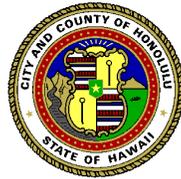


**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place:       October 17, 2018  
                              Kapālama Hale  
                              1st Floor Conference Room  
                              925 Dillingham Boulevard  
                              Honolulu, Hawai‘i 96817  
                              and  
                              92-161 Waipahu Place  
                              Kapolei, Hawai‘i 96707

Present:               Michael Lilly, Esq., Vice Chair

                              Peter S. Adler, Commissioner  
                              Hon. Riki Amano (ret.), Commissioner (*via video conferencing*)  
                              Lynette Lo Kanda, Commissioner  
                              David B. Monk, Commissioner

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

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

Absent:               Hon. Victoria Marks (ret.), Chair  
                              Hon. Allene Suemori (ret.), Commissioner

**MINUTES OF THE ETHICS COMMISSION MEETING**

I.       Call to Order, Public Notice, Quorum

Vice Chair Lilly called the meeting to order at 11:30 a.m., stating that all Commissioners

were present except Chair Marks and Commissioner Suemori. Commissioner Amano participated in the meeting via phone conferencing, and confirmed she was alone at her location.

## II. New Business

### A. Chair's Report

#### 2. For Action: Approval of Open Session Minutes of August 15, 2018

**Commissioner Adler made and Commissioner Amano seconded a motion to approve the open session minutes of August 15, 2018. The motion carried unanimously.**

#### 3. For Action: Approval of Executive Session Minutes of August 15, 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 Monk made and Commissioner Amano seconded a motion to approve the executive session minutes of August 15, 2018. The motion carried unanimously.**

## II. New Business

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

#### 1. Staff Work Reports Summary

The EDLC announced Sr. Clerk Pagkalinawan has extended his contract to continue working with our agency. Sr. Clerk Pagkalinawan worked on the lobbyist forms with LCIII Bigornia's assistance, and will continue handling the lobbyist forms in this upcoming filing period. He has also been assisting the ALC and Investigator Yonamine with conducting training. Sr. Clerk Pagkalinawan was also tasked to summarize and organize advisory opinions.

LCIII Bigornia continues to assist with administration, training, and statistics. She manages the office's inventory of supplies, equipment, and furniture. She coordinates staff meetings to discuss improvements to process lobbyist and financial disclosure forms.

Investigator Yonamine conducted a refresher training course for the HPD stripes class using the Ethics JeoPARODY game. Also, she and the ALC reviewed a new custom-designed data management software created by a private vendor for the Department of Commerce and Consumer Affairs (DCCA), Regulated Industries Complaints Office (RICO). The EDLC explained the database includes everything from tracking its investigations to creating pre-populated templates using information entered into the database. The EDLC further explained that our office would explore possible ways to obtain a version of the software for the

EC. Investigator Yonamine is also working with the ALC to create new formats for the investigative report.

The ALC continues to lead the case management meetings, conduct investigations and prosecutes cases. She is also creating the new all employee standards of conduct training which will be released in July 2019 for the next biennium period. The ALC also continues to keep our presence on social media using Twitter. The EDLC explained that the ALC's work distribution time was heaviest on complaints, administration, and then others.

## 2. Statistics

- a. Website Sessions, August (374) and September (346) 2018
- b. FY2018 Statistics

Every year, the City publishes a report on all departments and agencies reflecting service, efforts, and accomplishments statistics from the prior fiscal year. The EDLC stated that the Ethics Commission statistics are organized within COR's section as the EC is administratively attached to COR. She reported statistics from categories that had not been previously reported to provide a more complete picture of what the EC does. The EDLC referenced Slide 14 of the EDLC report, and stated the table will be in the report. The EDLC explained the significance of the categories and numbers to the Commission.

In regard to the statistics obtained from the "Disclosures" section, Sr. Clerk Pagkalinawan was primarily responsible for counting all disclosures from prior fiscal years in order to make comparisons. Historically, staff never reported how many of these forms were actually reviewed in a given year, and the number continues to grow. Commissioner Kanda asked if staff reviews the forms, the EDLC confirmed. She suggested changing the title of the category from "disclosures received" to "disclosures reviewed" that shows staffs' doing work. The EDLC will take note and amend for next year's annual report.

The EDLC continued describing the next categories of statistics – "Ethics Commission Meetings." The EDLC stated that they do not represent a lot in terms of totals, but the amount of work that goes into a Commission meeting is pretty dramatic. She continued that the week before the Commission meeting is the heaviest week when staff files agendas and uploads materials to the website. The following week is the meeting, and then staff reviews and completes action items after the meeting. Staff probably has a week in between to complete work on matters that are triggered by the meeting. The EDLC concluded that meeting preparation and clean up largely impacts staff's workload.

In regard to "Advisory Opinions," the EDLC stated that the total number of AOs published for each fiscal year does not reflect the Commission's performance.

Finally, in regard to "Lobbyist Registrations, Annual Reports Received," the EDLC noted that she will amend "received" to "reviewed" as Commissioner Kanda proposed for the "Disclosures" section.

The EDLC summarized that historically, only the top three categories regarding the number of cases and requests for advice were reported. For this fiscal year, staff added additional categories in the report, which shows a much more accurate picture of what staff does. The EDLC applauded staff who worked hard to complete and count the work. The EDLC added that staff is in the process of organizing the data, so that it does not have to be manually counted in the future. She noted that it took the Sr. Clerk Pagkalinawan a solid 4-5 days to count the number of forms reviewed, and another handful of days for LCIII Bigornia to also count.

Commissioner Amano asked if staff reported all the categories since FY2015. The EDLC confirmed that staff reported the first three, but the rest are new. Commissioner Amano asked whether staff had to compile numbers for this chart from FY2015. The EDLC confirmed.

Vice Chair Lilly asked the EDLC if the EC is required to meet monthly. The EDLC replied that she does not know. The ALC responded that the Rules of Procedure provides that the Commission “meets as it deems appropriate.” Vice Chair Lilly commented when he was on other boards, they met every month. He proposed to meet every other month. Deputy Yost asked the EDLC and ALC if the EC has any by-laws. The ALC responded there are no by-laws, only Rules of Procedures.

Vice Chair Lilly expressed concern over the amount of time staff consistently spends to prepare for EC meetings. He asked the EDLC how much time could be saved by meeting less so staff could devote the time to resolving complaints and other more pressing needs. The EDLC stated that if the Commission were to reduce meetings, staff would save a lot of time.

Vice Chair Lilly requested to put this matter on the agenda for next month’s meeting. He asked the EDLC to assess the pros and cons of having monthly meetings.

Commissioner Adler asked for examples of agenda items that would require the whole Commission to be present. The EDLC responded that the EC must be present to approve and adopt formal advisory opinions. The ALC added the Commission must meet to discuss and approve conclusions and recommendations from an investigative report, establish probable cause to initiate a case, and any other actions leading up to a contested case hearing.

Commissioner Amano recalled the great number of meetings in 2016 was due to the EC acting in a quasi-judicial role and staff acting in a prosecutorial role; Vice Chair Lilly confirmed. Commissioner Amano continued, if the Commission had to return to that role, the number of meetings would increase.

Commissioner Kanda requested that this topic be discussed at the next meeting as it was not on this agenda and she would like public input.

### 3. Budget

- a. FY2019 Operating Budget – None
- b. For Discussion: FY2020 Operating Budget Request – Update

The EDLC announced that currently there are internal administration-only meetings between the Managing Director (MD) and each of the departments. The Ethics Commission has been scheduled to meet with the MD on December 12, 2018. Currently, we have been answering questions that they have. A finalized version will be used for discussion.

4. Education and Outreach
  - a. Ethics Training Program – Update

The EDLC turned to staff for their input and feedback on the Honolulu Police Department (HPD) training conducted by Investigator Yonamine, LCIII Bigornia, and Sr. Clerk Pagkalinawan.

Investigator Yonamine explained that the ALC was unavailable to conduct HPD's newly promoted Captain's training, and she agreed to take the task from the ALC. The ALC briefed her on the Ethics JeoPARODY refresher training that she built, which requires trainees to interactively use their cellphones to access the EC's mobile website and review ethics handouts to find the answers. There were 12 newly promoted police captains in the class who were very excited to participate. Staff received a lot of positive feedback. Investigator Yonamine suggested that trainees should complete a written survey after each training session to obtain more feedback, and to keep track of suggestions. She stated that everyone was involved by either looking up answers on their phone and/or their ethics handouts. The Ethics JeoPARODY was a good interactive teaching tool as opposed to only lecturing.

Commissioner Amano confirmed that staff should send out an assessment for new ideas and best practices for training. On the assessment, she suggested questions to ask such as: what you like, what you don't like, what is effective, etc. Investigator Yonamine confirmed that she started drafting the survey, and will be implementing the survey after training soon.

The EDLC stated that staff wants to continue to use the Ethics JeoPARODY refresher training, especially at a Cabinet meeting, by splitting the Directors and Deputy Directors into groups. She envisioned that the Ethics JeoPARODY will eventually be tailored to each training group.

The ALC worked with the Department of Human Resources (DHR) to use the current "All City Officers and Employees" course for at the New Employee Orientation ethics training. The EDLC explained that the last biennium training course will be used for the incoming new employees.

6. Education Opportunities – Commissioners and Staff
  - a. State Campaign Spending Commission – Postponed

The Commission confirmed postponement of the State Campaign Spending Commission training until next year due to conflicts in scheduling.

b. Airing of *Dark Money*, PBS, October 1, 2018

The EDLC informed the Commission that *Dark Money* aired on PBS on October 1, 2018. She acknowledged that some Commissioners have already watched it. She stated that she watched some of it and commented that it discussed the lack of transparency money donated to super political action committees.

Commissioner Adler announced that *Dark Money* is also a good book and he offered it to anyone who wants to read it.

c. Society of Corporate Compliance and Ethics (SCCE), Compliance & Ethics Institute, October 21 – 24, 2018 (Las Vegas, NV)

The EDLC reminded the Commission that next week, she, the ALC, and Commissioner Amano will be attending the SCCE Conference. The EDLC stated that this will be the first industry-specific training that the ALC attended since 2011, the ALC confirmed.

The EDLC stated that there is not a lot of ethics training available in Hawaii, so the big budget request is to get some travel money for staff to attend relevant training.

Commissioner Adler asked how many Hawaii companies have ethics or compliance officers. The EDLC replied that she does not know. The ALC responded that big companies such as Hawaii Medical Services Association, Hawaii Gas, Hawaiian Electric Company, etc. have compliance programs.

7. Ethics Commission Meeting Schedule – CY2019

The EDLC asked the Commission to look at their calendars for next year to set aside dates per the earlier discussion on meeting every other month. She continued that the discussion can be continued to the next meeting.

**At 12:00 p.m. Commissioner Adler made and Commissioner Kanda 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

- B. For Discussion: Executive Director and Legal Counsel – Annual Evaluation Feedback
- C. For Action: Request for a Motion to Approve and Adopt Staff’s Draft Advisory Opinion No. 2018-2 Regarding Alleged Violation of RCH Sec. 11-104 Against a City Officer
- D. For Action: Request for a Motion to Approve and Adopt Staff’s Draft Advisory Opinion No. 2018-4 by Request of a Department
- E. For Action: Request for a Motion to Approve Conclusions and Recommendations of Investigation Report Related to Alleged Violation of RCH Sec. 11-104 Against a City Officer

**At 12:57 p.m., Commissioner Kanda made and Commissioner Adler 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 conferred with its counsel.

Executive Session Item III.B. – The Commission deferred discussion to the November 14, 2018 meeting.

Executive Session Item III.C. – **At 12:16 p.m., Commissioner Monk made and Commissioner Kanda seconded the motion to approve and adopt Advisory Opinion 2018-2 with amendments. The motion passed unanimously.**

Executive Session Item III.D. – **At 12:20 p.m., Commissioner Adler made and Commissioner Monk seconded the motion to approve and adopt Advisory Opinion 2018-4 with amendments. The motion passed unanimously.**

Executive Session Item III.E. – **At 12:41 p.m., 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.**

IV. For Discussion: Strategic Planning

A. Media Policy

1. Ethics Commission Media Policy (June 20, 2018)
2. City of San Jose Media Policy (Revised Date June 21, 2016)

The Commission deferred IV.A until the November 14, 2018 meeting.

V. Adjournment – Next Meeting: November 14, 2018

**At 1:01 p.m., Commissioner Adler moved and Commissioner Kanda seconded the motion to adjourn the Ethics Commission meeting. The motion carried unanimously.**