

ETHICS COMMISSION  
**CITY AND COUNTY OF HONOLULU**

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**Advisory Opinion No. 2014-5**

**I. SUMMARY**

The Honolulu Ethics Commission found that a City supervisor misused a City cellular phone for personal use. The larger underlying issue is that this case arose out of allegations of nepotism and preferential treatment that could have been mitigated if the Department had implemented the Commission's instructions from a prior investigation of the same situation. The Commission reminds all City agencies that they should avoid having one spouse directly supervise the other.

**II. FACTUAL BACKGROUND**

On or about February 21, 2014, Ethics Commission staff received a complaint that Patrick Chau, Supervisor, Data Section, Information Technology ("IT") Division, Honolulu Police Department ("HPD"), gives preferential treatment to his subordinate and wife, Waleerat "Kob" Thaisomboon. Specifically the complaint alleged that: (1) she is given more overtime ("OT") than anyone else in the section; (2) she is never held accountable for missing section meetings; and (3) she is the only one in the section that has been issued a departmental cellular phone and Mr. Chau allows her to use it for her own personal use.

Ms. Thaisomboon is a data processing systems analyst and Computer Aided Dispatch ("CAD") Administrator, Applications Section, Information Technology Division, Honolulu Police Department ("HPD"). Mr. Chau has worked for HPD since 1990. Mr. Chau and Ms. Thaisomboon were married in 1992. At that time, she was a contract hire with HPD for the IT Division and was not under Mr. Chau's supervision. Since 2000, she was promoted as CAD administrator and has worked as a supervisor in the IT Division, HPD. Her job duties include, but are not limited to: receiving trouble calls related to the CAD system.

Mr. Chau has been Ms. Thaisomboon's direct supervisor since 2000. Mr. Chau is the highest ranking civilian supervisor in the IT Division.

**A. PRIOR ETHICS COMMISSION INVESTIGATION**

An earlier investigation into similar allegations of preferential treatment by Mr. Chau in giving Ms. Thaisomboon excess OT (EC No. 05-125) resulted in insufficient evidence for any ethics violations based on preferential treatment. At that time, the organizational make-up of HPD's IT Division required Mr. Chau to supervise Ms. Thaisomboon because there was no other

supervisor in that division. The Ethics Commission staff made a written recommendation to HPD administration to implement additional monitoring to prevent actual and perceived preferential treatment. HPD administration at that time only verbally informed the Major of the IT Division to monitor workloads and ensure workloads were equitable.

The current IT Division Major was unaware of staff's prior monitoring recommendations between Mr. Chau and Ms. Thaisomboon. As such, he had not taken any preventative measures.

## **B. OVERTIME**

Staff received confirmation that, for calendar year 2013, Ms. Thaisomboon received more OT by 87 hours than any other supervisor at her level in the IT Division. However, staff also received information from several witnesses that there had been a problem with the IT staff not wanting to return "on call" requests for help after hours, which would have allowed the other staff members OT.

## **C. MISSING MEETINGS**

Approximately eight witnesses all confirmed that Ms. Thaisomboon did not regularly attend mandatory weekly staff meetings, and did not appear to face any consequences for her absences. Ms. Thaisomboon admitted that she did not attend the weekly meetings, although she should and agreed that she would start attending meetings in the future. Because there were no meeting minutes or attendance sheets, we have been unable to verify the number of meetings in which Ms. Thaisomboon was absent.

## **D. HPD CELLULAR PHONE ISSUANCE AND PERSONAL USE**

On or about 2007, Ms. Thaisomboon was authorized to use and was issued an HPD cellular phone (HPD phone) to answer CAD service calls. Since that time, Mr. Chau reissued and replaced the HPD phone for Ms. Thaisomboon to continue using it to respond to CAD service calls.

Staff verified that Ms. Thaisomboon is the only IT Division employee other than Mr. Chau to be issued an HPD cellular phone. Staff obtained AT&T invoices from December 10, 2012-February 9, 2014 for the HPD Phone. Ms. Thaisomboon admitted that she does use the HPD Phone for her personal use and was cooperative in identifying calls forwarded to this HPD Phone that were personal. She stated that it was her understanding that the city phone had a "block" account payment so that it would not create an additional cost to the city if she used it for her own personal use. Ms. Thaisomboon was willing to reimburse the cost of the personal use of the HPD Phone which was \$97.40 for the time that was analyzed.

HPD's policy on HPD issued cellular phones requires that the phones only be used for authorized police purposes. HPD Policy No. 2.41 Sec. 4.A. ("Policy"). Ms. Thaisomboon was held accountable to this Policy and was aware of this Policy at all relevant times.

Further, the HPD Policy states that employees shall reimburse the department for all unauthorized calls made and received on department-issued mobile telephones. Reimbursement shall be made in accordance with the current rates listed in the city telephone contract or price schedule.

### **E. HPD IT DIVISION REORGANIZATION**

EC Staff learned that the IT Division was now undergoing a reorganization and civilianizing the work force. Under the reorganization it was possible that Ms. Thaisomboon could be moved so that she would no longer be under Mr. Chau's supervision. Mr. Chau and HPD Administration were amenable to moving Ms. Thaisomboon from Mr. Chau's direct supervision.

### **III. PROCEDURAL HISTORY**

In light of the current IT Division reorganization, weight of the evidence, and the potential impact on public safety, Commission staff determined that it would not be in the best interest of the public to pursue allegations of preferential treatment.

As such, on May 30, 2014, staff brought this case before the Ethics Commission to determine if there was sufficient evidence to show probable cause only for the misuse of the HPD Phone. The EC unanimously found that there was probable cause of an ethics violation under Revised Charter of Honolulu ("RCH") Sec. 11-104. The Notice of Alleged Violation (Notice) was served on Ms. Thaisomboon.

On June 12, 2014, Complainant reissued an amended Notice to clarify certain facts. After good faith negotiation, the parties came to an agreement that Ms. Thaisomboon reimburse the city the amount of \$97.90 for the cost of her personal phone calls on the HPD Phone in exchange for Complainant's recommendation of dismissal of the case and a formal advisory opinion issued by the EC.

On June 26, 2014, Ms. Thaisomboon and staff in their capacity as Complainant in this matter appeared before the EC requesting approval of the settlement agreement. The EC unanimously approved the Settlement Agreement.

### **IV. ANALYSIS AND DISCUSSION**

Ms. Thaisomboon admitted to violating the Revised Charter of Honolulu ("RCH") Sec. 11-104 for using the HPD Phone for personal use. The Commission recognizes that there is a "reasonable personal use" exception to the general prohibition against using city resources for non-city purposes. The reasonable personal use exception allows personnel to use a city resource for personal convenience that is: "(1) for a brief time; (2) does not interfere with the productivity of the employee; (3) does not create an additional cost to the city; and (4) is not for business financial or commercial purposes." Guidelines on the Use of City Resources (Oct. 9, 2007) ("Guidelines").

Ms. Thaisomboon's use of the HPD Phone for personal use does not fall within the "reasonable personal use exception" because there was an additional cost to the city of approximately \$100.

While Ms. Thaisomboon clearly violated Revised Charter of Honolulu Section 11-104 when she misused the HPD Phone for personal calls, the more troubling issue that the Commission wanted to highlight in this opinion is the perception of preferential treatment when one spouse directly supervises the other. The Commission also wants to take this opportunity to provide recommendations to assist city officers and employees in eliminating this type of situation city-wide.

Interviews with witnesses in this case generally resulted in the same sentiment: that having a husband supervise his wife was "inappropriate", "unhealthy", and created a "fear of retaliation" for others to bring issues about Ms. Thaisomboon to Mr. Chau. In addition to the complainant, many witnesses also perceived that Mr. Chau gave his wife preferential treatment including: more resources and support than any other supervisor, more flexible hours, more opportunities for OT, leniency in regard to dress code, leniency in not attending staff meetings, issuance of an HPD cellular phone, leniency in using the HPD Phone for personal calls, bolstered support of project evaluations and work performance, and her subordinates receiving opportunities for internal promotions not available to others.

This case has shown that situations where spouses, or those with close personal relationships, who supervise each other create havoc on the morale and efficiency of the Division. There is no doubt that there was *perceived* preferential treatment in this case, which can be just as damaging as actual preferential treatment. In addition, avoidance of this type of situation can protect spouses from being unfair targets of misplaced allegations of preferential treatment. The Ethics Commission has consistently recommended that this type of supervisor/subordinate situation be avoided for these very reasons.

RCH Section 11-104 prohibits a city officer or employee from using his or her official position to secure or grant special treatment or consideration beyond that which is available to all persons. This law is intended to prevent favoritism by government personnel when they make decisions. Nepotism is a subset of favoritism; it is favoritism towards relatives.<sup>1</sup>

Nepotism erodes public trust in government institutions, their integrity and operations. It creates reasonable concerns that the decisions of government are not based on merit and objectivity, but on family relations. *See, e.g., State Ethics Commission v. Antonetti*, 365 Md. 428, 448-452, 780 A.2d 1166-1169 (Md. 2000) (administrator misused his office in violation of fair and equal treatment policy, conflict of interest standards and anti-nepotism law by hiring his wife and son as temporary employees in his agency) and *In the Matter of Kane*, 50 N.Y.2d 362-363, 428 N.Y.S.2d 941, 942-943 (N.Y. 1980) (judge who appointed son as referee

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<sup>1</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1518 (3rd ed. unabridged 1993). BLACK'S LAW DICTIONARY (6<sup>th</sup> ed. 1990) at 1039 defines nepotism as the bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship rather than merit.

and appointed son's law partner to lucrative receiverships violated judicial canon prohibiting nepotism). The adage "blood is thicker than water" applies in the government context. It expresses why a decision by a public officer is suspect when it affects the financial interests of the officer's family member.

Furthermore, nepotism often creates management problems in job assignments and promotions, reduced work productivity and the administration of discipline. *Sioux City Police Officers' Association v. City of Sioux City*, 495 N.W.2d 687, 691 (Ia. 1993). Anti-nepotism laws are aimed at avoiding preferential treatment and inefficiency in public office by preventing public officials from favoring their relatives. *Id.* RCH Section 6-1112.6 sets out the city's anti-nepotism law.<sup>2</sup>

Honolulu Ethics Commission Advisory Opinion No. 2005-2.

## V. CONCLUSION AND RECOMMENDATIONS

In light of the foregoing, the Commission determines that:

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<sup>2</sup> Section 6-1112. Prohibitions --

6. Restrictions on Appointment and Promotion of Relatives.

(a) No public officer shall advocate one of his or her relatives for appointment or promotion to a position in the same agency or in an agency over which he or she exercises jurisdiction or control.

(b) No public officer shall appoint or promote within the agency to which he or she has been assigned or within an agency over which such officer exercises jurisdiction or control:

(1) one of his or her relatives; or

(2) one of the relatives of either a second public officer of his or her agency or a second public officer who exercises jurisdiction over his or her agency, if the second public officer has advocated the appointment or promotion of that officer's relative.

(c) This subsection shall not prohibit a public officer from appointing or promoting a relative to a position if the relative is on the applicable eligible list submitted by the director of human resources in accordance with the civil service charter provisions, laws, and rules.

(d) As used in this paragraph:

(1) A public officer is deemed to "advocate the appointment or promotion of a relative" if the public officer recommends or refers the officer's relative for appointment or promotion by another officer standing lower in the chain of command. "Chain of command" means the line of supervisory personnel that runs through the involved public officers to the head of the relevant agency.

(2) "Agency" means the same as defined under Section 13-101 of this charter, the council, and any council office.

(3) "Appointment" means the selection of a person to fill a position or the hiring of a person to provide a personal service.

(4) "Public officer" means an employee or officer as defined under Section 13-101 of this charter.

(5) "Relative" of a public officer means a person who is related to the officer as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

- This opinion shall be published without identifying the subject of the complaint or his/her division and department as required under Hawaii Revised Statutes Sec. 92F-13(1) and Office of Information Practices Op. Ltr. Nos. 10-3 and 96-2<sup>3</sup>;
- The EC staff shall work with HPD, as it reorganizes the IT Division and adds other supervisors, to create and implement a written plan that would allow Ms. Thaisomboon to be in a different section thereby eliminating spousal supervision;
- The IT Division should develop and implement a policy for even distribution of OT among the IT Division staff and supervisors;
- An independent review of OT for IT Division staff and supervisors should be implemented on a semi-annual basis; and
- Each IT Division employee participates and successfully completes ethics training that covers the City ethics laws by June 30, 2014.

APPROVED AS TO FORM  
AND LEGALITY:

/S/  
CHARLES W. TOTTO  
Executive Director and Legal Counsel

/S/  
KATY CHEN, Vice Chair  
Honolulu Ethics Commission

Dated: Honolulu, Hawaii, June 26, 2014

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<sup>3</sup> “OIP finds that, in most cases, the identities of the Subjects would fall within the scope of the UIPA’s exception to required disclosure that is based upon ‘a clearly unwarranted invasion of personal privacy.’ HRS Sec. 92F-13(1) (1993). Thus, the UIPA would generally make these person’s identities confidential.”