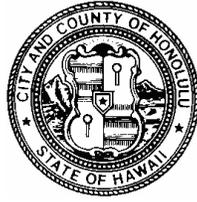


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR &
LEGAL COUNSEL

MINUTES
ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: June 19, 2013
Standard Financial Plaza
Conference Room, Suite 211

Present: Rachael S. Wong, Dr.PH, Vice Chairperson
Katy Chen, Esq., Commissioner
Jeffrey Burroughs, Ph.D., Commissioner
Stanford Yuen, P.E., Commissioner
Charles W. Totto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)

Absent: Charles W. Gall, Esq., Chairperson
Michael A. Lilly, Esq., Commissioner
Stephen Silva, Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 469th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at 11:48 a.m. by Vice Chair Wong.

The Commission had before it the memorandum regarding the Agenda Items for the June 19, 2013 Meeting, Open Session, dated June 12, 2013.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES
OF THE OPEN SESSION OF THE MAY 15, 2013 MEETING

Vice Chair Wong asked for a motion to approve the Minutes of the Open Session of the May 15, 2013 meeting. **[Vice Chair Wong mentioned “May 8 meeting”, however, the meeting took place on May 15. The confusion arose from a typo on Open Agenda Memo.]**

Vice Chair Wong informed the EC that she was not at the May 15 meeting and asked whether the Minutes could be adopted with just three Commissioners.

[Commissioner Chen arrived after the meeting began, and Chair Gall, Commissioner Lilly and Commissioner Silva were absent.]

The EDLC responded that any action by the Commission requires a minimum of 4 votes. However, if a member who was absent from the May 15 meeting reads and understands the Minutes, he/she may vote to adopt. He further advised that it was up to Vice Chair, but if she didn't feel comfortable voting, she could recuse herself since she was absent.

Vice Chair Wong recused herself and deferred the approval of the May 15, 2013 Minutes until the next meeting.

III. OLD BUSINESS

A. Confirming the Date and Time of the July 15, 2013 Meeting

The meeting was confirmed for **Monday, July 15, 2013 at Noon.**

B. Setting the Date and Time for the Meeting During the Week of August 12, 2013

The meeting was confirmed for **Monday, August 12, 2013 at 11:30 p.m.**

The Vice Chair asked the EDLC to run through the Administrative News.

IV. NEW BUSINESS

A. For Discussion: Administrative News

1. Complaints and requests for advice

The EDLC informed the Commission that it looks like the workload will have gone up about 12 or 13 percent this year over last year. Also, staff will probably reach about 3,000 employees and officers in one form of training or another by the end of this fiscal year.

4. Hiring the full time Staff Investigator

The EDLC also informed the Commission that he interviewed the best candidate for the staff investigator position, and had not made an offer yet, but was hopeful that she would accept the position, since she would be a great addition to the EC staff. He further stated that he will inform the Commission of her identify once she has accepted the position. Since this is a newly-created position, her start date cannot be confirmed, but was hopeful that it would be the end of July. He will keep the Commission posted.

The Vice Chair asked if this person would sit in the office or what would be the physical logistics. The EDLC responded that she would be physically in the office. Vice Chair Wong then asked if we had enough room, and the EDLC responded, “barely.” The EDLC further stated that if we buy a “state-of-the-art,” or at least an updated copier, as well as make room for another Po’okela intern, we would definitely have to make some “space changes,” and to also obtain another computer line hook-up for another computer in the office.

5. Status of hearing officer for a contested case:

The EDLC informed the EC that he requested that funds be released to pay for the hearings officer through a contract back in February. We do not have a hearings officer on contract yet, we do not have a hearing date yet, but we hope to get those as soon as possible.

6. Miscellaneous:

Vice Chair Wong asked if there was anything that the Commission could do to help. The EDLC responded that he didn’t think there was anything the Commission could do at this point, since this is just one of the many little bureaucratic bumps he had to go through, but appreciated the offer.

Commissioner Chen asked the EDLC if there was any chance of going into a larger office space. The EDLC responded that the office space issue will be addressed in the upcoming fiscal year 2015 planning, which will start in a couple of months. He also stated that he had submitted the office space issue, along with the need for additional employees to the administration for FY14 and will continue to advocate for increased resources in FY15.

The next critical position to add is either a part-time or full-time legal clerk, working under the Legal Clerk III, because she has not only the old responsibilities of the lobbying and financial disclosure form filings, we now have the all-employee ethics training as well as the supervisors’ ethics training. Keeping these programs organized and moving takes two people. Plus, she has all the other duties that she does for the ALC, the EDLC and the Commission. The next level of priority is another attorney or investigator.

There are still many issues the Commission has not had the chance to take on because of a lack of resources, like something as simple as auditing the financial disclosure statements. We don’t know whether the people are telling us the truth or not. To just do a random audit of 50 or 100 statements takes a lot of time, and may not be the best use of resources compared to other priorities. There are areas that we might want to take a much more proactive approach in investigations. With our own investigator, we should be able to be more creative in some of the investigative work we do, rather than just responding to complaints.

B. Informational: Office of Information Practices' Decision Regarding the Confidentiality of Commission Investigative Materials

The EDLC asked if anybody was interested in looking at the actual Opinion, we could send them a copy. It's a little dense, unless you're a lawyer. It is a culmination of several years work by staff and details how our work is protected from disclosure and under what circumstances. The opinion maintains the integrity of the Commission process and confidentiality regarding the people we deal with.

Vice Chair Wong asked if this was the first time that it came up. The EDLC responded that it's the first time that someone who wanted our investigative records took the issue to OIP.

Vice Chair Wong stated that the opinion shows that the public and OIP recognize that the Commission is an integral part of government.

C. For Discussion: Review of Staff's Proposed Ethics Commission Operating Plan for Fiscal Year 2014 through Fiscal Year 2016

The EDLC informed the Commission that he would be happy to go through the matter with them or just to leave it up to the Commission to discuss topics they are interested in.

In the past, it has always been a flexible plan. These are things we would like to do, if we have the resources and the opportunity to follow through.

The EDLC made a change on Page 5, Action Item #6, a. and b., "c" was included: "*c. Try to determine probable cause within 6 months of complaint filing.*" **[The EDLC handed-out copies of the revised Page 5.]**

The EDLC further stated that goals in the Summary for completing advice and complaints are coming closer to completion. We do have cases, for instance, where probable cause is decided within six months. Since Laurie's come on board, we rapidly reduced the number of complaint cases that are two or three years old.

The EDLC said that managing resources is a balance between funding and priorities. To the degree we get more resources, we can do more, and to the degree we don't, we have to just prioritize. The EDLC will be pushing ahead with our resource plan for FY15. He mentioned that we have a good relationship with the Budget & Fiscal people and also with the Managing Director's office. Despite the beginnings with Ember Shin, we have worked with her on other things without a glitch. Vice Chair Wong commented that it was good.

Vice Chair Wong stated that she liked the idea about ethics officers in each department. She asked if the action items were based on best practices from other agencies. The EDLC

responded that the best practices are based on best practices in jurisdictions, private corporation that develop compliance programs as a result of the federal sentencing guidelines against corporate fraud and our own ideas for successful ethics program management. Vice Chair Wong commented that she wondered whether it might strengthen the action items and positions in the Plan if the source were noted. The EDLC will try to do that.

Commissioner Chen asked how the action items are selected for implementation. The EDLC said he tends to be “ruthlessly opportunistic.” Some items, such as legislation, take significant time, resources and allies to accomplish. Some of these can just grow on its own, such as the use of departmental ethics officers. If one would like to be called an Ethics Officer, that’s great, and if not but they are going to take on the duties, that’s fine too. “Opportunism” comes into play when someone offers a good ethics policy idea. Bill 32 (to apply the ethical standards of conduct to the bus transit provider) is a good example. We received three complaints alleging serious misconduct at the same time that Councilmember Manahan was interested in proposing legislation to have the ethics laws apply to the bus service provider.

Commissioner Burroughs stated that it would be helpful if the action items were prioritized. The EDLC stated he would try to do that.

Vice Chair Wong suggested a “dashboard presentation,” since it’s easy for folks to see. Vice Chair Wong explained that a dashboard presentation is like a dashboard on your car where you get to see everything at one time, so maybe you can prioritize them and show which ones are in progress, which ones are completed in green, which ones have been stopped or whatever. One can see the progress on maybe quarter by quarter. This could also be used as executive summary. The EDLC agreed.

Commissioner Burroughs and Vice Chair Wong agreed. Commissioner Yuen also suggested that you could explain that the Plan is flexible. The EDLC will see what he can come up with for the next meeting, and if the Commission has any ideas regarding other areas, to send him an email.

Vice Chair Wong asked for a motion to move into executive session. Commissioner Burroughs so moved, Commissioner Chen seconded and all were in favor.

V. SUMMARY OF EXECUTIVE SESSION MINUTES

- A. For Action: Request for a Motion to Approve the Minutes of the Executive Session of the May 15, 2013 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The approval of the minutes was deferred until the next meeting.

- B. For Action: Request for a Motion to Adopt Commission Staff’s Proposed Position Regarding Bill 32 (2013) to Apply the Ethics Laws to the Management Services Contractor for Bus Transportation. (HRS Secs. 92-5(a)(4))

The Commission voted to support the intent of the bill and recommend clarifying ROH Sec. 18.3 to require that the bus transit provider's officers and employees be covered by the city ethics laws.

- C. For Action: Request for a Motion to Find Probable Cause that a City Officer Failed to File a Conflict of Interest Disclosure in Violation of RCH Sec. 11-103. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The Commission found probable cause of a violation and instructed staff to transmit a Notice of Alleged Violation to the Respondent.

VI. ADJOURNMENT