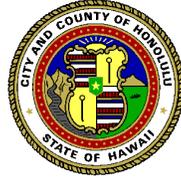


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817
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

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

Date and Place: April 19, 2017
 Kapālama Hale
 1st Floor Conference Room

Present: Hon. Victoria Marks (ret.), Chair
 Michael Lilly, Esq., Vice Chair

 Peter S. Adler, Commissioner
 Hon. Riki Amano (ret.), Commissioner
 Stephen Silva, Commissioner (holdover, term exp. 12-31-16)
 Hon. Allene Suemori (ret.), Commissioner
 Stanford Yuen, P.E., Commissioner (holdover, term exp. 12-31-16)

 Jan K. Yamane, Executive Director and Legal Counsel
 Laurie A. Wong-Nowinski, Associate Legal Counsel
 Janice Yonamine, Investigator
 Lisa P. Parker, Legal Clerk III
 Kristine Bigornia, Legal Clerk I
 Joseph Pagkalinawan, Po‘okela Intern
 Moana Yost, Deputy Corporation Counsel,
 Department of the Corporation Counsel (“COR”)

 Richard Nakamura, Legal Counsel as to Item III.B.
 Dr. Kioni Dudley, Member of the Public
 Robert (Bobby) Lee, Hawaii Fire Fighters Association (“HFFA”)
 William Thornock, HFFA
 Christopher Powell, HFFA
 Jayna Omaye, Reporter, Star Advertiser

MINUTES OF THE APRIL 19, 2017 OPEN SESSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:30 a.m. and announced that they met quorum, with Commissioners Amano, Adler, Silva, Yuen, and Lilly present.

A. Chair's Report

1. Announcements, Introductions, and Correspondence – Presentation of Award of Recognition to Commissioner Stanford Yuen

Chair Marks announced that it was Commissioner Yuen's last Commission meeting and thanked him for his service. She presented him with an award of recognition, signed by the Mayor. Commissioner Yuen thanked the Commission and staff for their work over the past four (4) years.

Chair Marks announced that Mr. David Monk had recently been appointed to the Commission to succeed Commissioner Yuen. She further stated that Ms. Lynette Lo Kanda had been nominated as a new Commission member who would succeed Commissioner Silva, currently a holdover member.

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

Chair Marks requested a motion to approve the Open Session Minutes of the March 15, 2017 meeting. It was moved by Commissioner Yuen, seconded by Commissioner Silva, and unanimously carried to approve the Open Session Minutes of the March 15, 2017 meeting.

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

Chair Marks requested a motion to approve the Executive Session Minutes of the March 15, 2017 meeting. It was moved by Vice Chair Lilly, seconded by Commissioner Adler, and unanimously carried to approve the Executive Session Minutes of the March 15, 2017 meeting.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC informed the Commission that she receives staffs' detailed work reports each month, and that the power point slides contain highlights only. Ms. Parker was continuing her normal duties and also updating guidance materials for the Chair's review and signature. Ms. Parker is also tasked with scheduling the first floor conference room, which would be shared by all Kapālama Hale tenants.

The EDLC continued that Ms. Bigornia was assisting her with graphing statistics that the Commission had reviewed over the last few months. Ms. Bigornia was also working

closely with the EC's Po'okela Fellow, Joseph Pagkalinawan, to update and redesign the EC website and upload a new complaint intake form and lobbyist materials. Also, Mr. Pagkalinawan assisted Ms. Bigornia with processing Lobbyist Registrations, Lobbyist Annual Reports, and Financial Disclosure filings. They will debrief on these processes in an upcoming staff meeting.

The EDLC reported that Jack McDonald, MPA Intern, completed his practicum work and would be attending the upcoming Strategic Planning meeting.

The EDLC reported that Investigator Yonamine continued to manage her case load and draft processes for complaint intake. The EDLC referenced a pie chart slide, which showed that Ms. Yonamine spent her time doing administrative and investigative work.

The EDLC reported that the ALC was still carrying a lot of the case load and continuing to work with DIT to develop the ethics training application, with support from Ms. Bigornia. The ALC was also developing case management processes and handling on-going administrative responsibilities. The EDLC referred to the ALC's pie chart, which depicted an ongoing large proportion of administrative work. The EDLC informed the Commission that another administrative position is needed to alleviate the administrative load from the ALC.

Commissioner Adler asked if the ALC's administrative load was caused by ongoing work or one-time work to fix the processes. The ALC responded that it was both. Commissioner Amano requested that the ALC breakdown the administrative work into smaller more descriptive sections in the pie chart going as far back as possible. The EDLC stated that her own administrative workload consisted of many things, including ongoing litigation.

Chair Marks encouraged the EDLC to find another MPA intern and to also talk with the UH Law School to obtain a law student intern. The law students have a 60-hour community service requirement and externships for graduation.

The EDLC responded that she had made initial outreaches to the law school and explained the difficulties of having an intern with no prior work experience to assist with administrative rulemaking. Chair Marks responded that some law students have been in the work force before going to law school.

Chair Marks informed the EDLC that her contact at the law school was Ronnie Kawakami; she also suggested that the EDLC contact Dale Lee.

2. Statistics – Complaints, Requests for Advice (FY2015–FY2017, Quarter 2)

The EDLC informed the Commission that statistics showed complaints for two (2) fiscal years, plus the first part of the current fiscal year. Data for the next quarter would be reported at the end of May. The EDLC showed the EC another slide depicting statistics that didn't show any trends. Unfortunately statistics for prior years were not kept consistently and therefore could not be used for comparison.

Commissioner Suemori entered the meeting at 11:45 a.m.

The EDLC reported that there were 67 open cases. Staff has had ongoing discussions about what should be considered an open case. As such, the number may fluctuate in the future.

3. Budget

- a. FY2017 Operating Budget – None
- b. FY2018 Operating Budget Request – Bill 25, CD1 (2017) Update

The EDLC reported that there was a special budget meeting held on April 11, 2017 and that there were no adjustments made to the EC budget.

4. Ethics Training Program

The EDLC reported that the Department of Information Technology (“DIT”) is still developing its ethics training program. In the meantime, Ethics Commission staff is using existing Mindflash licenses to train the Legislative Branch. Councilmember training would proceed after the budget cycle is completed in June 2016. Also, a new version of Board and Commission training had been sent to the Liquor Commission (2 of 4 completed) and the Ethics Commission (5 of 7 completed). Staff received positive feedback via surveys.

The EDLC further reported that one (1) Mindflash seat was still being held for HART Interim Director Murthy, and that he may come to this conference room to do an entire day of training with the City’s Equal Opportunity Office (EOO) and EC staff.

- 5. 2016 General Election Charter Amendment Question No. 2 – Bill to Conform ROH Section 3-6.4 With Question No. 2

The EDLC reported that a Bill had been drafted to conform the ordinance to the Charter Amendment and has been sent to COR for review.

- 6. Audit – None
- 7. Legislation – None

[NOTE: Agenda Items taken out of order due to guests present.]

At 11:50 a.m. Chair Marks requested a motion to move into executive session. It was moved by Vice Chair Lilly, and seconded by Commissioner Silva, and unanimously carried to approve the motion to move into executive session.

III. Executive Session

- A. For Discussion and Action: Request for Review of Legal Counsel’s Preliminary Determination of Ethics Complaint: 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 (HRS Sections 92-5(a)(4) and (a)(8))

Robert Lee provided testimony in regard to this matter. Thereafter, all guests were excused and the Commission conferred with its attorneys.

RETURNED TO OEN SESSION AT 12:36 P.M.

Chair Marks stated that the Commission reconsidered staff's opinion and that a letter would be sent to the parties.

RETURNED TO EXEC SESSION AT 12:39 P.M.

- B. 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 Hawai'i (HRS Section 92-5(a)(4))

The Commission conferred with its attorney, Richard Nakamura.

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

RETURNED TO OPEN SESSION AT 12:52 P.M.

[NOTE: Commission returned to ordered agenda items.]

- C. For Discussion: Rule-Making – When Receipt of Campaign Funds by an Elected Official or Expenditure of Campaign Funds by a Super Political Action Committee That Benefits an Elected Official Constitutes the Possession or Acquisition of Such an Interest by an Elected Official as Might Reasonably Tend to Create a Conflict With the Public Interest, Such Official Shall Make Full Disclosure in Writing to the Council

Dr. Dudley stated that the rule-making is a good first step towards councilmember accountability to the public by actively disclosing the names of the contributors and how much money was contributed to their campaign.

Dr. Dudley requested that the provision at the end of the rule should be changed to “...full disclosure in writing to the council and ethics commission.”

Dr. Dudley also requested to include, reporting to the ethics commission, as well as the council prior to voting on any issue in which there is a conflict of interest.

Vice Chair Lilly moved that the proposed rule be amended to state, “that such official shall make a full disclosure in writing to such person's appointing authority or to the council, if

it's a case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent."

Commissioner Silva requested that the disclosure should also be published in the news and media, to prevent the elected official from voting. Vice Chair Lilly responded that the rule can only implement the law, and the law does not require publication.

Commissioner Adler asked for clarification of the word, "benefit." Vice Chair Lilly responded that they could get clarification from constituents during the rule making process. Chair Marks commented that they could just delete the phrase, "that benefits an elected officer" or in the alternative state, "if you receive these funds, it constitutes possession or acquisition of an interest." Commissioners Amano and Adler agreed.

Vice Chair Lilly amended his motion to delete the words, "that benefits an elected official," and added, "such official shall make full disclosure in writing to such person's appointing authority or to the Council, and in the case of a member of the Council, and to the Ethics Commission, at any time such conflict becomes apparent." Chair Marks asked that the language of the rule track Section 11-103, and Vice Chair Lilly agreed.

Chair Marks clarified that the Commission is only revising a proposed rule for future public comment; the Commission is not actually making a rule now. Vice Chair Lilly moved that EC counsel draft the proposed amended language of the rule. Chair Marks responded that they can ask for draft language but she was not certain if a motion was needed at that point.

The EDLC stated that the formal rulemaking process hasn't even started yet. She explained that it's a long and separate process under HRS Chapter 91. The proposed rule needs to be published on the website for 30 days, then it needs to go to public hearing. There will also be a whole chapter or two with many subchapters, including both substantive and procedural rules. The EDLC confirmed that a motion is not necessary.

Commissioner Silva asked about the timeframe to establish the rules, and the EDLC responded that it could take as long as one or two years.

Chair Marks stated that there would also be a lot of rule-making on gift issues. The EDLC stated that typically an entire chapter of proposed rules would be reviewed instead of only one section. The EDLC further stated that the EC already has rules of procedure, but if they wanted to amend those too with a compendium of matching and aligning rules, it would be best to do all at one time.

Chair Marks recalled that an advisory opinion does not have the force and effect of law, so rule-making would also be a compilation of all the precedent from the Commission's published advisory opinions. Vice Chair Lilly stated that the Commission would need more staff.

The Commissioners thanked Dr. Dudley for his testimony and bringing these issues to their attention.

[NOTE: Agenda Items D and E were discussed together.]

At 1:13 p.m. Chair Marks requested a motion to move into executive session. It was moved by Vice Chair Lilly, and seconded by Commissioner Adler, and unanimously carried to approve the motion to move into executive session.

D. For Discussion: Procedures for Evaluating the Work Performance and Setting the Salary of the Executive Director and Legal Counsel Pursuant to RCH Section 11-107, as amended by 2016 General Election Charter Amendment Question No. 2

E. For Discussion: Procedures for Setting the Salary of the Associate Legal Counsel Pursuant to RCH Section 11-107, as amended by 2016 General Election Charter Amendment Question No. 2

The Commission discussed the above agenda Items D. and E., regarding the salaries of the EDLC and ALC.

IV. For Discussion: Strategic Planning – Permitted Interaction Group Report of April 10, 2017 Meeting

Commissioner Adler reported that the Permitted Interaction Group (“PIG”), consisting of himself, Chair Marks, Commissioner Amano, the EDLC and ALC, met earlier this month. The PIG would also be meeting once more in April and another time in May. Commissioner Adler further reported that the PIG was working on where the Commission would like to be by 2025 and how would they get there. They are creating a dashboard with leading and trailing indicators and also a “SWOC” analysis discussing the Commission’s strengths, weaknesses, opportunities and challenges. They also hypothesized on economic, political, and other assumptions over the next eight (8) years. There will be a section of some high-level objectives and action items. The format of the Strategic Plan is still in flux. The MPA intern will attend the next meeting. Commissioner Adler was looking forward to eventually incorporating public comments into the Strategic Plan during open discussions.

Vice Chair Lilly commented that he appreciated Commissioner Adler’s effort.

Chair Marks commented that the Strategic Planning session focused on strengths, weaknesses and challenges of the Commission. She also thought it was very instructive.

Commissioner Amano commented that the Commission would have to take small steps while discussing ideas for upcoming things like training that could be implemented without too much stress on the staff and the Commission.

The EDLC commented that she was very appreciative of Commissioner Adler’s facilitation of the sessions.

V. Adjournment

The meeting concluded at 1:32 p.m.