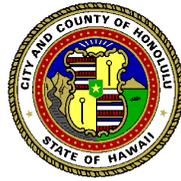


**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817  
PHONE: (808) 768-9242 • FAX: (808) 768-7768 • EMAIL: [ethics@honolulu.gov](mailto:ethics@honolulu.gov) • INTERNET: [www.honolulu.gov/ethics](http://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: August 15, 2018  
Kapālama Hale  
1st Floor Conference Room  
925 Dillingham Boulevard  
Honolulu, Hawai'i 96817

Present: Michael Lilly, Esq., Vice Chair

Peter S. Adler, Commissioner  
Hon. Riki Amano (ret.), Commissioner  
David B. Monk, Commissioner  
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel (EDLC)  
Laurie Wong-Nowinski, Associate Legal Counsel (ALC)  
Janice Yonamine, Investigator  
Joseph Benedict C. Pagkalinawan, Senior Clerk

Moana Yost, Deputy Corporation Counsel,  
Department of the Corporation Counsel (COR)

Don Hamada, Member of the Public (only in Agenda Item VI.A.)

Absent: Hon. Victoria Marks (ret.), Chair  
Lynette Lo Kanda, Commissioner

**MINUTES OF THE ETHICS COMMISSION MEETING**

I. Call to Order, Public Notice, Quorum

Vice Chair Lilly called the meeting to order at 11:35 a.m., stating that all Commissioners were present except Chair Marks and Commissioners Suemori and Kanda.

II. New Business

A. Chair's Report

2. For Action: Approval of Open Session Minutes of July 18, 2018

**Commissioner Amano made and Commissioner Adler seconded a motion to approve the open session minutes of July 18, 2018. The motion carried unanimously.**

3. For Action: Approval of Executive Session Minutes of July 18, 2018  
The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

**Commissioner Amano made and Commissioner Monk seconded a motion to approve the executive session minutes of July 18, 2018. The motion carried unanimously.**

**\*\*\*AGENDA ITEM TAKEN OUT OF ORDER\*\*\***

VI. Open Forum

A. For Discussion: Case Administration

Vice Chair Lilly announced that Agenda Item VI.A. will be taken out of order, and asked Mr. Don Hamada to come forward. Vice Chair Lilly also stated that the Commissioners will not get involved in any investigations or cases at this point. Mr. Hamada replied that he will only speak at a policy level.

Commissioner Suemori arrived at 11:39 am.

Mr. Hamada stated he had several issues to discuss. First, he stated that out of courtesy, staff should consult with the complainant about their preliminary determination before dismissing a complaint and telling the complainant to appeal it to the Commission. Second, staff should review a second complaint immediately following dismissal of the first complaint if it is based on similar facts as the first complaint instead of going to the "back of the line." Finally he stated that he did not like the Ethics Commission (EC) intake form because there was no category for "misuse of resources."

During discussion of the EC's intake form, Mr. Hamada passed copies of a packet of documents to the Commission which included a blank intake form for reference. The EDLC noted that the documents also contained his second complaint and should not be given to Commissioners as it was premature and could create a conflict of interest in the Commissioners. Both EDLC and ALC asked Commissioners if they could tear off parts of the packets with Mr.

Hamada's complaint. Thereafter, Commissioner Suemori encouraged Mr. Hamada to make revisions to the form and submit it to the Commission for consideration.

Vice Chair Lilly stated that the Commission will continue to update its procedures, while taking Mr. Hamada's concerns into account.

Commissioner Amano told Mr. Hamada that the Commission will consider his issues when taking up long-range planning. Commissioner Amano cautioned, however, that under procedural planning, the Commission needs to look at a bigger picture instead of looking through isolated cases. Commissioner Amano also noted that the Commission is open to Mr. Hamada's suggestion for the intake forms.

The Commissioners thanked Mr. Hamada for raising his issues to the Commission. Mr. Hamada left the meeting at 12:02 pm.

Ethics Commission staff shredded documents detailing Mr. Hamada's second submitted concern.

## II. New Business

### B. Executive Director and Legal Counsel's Report

#### 1. Staff Work Reports Summary

The EDLC noted that Sr. Clerk Pagkalinawan is assisting with administrative and clerical duties, including manually compiling the number of Commission meetings and disclosures received for the last three fiscal years. The EDLC noted that this was done to more accurately report the type of work the Commission has been doing in the City's Annual Report instead of only reporting on complaints and requests for advice. Commissioner Amano asked if the Commission staff is keeping records of the compiled data. The EDLC confirmed.

The EDLC also stated that Sr. Clerk Pagkalinawan is researching super political action committees ("Super PACs") during the current elections. The EDLC asked Sr. Clerk Pagkalinawan to review media and Campaign Spending Commission reports to research the amount of money spent by Super PACs on candidates. The EDLC also noted that the Campaign Spending Commission will conduct training for the Commission in October 2018, making the research on Super PACs timely.

Commissioner Amano asked how the data supplied by Dr. Kioni Dudley about Super PACs will be used. The EDLC responded that it will be referenced during rulemaking. Commissioner Amano asked if Dr. Dudley's materials could be used publicly. The EDLC stated that the materials submitted by Dr. Kioni Dudley about Super PACs can be referenced publicly, to the extent that the materials were reports from the Campaign Spending Commission's website; further, the materials were referenced during open session meetings.

Commissioner Adler commented that the issue concerning Super PACs influence on the public trust stems from the commission's mandate of holding the public's trust. But, Commissioner Adler stated that he felt uneasy as he recalled that the Commission does not have any adhering place to investigate the topic. The EDLC concluded that staff is researching and developing the Super PAC issue for the Commission.

The EDLC reported that Legal Clerk III (LCIII) Bigornia is unable to attend the meeting due to an emergency. The EDLC mentioned that LCIII Bigornia continues to finalize city employee and officers training and that several departments were still incomplete. LCIII Bigornia is also training and sharing the workload with Sr. Clerk Pagkalinawan.

The EDLC reported that Investigator Yonamine continues to work her cases, as well as assists with coordination of multiple cases in departments.

The EDLC reported that the ALC is overloaded, highlighting the need for additional support. The EDLC also noted that she and the ALC are in a "losing battle," as the demand for case work outweighs the available resources to efficiently address case work.

Commissioner Amano asked if there is any appropriate action the Commissioners could do to help. The EDLC stated that staff needs to find a "middle ground," addressing both the Commission's enforcement and administrative duties equally as it had been unbalanced in the past. The EDLC also emphasized that doing so requires a lot of fixing and other work.

Commissioners Adler and Amano asked the ALC for her view on her workload. The ALC reported that she was very busy doing everything on a daily basis and wanted to increase the amount of time she spends on legal research and drafting, and decrease the amount of time spent on other duties. She explained that she only spends 5 percent of her time to legal research and drafting. Commissioner Adler asked if what the ALC does in legal research and drafting includes legal work on complaints. The ALC replied in the negative and explained that she includes legal work spent on complaints in the "Complaints" category. She wants to spend more time reviewing and fixing defects in the law, and examining Advisory Opinions as a means of formulating policy or rulemaking. The ALC mentioned that she cannot do so unless she is released from other duties.

Commissioner Adler suggested setting up a permitted interaction group ("PIG") to let the Commissioners work on hard legal issues. The EDLC explained that the PIG might increase the work for the Commission staff rather than decrease it. Commissioner Amano commented that a PIG might be used in long-range planning, and given current statistics, could reflect what the Commission should look like. Commissioner Amano stated that it could be added when building the budget for the future. In the meantime, staff must find people, such as law school students, to help out in the case work. The EDLC noted, however, that the burden becomes more time spent in supervision and management.

The EDLC also reported that she is at a point where she understands the Commission's workload issues and where the Commission's resources should be. The EDLC

noted that although workload issues would be helped by adjusting position descriptions, it cannot increase capacity. Increasing the commission's capacity will be discussed during the budget agenda item.

2. Statistics
  - a. Website Sessions, July 2018 – 468
3. Budget
  - b. FY2020 Operating Budget Request – Update

The EDLC reported that she has had preliminary budget discussions with Chair Marks. Although both the EDLC and ALC received salary increases, there is a salary shortage for Fiscal Year (FY) 2018, which will be addressed in the Commission's budget request for FY2020.

The EDLC summarized FY2020 budget requests. The EDLC reported that the Commission will request to add an Assistant EDLC to the position count, rather than upgrading the ALC position. The Commission's staff would be increased by one full-time employee (FTE). The EDLC explained that additional office space, equipment (desk, chair, PC, etc.) would be requested to support the Assistant EDLC position.

The EDLC also spoke with Chair Marks about training. Chair Marks felt that it was imperative for the Commission to attend more training conferences. The EDLC reported that Chair Marks suggested that the Commissioners should attend training conferences once a year and staff should attend twice a year. Vice Chair Lilly commented that his law partner, a former Honolulu Ethics Commissioner during the late 1990s, told him that historically, Ethics Commissioners and staff attended training conferences annually. The EDLC confirmed.

The EDLC also reported that the Commission needs professional database software. Staff currently use excel spreadsheets to input and organize data and manually generate reports. The EDLC also explained that the Department of Budget and Fiscal Services, Internal Control Division, holds the contract with NAVEX Global for the Integrity Hotline, which uses a comprehensive database. There are only four licenses—two for the Internal Control Division, one for the City's Equal Opportunity Office, and one for the Ethics Commission.

Commissioner Amano asked if the EDLC wants to have the Commission use an independent, separate database from the one used for the Integrity Hotline. The EDLC confirmed, but clarified that it could be the database with firewalls between hotline and ethics cases. Commissioner Amano inquired if the EC needs money for the database, to which the EDLC replied in the affirmative, but that estimates are still pending.

The EDLC concluded by explaining that she will also request to retain contract monies for conflict cases.

**At 12:30 p.m. Vice Chair Lilly made and Commissioner Adler seconded a motion to move into executive session. The motion carried unanimously.**

III. Executive Session (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.)

A. 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

C. For Discussion: Executive Director and Legal Counsel – Annual Evaluation Feedback

D. For Action: Request for a Motion to Approve and Adopt Staff's Draft Advisory Opinion No. 2018-2 Regarding Violation of RCH Sec. 11-104 Against a City Officer

E. For Action: Request for a Motion to Approve and Adopt Staff's Draft Advisory Opinion No. 2018-3 Regarding Alleged Violation of ROH Sec. 3-8.4(b)(2) Against a City Officer

**At 1:01 p.m., Commissioner Adler made and Commissioner Suemori seconded a motion to move out of executive session and return to open session. The motion carried unanimously.**

Vice Chair Lilly reported on executive session matters:

Executive Session Item III.A. – The Commission discussed litigation with its counsel.

Executive Session Item III.C. – Deferred until the September 19, 2018 meeting.

Executive Session Item III.D. – Deferred until the September 19, 2018 meeting.

Executive Session Item III.E. – **Commissioner Amano made and Commissioner Monk seconded a motion to approve and adopt staff's draft Advisory Opinion No. 2018-3. The motion carried unanimously.**

II. New Business

4. Education and Outreach

a. Ethics Training Program – Update

The ALC informed the Commission that she will conduct training for newly-promoted Honolulu Police Department captains on August 23, 2018. The training will consist of

a refresher and a Jeopardy Game similar to the one played during Honolulu Fire Department Captain's ethics training. The ALC also stated that she will conduct ethics training for new employees at the New Employee Orientation (NEO) on September 10, 2018, at the Blaisdell Center. The ALC will demonstrate for Department of Human Resources staff how to use the new ethics training DVD and administer the ethics quiz. Last biennium's ethics training will be used for this biennium's NEO ethics training. The ALC mentioned that she will be meeting with the Department of Information Technology for the next biennial training and to request survey statistics from the last biennium.

The ALC also reported on the Commission's Twitter activities, including an increase in new followers, shout outs from the New York City Conflict of Interest Board, and "likes" from the City's Deputy Managing Director, Georgette Deemer, regarding one of Weinstein Ethics Lecture Series, which she also attended. The ALC also thanked Commissioner Monk for attending the recent *Ethics in Politics* series.

The EDLC reported statistics regarding training. As requested by Commissioner Adler, the EDLC distributed statistics to the Commissioners showing the source of complaints and requests for advice from FY2017. The EDLC also pointed out data for education and outreach, reflecting that scanning of completed training forms was very slow. The EDLC suggested reaching out to departments to urge them to finish and scan their ethics training documents as soon as possible.

#### 7. Education Opportunities – Commissioners and Staff

The EDLC informed the Commission about the last three Weinstein Ethics Lecture Series topics including fraud, legal ethics, and politics. Chair Marks and the EDLC attended *Ethics and Fraud*, the EDLC, ALC, and LCIII attended *Legal Ethics*, and Commissioner Monk, the EDLC, LCIII, and Sr. Clerk attended *Ethics in Politics*.

- a. State Campaign Spending Commission – October 17, 2018 (tentative)
- b. Society of Corporate Compliance and Ethics (SCCE), Compliance and Ethics Institute, October 21 – 24, 2018 (Las Vegas, NV)
- c. Council on Governmental Ethics Laws (COGEL), COGEL Conference, December 9 – 12, 2018 (Philadelphia, PA)

#### IV. Strategic Planning

##### A. Media Policy

1. Ethics Commission Media Policy (June 20, 2018)

The EDLC informed the Commissioners that the updated Media Policy is posted on the Ethics Commission website.

2. City of San Jose Media Policy (Revised Date June 21, 2018) – Deferred until the September 19, 2018 meeting.
- B. Crisis Management
1. City and County of Honolulu Government Function During Emergencies and Disasters, Mayor’s Directive No. 13-1 Dated March 1, 2013
  2. Emergency Operations, Standard Operating Guideline Dated May 1, 2014

The EDLC told the Commission that the distribution is for informational purposes. In the event of an emergency, staff will serve in a non-essential, support role.

VI. Adjournment

The EDLC confirmed attendance to establish quorum for the September. After discussion, the Commission determined it would meet on September 19, 2018.

**At 1:10 p.m., Commissioner Suemori moved and Commissioner Monk seconded the motion to adjourn the Ethics Commission meeting. The motion carried unanimously.**