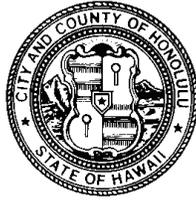


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
LEGAL COUNSEL

ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: January 21, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Michael A. Lilly, Esq., Vice Chair  
Stephen Silva, Commissioner  
Stanford Yuen, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Letha A.S. DeCaires, Investigator  
Geoffrey Kam, Deputy Corporation Counsel, Department of the  
Corporation Counsel (COR)  
Catherine Maki, Administrative Service Officer, Department of the  
Corporation Counsel (COR)  
Noel T. Ono, Assistant Director (DHR)  
Lila T. Tom, Division Chief, Classification & Pay (DHR)  
Gwynne Inamasu, Recruitment Section Head, Employment &  
Personnel Services (DHR)  
Jennifer Tobin, Branch Chief, Benefits, Research & Transaction  
Branch (DHR)  
George Hurd, Hawaii News Now  
Rick Daysog, Hawaii News Now

Stenographer: Lisa P. Parker, Legal Clerk III  
Kristine I. Bigornia, Legal Clerk I

**I. CALL TO ORDER**

The 485th meeting of the Ethics Commission (“Commission” or “EC”) was called to order at approximately 11:40 a.m. by Chair Chen.

The Commission had before it the EDLC's Memorandum regarding the Agenda Items for the January 21, 2015 Meeting, Open Session, dated January 16, 2015.

## **II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSION OF THE NOVEMBER 21, 2014 MEETING**

**Commissioner Lilly moved that the Minutes be accepted. Commissioner Silva seconded the motion. The Commissioners voted unanimously to approve the Minutes.**

## **III. OLD BUSINESS**

The Commissioners agreed that the next meeting date would occur on Wednesday, February 18, 2015. The Commissioners further confirmed tentative meeting dates for the following: Wednesday, March 18, 2015; Wednesday April 22, 2015; and Wednesday, May 20, 2015; all at 11:30 a.m.

## **IV. NEW BUSINESS**

### A. For Discussion: Administrative News.

1. Complaints and requests for advice statistics through last month. The EDLC stated that the net change was to reduce the outstanding workload by 29 cases. Over a 2-month period, staff worked on reducing backlog, with about 70 pending.

2. Status of Fiscal Year 2015 – 2016 Operating Budget. For the new Commissioners, the EDLC gave a brief background on the issues. The EDLC expressed that the EC has been chronically underfunded in light of its workload and the needed resource increase has been denied by the Department of Fiscal Services (BFS) and the Managing Director (MD). The budget process has become cumbersome, and because of the need to repeatedly communicate with the Department of Human Resources (DHR), BFS and the Department of Corporation Counsel (COR) on the budget, it reduced his ability to do substantive work on legal issues. For example, the EDLC approved the raise of the ALC's salary in July 2014, but still has no answer from the departments regarding its approval. Things take time in this bureaucracy, but will try to work in a more streamlined way with COR, DHR and BFS.

For FY16, we asked for a number of positions, none of which were allowed by BFS. The EDLC appealed the request for the second investigator position, which is the most critical personnel issue, and this was again denied by the MD. The salaries for the EDLC and ALC were taken under advisement and we hope to hear by the end of the month and will bring results back in the next meeting. We were allowed to have sufficient funds in order to actually pay the rent for the office of our Investigator. Another budget option is to present our request or modified request to the Council in March.

3. Status of the Reallocation of the Investigator II to III Position. The EDLC stated that both COR and DHR are still in the process of the reallocating this position, and this quarter

may be Letha DeCaires' last contract. DHR and COR are requiring the EC try to fill the Investigator position with a permanent employee rather than the contract approach. Staff has relied on her excellent work, but we are required by City's rules and laws to attempt to fill the position rather than use someone on a Personal Services Contract. Staff plans to have this permanent position filled by a qualified candidate, but if staff cannot find a qualified candidate, we would enter into another 89-day contract with Ms. DeCaires. The EDLC further stated that we actually lost 4 out of 18 months, when she did not have a contract as a result of delays by COR and DHR.

Commission Lilly asked the EDLC to explain the effectiveness of Ms. DeCaires' work, especially to the new Commissioners. She is a retired HPD Captain and has been an outstanding investigator with the Ethics Commission.

The EDLC explained that she was able to review, investigate and close cases whether or not there was sufficient evidence of wrong doing present thorough and effective investigative reports on all cases. In addition, Ms. DeCaires was able to find evidence of serious misconduct in several cases, including the Romy Cachola case. She closed about 100 cases within the first year. Because of her HPD training and her skill and personality, she had great rapport with the subjects, witnesses, and union agents to fairly, efficiently and promptly obtain the information needed to determine misconduct. In turn, her work product and ideas were invaluable to the attorneys. Ms. DeCaires handles cases regarding high-level city officials, the most complex facts and allegations of serious misconduct.

The EDLC further stated that Ms. DeCaires has a workload four times the size of the workloads of similar administrative investigators at the AG's office, Police Commission, Equal Opportunity Office and the Professional Standards Office at HPD. In each of those agencies they use investigators to handle an average of 25 administrative cases per year, whereas the Commission had 90-100 in each of the last 5 years. While analyzing each case, she helped staff determine which were the most important and should have the highest priority.

The EDLC further stated that he will be working with DHR on obtaining a list of potential candidates.

Assistant DHR Director, Noel Ono, explained that DHR's position is not a reflection on Ms. DeCaires and he knows that she is highly qualified and doing a very good job. The position is a civil service position and can only be held for one year. If it was a budgeted contract then a PSC contract can be budgeted on a temporary basis, but because it is a civil service position and exempt, the position needs to be filled. The EDLC agreed. Assistant DHR Director Ono further stated that he will submit a list of potential candidates. He further stated that in our process of trying to find the best qualified person, if we show an effort and circumstances show another 89-day contract is warranted, the EC could submit our request to COR and the MD. Assistant DHR Director Ono stated that there should be a permanent position in order to secure pay and cost stability.

The EDLC asked if he should have asked for a contract position instead of a civil service position, and if we did that there would still be a limitation of a one-year contract.

Lila Tom of DHR responded that for contract positions, it would have to fall within the charter provisions of what's allowed and depends on what the rationale would be for the creation of that contract position, but for the most part it would be limited to that one-year limitation.

Ms. Tom continued that normally personal services contracts are for temporary situations where the need is critical. In this situation, since there is a position now, the focus is to filling that established position so you no longer need a temporary position. Ms. Tom also confirmed that the reallocation of the position will be forthcoming. The EDLC thanked Ms. Tom.

Commissioner Yuen stated that Ms. DeCaires' effective work has been a "plus" and resulted in savings to the City.

4. Report on Board and Commission Members' Mandatory Ethics Training. The EDLC explained the status of the December and January training sessions. A total of 83 officials have attended the sessions, including Commissioner Lilly and Commissioner Amano. The ethics training session with the Liquor Commission will be put on DVD. The DVD will be available to any new board or commission member, so they may comply with the training law.

The EDLC explained that the duration of the training is about 60-90 minutes. Staff suggests that the Commission members review the training DVD, and in one of the regular meetings we can discuss questions specific to Ethics Commission members.

Chair Chen asked the EDLC how long should they anticipate for the training in the regular meeting, and the EDLC responded about a half hour.

All Commissioners agreed to view the DVD and then have a short training for issues related to their specific position as an EC member. This will occur at a regular meeting, hopefully in March.

5. Report on Mandatory Annual Financial Disclosure from City Officers and Lobbyist Reports. There are about 600 officials who must file financial disclosures, and about 100 lobbyists who file annual reports. A lobbyist is one who for pay attempts to influence the policymaking decisions of the administration or the council. Each lobbyist must submit a report of its expenses in the preceding year related to lobbying for each entity or company they lobbied for.

B. For Action: Nominations and Election of Chair and Vice Chair for 2015.

The ALC explained the process of the nomination by reciting the Ethics Rules of Procedures Section 1.19, which requires voting by secret ballot. Each Commissioner had two slips of paper, one for Chair (gold form) and the other for Vice Chair (green form), with each Commissioner's name.

After the Commission voted, the gold form slips were passed to Investigator DeCaires, who announced the new elected Chair of the Commission. Acting Chair, Katy Chen,

was elected as the new chairwoman of the Commission with 5 out of 7 votes among the Commissioners. The ALC congratulated Commissioner Chen, and she accepted.

The Commission then voted for Vice Chair (green form), excluding Chair Chen. Commissioner Michael Lilly, was elected as the new Vice Chair, with 4 out of 7 among the Commissioners. The ALC congratulated Michael Lilly, and he accepted.

C. For Discussion: News Release Policy.

The EDLC stated that he put together a basic News Release Policy and asked the Commission to comment with questions. The EDLC then recited the draft “Policy and Procedure Regarding News Releases” from the Open Memo.

Chair Chen asked if there were any questions. Commissioner Lilly asked if the EDLC is proposing a resolution, and the EDLC confirmed and asked if the Commission wanted a discussion.

Chair Chen stated that it was not a formal draft, and the EDLC agreed, but would put something together in a more formal draft, and didn’t know if they wanted to add, remove or modify the policy. Commissioner Lilly then stated that it could be revised at any time, and the EDLC confirmed.

Commissioner Amano asked if COR and the administration and cabinet should be included as recipients of the news release, and the EDLC confirmed they do and will receive the news releases.

Chair Chen stated that it is not listed on the agenda as an action item. The EDLC thinks having the item on for “action” is not necessary, but and Deputy Corporation Counsel Geoffrey Kam disagreed. Chair Chen instructed The EDLC to prepare a formal draft of the policy for the Commission to review and to vote on in the next meeting.

Commissioner Amano appreciated the draft, but also needed time to think about the purposes of the news release, so it covers the kinds of things to issue in a news release form. She further stated that the EDLC gave an example, and would like to comment on other examples. The EDLC responded that the past releases were focused on the issuance of advisory opinions, there were a few regarding bills, and one on budget. He also stated that what news may be released should be broad so that the Commission would have some latitude in what to give to the public.

**Chair Chen asked for a motion to exit Open Session and to go into executive session. Commissioner Yuen so moved and Commissioner Suemori seconded. The motion passed unanimously.**

**Commissioner Yuen left the meeting at 12:26 p.m.**

## V. EXECUTIVE SESSION SUMMARY

- A. For Action: Request for a Motion to Approve and Adopt the Minutes of the Executive Session of the November 21, 2014 Meeting. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission approved and unanimously passed the Minutes.**

- B. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Four (4) Commissioners were in favor and two (2) Commissioners abstained.**

- C. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

- D. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

- E. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

- F. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.8(b) (Receipt of Gifts in Excess of \$200 Gift Cap) and RCH Sec. 11-103 (Failure to File Conflict of Interest Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

**The Commission found probable cause. Five (5) Commissioners were in favor and one (1) Commissioner abstained.**

**VI. ADJOURNMENT**

**Chair Chen asked for a motion to go into Executive Session. Commissioner Lilly so moved and Commissioner Silva seconded. The motion passed unanimously.**

The meeting adjourned at approximately 12:45 p.m.