether the Commission Will Hear the Matter or Designate a Permitted Interaction Group or Hearing Officer

The EDLC noted that the Commission could hear the contested case itself or select a permitted interaction group or a hearing officer as a designee. The EDLC stated that there are sufficient funds in FY2013 to hire a hearings officer based on a 1-day hearing.

**Vice Chair Wong moved for the Commission to discuss and decide on whether the EC will hear the matter or designate a permitted interaction group or hearing officer. Commissioner Yuen seconded the motion, and the Commission unanimously resolved to meet with its advisory counsel in this matter, Deputy Corporation Counsel Geoffrey Kam.**

**The EDLC and Attorney Lyle Hosoda left the room.**

Commissioner Lilly mentioned Dale Lee, and Chair Gall noted that Dale Lee worked at U.H. Law School, and that the EC had hired him before, but the case settled. It was noted that Chair Gall, Mr. Lee, and Mr. Hosoda all worked for the same law firm at one time, but that Messrs. Lee and Hosoda had left the firm over seven years ago. Chair Gall mentioned that the parties' attorneys have a right to object to a hearings officer. Deputy Corporation Counsel Kam added that the decision on whether Mr. Lee can be the hearing officer is also based on his availability.

**Chair Gall asked for a motion to hire a hearing officer, and that the EC's first choice is Dale Lee. Commissioner Chen made a motion to that effect, it was seconded by Commissioner Silva, and all were in favor.**

**The EDLC and Attorney Lyle Hosoda came back into the room at 12:20 pm.** Chair Gall informed them that the EC decided to hire a hearing officer, and that their first choice would be Mr. Lee. The hearing date will be scheduled in May, pursuant to the hearing officer's availability. Attorneys for the parties agreed to the selection of Mr. Lee.

The EDLC will contact Mr. Lee and check his availability for a hearing around May 6, 2013. The EDLC asked for a motion whereby (1) the scope of hearing will be based on the issues relevant to the Notice of Alleged Violation and Response thereto, and (2) the scope of authority will be as stated in Rules of Procedure, Rule 1-21 and HRS, §92-2.5 (b)(1).

**Vice Chair Wong made a motion as stated by the EDLC and to schedule the hearing. Commissioner Lilly seconded, and the motion was passed unanimously.**

- C. For Discussion: Request for Advice Regarding Use of City Resources or Private Funds for Purposes of Government Transition Between City Administrations
- D. For Discussion: Request for Advice Regarding Whether Use of Private Funds is a Gift for the Benefit of a City Officer

Items V.C and D were discussed together.

The EDLC informed the Commission that there were news reports regarding a non-profit social welfare entity under IRC Section 501(c)(4) that was formed to pay for certain expenses.

The EDLC informed the Commission that the ALC would be more knowledgeable, since she was doing the research.

**Chair Gall asked if there were any other discussions, and since there were no further discussions, he moved on to Item E.**

E. For Discussion: Annual Job Performance Review of the Executive Director and Legal Counsel

Chair Gall informed the Commission that their Annual Job Performance Reviews for the EDLC needed to be submitted by the end of the month. He also asked Vice Chair Wong to follow-up with the commission members for their input.

Chair Gall led a discussion of various personnel-related issues.

**Having no further executive session business to discuss, Commissioner Gall asked for a motion to exit executive session. Commissioner Silva made a motion to that affect. Commissioner Yuen seconded the Motion. The Motion was passed unanimously. Executive session adjourned.**

VI. ADJOURNMENT

**Having no further business to discuss, Vice Chair Wong moved to adjourn the meeting, Commissioner Silva seconded and the Motion was passed unanimously. Session adjourned at about 1:28 p.m.**