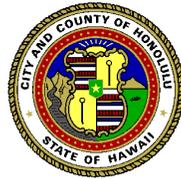


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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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: November 14, 2018
Kapālama Hale
1st Floor Conference Room
925 Dillingham Boulevard
Honolulu, Hawai'i 96817

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

Peter S. Adler, Commissioner
Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, 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)
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)

Natanya Friedheim, Reporter, Civil Beat

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:36 a.m., stating that Vice Chair Lilly, Commissioners Monk and Suemori were present and declared quorum.

II. New Business

A. Chair's Report

2. For Action: Approval of Open Session Minutes of October 17, 2018

Commissioner Monk made and Vice Chair Lilly seconded a motion to approve the open session minutes of October 17, 2018. The motion carried unanimously.

3. For Action: Approval of Executive Session Minutes of October 17, 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 Vice Chair Lilly seconded a motion to approve the executive session minutes of October 17, 2018. The motion carried unanimously.

II. New Business

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC reported Sr. Clerk Pagkalinawan has been working on lobbyist information, including refreshing and updating forms and frequently asked questions (FAQs). He has also been assisting with clerical functions and preparing for the meeting. The EDLC announced that staff will send a reminder memo to lobbyists by email instead of via United States Postal Service.

LCIII Bigornia continues to update lobbyist and financial disclosure forms. Forms, instructions, and other information for both are distributed at this time of the year.

The EDLC informed the Commission that Investigator Yonamine is out of the office today. She continues her focus on investigations and has utilized the new investigation report template.

The ALC's work has been heavier on administration during this reporting period.

At 11:45 a.m., Chair Marks announced Commissioners Kanda, Adler, and Amano arrived.

The EDLC announced new Kapālama Hale building security procedures. A sign-in sheet will be circulated for everyone who does not work in the building to sign. Staff will return the sign-in sheet to the security guard.

2. Statistics
 - a. Website Sessions, October (409) 2018

The EDLC reported 409 web sessions in the month of October. With the upcoming lobbyist and financial disclosure filings, the EDLC predicted the number of web sessions will increase.

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

The EDLC reported staff is still developing this biennium's training course.

6. Education Opportunities – Commissioners and Staff
 - a. Society of Corporate Compliance and Ethics (SCCE), Compliance & Ethics Institute, October 21 – 24, 2018 (Las Vegas, NV) – Update

The EDLC reported the ALC, Commissioner Amano, and she attended the 2018 SCCE Conference held in Las Vegas.

The ALC shared that the Conference was mostly technology driven; she was amazed by how much it was used. The last time she attended substantive ethics training was in 2011 at the Council on Governmental Ethics Laws (COGEL) conference—a conference on government ethics. She stated that all the principles and ideas discussed at the SCCE conference reinforced the Commission's path and policy; the way it views preventative measures confirms we are on the right track. The ALC continued that it was great to see the new technology; we will try to incorporate some of those features in our new training program. Other ideas, such as how to measure the effectiveness of our program, were discussed. This has always been difficult for government.

The EDLC shared that it was her second time attending the conference; she underscored how important this kind of training is. She explained that ethics training is not easy to obtain, especially in Hawaii. She stated that the Commission will continue to push for more budget to travel because attending is critical to obtain fresh and new information.

The EDLC stated it is our charge to stay abreast with training and other industry changes, even though government may lack some of the resources that the private-sector has. Government needs to stay in front of the curve. The EDLC continued that the Commission's FY2020 budget request increases out-of-state training from one to two a year for staff and one for a Commission member. She expounded on how extremely valuable it is to learn new things and to validate some of the Commission's work.

Commissioner Amano shared that attending the conference for the last two years was worth every penny. The plenary speakers are inspirational and the conference organization, with 1800 participants, is top-notch. The ALC, EDLC, and she also met one government employee from Hennipen County, Minnesota.

Commissioner Amano asked the EDLC if she has been in touch with her. The EDLC replied that she sent her an email and will follow up.

Commissioner Amano shared that we met her through the organization's app, a feature called *Brain Date*, where participants can share their ideas and reach out to other participants for discussion. When the ALC checked-in on *Brain Date*, she saw that someone had put out a discussion idea on local government, so she reached out to her and scheduled a meeting.

The EDLC stated that at some point, there should be a government roundtable. She continued there are at least 20 government participants, so it would worthwhile to have a discussion.

Commissioner Amano announced that she plans to go to next year's conference, which be held in National Harbor, Maryland, from September 15-18, 2019.

The EDLC stated the ALC's travel, hotel, per diem, and conference fees were included in this year's budget. The EDLC paid for her own travel, hotel, and per diem, but her conference fees were covered by budget, which is the same arrangement as last year. Commissioner Amano paid for all of her expenses—travel, hotel, per diem, including registration costs—same as last year. Also last year, Chair Marks attended the conference and paid her own travel, hotel, per diem, and registration costs. Continued travel, even without budget, shows the Commission's commitment to obtaining valuable training.

Chair Marks agreed that it was a great conference.

Commissioner Monk asked if there were any new substantive issues to be aware of.

The EDLC shared that there was a performance metrics session that she thought was particularly good because it offered ways to score our program. When the Permitted Interactive Group (PIG) reconvenes, she would like to share the session materials.

The EDLC stated measuring the effectiveness of our program was attempted several years ago, but staff's survey was held back because of union involvement. The Department of Human Resources (DHR) instructed all employees not to take the survey because the unions wanted to meet and confer on the survey.

One of the SCCE sessions described such surveys conducted in the private sector and the valuable information obtained by company management. The EDLC asked whether such surveys had been used in the government sector. The speaker responded that it tried to in one place—a transit authority—but as soon as the survey was sent, there was a Freedom of Information Act ("FOIA") request, which dampened employee candor. Thus, it's difficult to figure out whether a government program is effective.

Chair Marks asked if staff passed out evaluation forms after each of our training session. The ALC replied “no” as to the in-person training sessions, but will be starting soon. Chair Marks suggested that staff reach out to the Unions to explain that we will be passing out an evaluation form in bubble format to all trainees with simple questions such as “is this good, why or why not,” or “are there any trainings you would like to see or topics covered.” The ALC stated Investigator Yonamine has drafted an evaluation form, which is ready for review and discussion. She continued that we really need gauge the City’s ethical culture. Chair Marks commented that it may be more difficult, but at least getting the training feedback is a start. She stated that the Unions would be worried that staff criticism might result in supervisor and management retaliation.

Vice Chair Lilly asked if the evaluations forms are anonymous. The EDLC explained with the online course, domain employees (employees with honolulu.gov email addresses) have both quiz and survey attached to the employee ID number. Non-domain employees (employees who do not have computer access) are filling out their quiz and survey on bubble forms with their employee ID number.

Chair Marks stated that staff could separate them, so that the survey is optional. The EDLC replied for staff can for non-domain users, but anonymizing for domain users would be difficult. Vice Chair Lilly commented if it is anonymous, then they would not worry about retaliation. The ALC stated for non-domain employees, their training is conducted in a classroom-style. The ALC explained that in the past, employees turn in their quizzes and surveys separately to the person conducting the training (sometimes their immediate supervisor or someone in the chain of command). She continued they may feel afraid because if they put down an issue, the person collecting the forms would be able to figure out to whom the quiz and survey belong. When staff went electronic, it was better until the Union issue arose. Chair Marks commented that it is still worth exploring.

Commissioner Adler asked if there are any sessions on lobbying and super political action committee issues. The EDLC replied that there will be in the next COGEL conference. Unfortunately, it falls on the week of budget discussions, so she is not able to attend. The current budget includes one staff travel and training, which was used by the ALC. In next year’s budget, she will request two such travel and training opportunities for staff. Commissioner Adler commented that he would like to hear their views on that.

Commissioner Suemori stated that she asked the Hawaii State Bar Association (HSBA), and was told that government ethics and legal ethics are different. Commissioner Amano stated they received more than 10 CLE approved credits that could be for ethics credit because it is specifically about ethics. Commissioner Suemori reiterated that the ones specifically for ethics are not necessarily legal ethics, its government ethics, which are different. Commissioner Amano stated that SCCE goes through the HSBA for approval.

The EDLC also announced that some of the Weinstein Ethics Conversation Series hosted at the University of Hawai`i at Mānoa this past summer were legal ethics CLE.

- b. Council on Governmental Ethics Laws (COGEL), COGEL Conference, December 9 – 12, 2018 (Philadelphia, PA)

7. Ethics Commission Meeting Schedule – CY2019

The EDLC stated one of last month's discussion issues was regarding the Commission's meeting schedule. The EDLC stated that the Commission meets once a month. Sometimes a meeting is cancelled due to lack of quorum or other reason. The EDLC expressed that there are pros and cons to meet every other month. She continued that staff has expressed that on certain months, other work—which is different from meeting preparation work—is very intense. The EDLC explained that January to February are heavy workload months, internally, because of financial disclosure and lobbyist filings, both of which are due at the same time. The EDLC suggested for other months when the Commission does not meet, those dates can be on hold for the PIG meetings. It has been difficult to schedule those meeting due to conflicts.

Commissioner Suemori asked with January and February being heavy months for staff, are there other months in the year that may be heavy?

LCIII Bigornia stated that January 10 is the deadline for registered lobbyists to submit their annual reports and registrations. She explained for this year, she will take a different approach by sending out a courtesy memo on the last week of November to give them about a month and a half to fill out the appropriate forms. LCIII Bigornia stated that one of the issues was notarizing both registration and annual report forms. She understands that a notary is not always available.

Commissioner Suemori asked with consideration of staff's comments that January will be busy, if the Commission meets on February 20, 2019, will staff still be busy? LCIII Bigornia replied it might be lighter by then. She explained that January 31 is the last day to submit financial disclosure forms, which includes board and commission members, City officers and employees, and Cabinet. LCIII Bigornia commented that many filers submit them on the day of the deadline. She continued after the deadline passes, forms are sorted and filed. Then staff follows up with the non-filers.

Commissioner Suemori asked if the month of June will be busy for staff. LCIII Bigornia replied no, it will be a lighter month. She stated that the end of the quarter is in June, staff will be updating the registered lobbyist list at that time and will continue once a quarter.

Chair Marks asked if the Charter or Ordinance requires the notary. LCIII replied the Ordinance, and the EDLC confirmed. The EDLC continued that it is one of the legal changes that we want to make. She explained instead of an omnibus bill, staff will go for smaller bills to remove the notary requirement because it has become problematic and is not necessary.

The EDLC directed the Commission's attention to a 2019 calendar marked with proposed Ethics Commission meetings and holidays, and two conferences, SCCE and COGEL.

Commissioner Suemori commented that the Commission can meet every other month starting February 2019. Commissioner Kanda agreed, and suggested to keep the other dates reserved for committee or emergency meetings. The EDLC commented there may be times when we have a time sensitive issue.

Chair Marks confirmed that the Commission will meet on dates on the right side of Slide 15 (February, April, June, August, October, and December) and reserve the dates on the left (January, March, May, July, September, November).

From the October 17, 2018 meeting, Vice Chair Lilly requested staff how much of their time spent on preparing before and after meetings. The EDLC explained that at every meeting, staff set aside five days for the first draft of the meeting minutes, and then it goes through ALC reviews with a two-day turnaround, and the EDLC reviews with a two-day turnaround. She continued that staff spends the first week after a meeting cleaning up. The second week is spent finalizing minutes. The EDLC stated that the week before the agenda filing she drafts an agenda for Chair Marks' review and comment. The following week, the agenda is filed and meeting materials are uploaded.

Vice Chair Lilly gathered that the staff has one working week that does not involve preparing for the meeting, and the EDLC confirmed.

Chair Marks asked staff how many forms they receive. LCIII Bigornia replied in January, staff receives about 500 forms from lobbyists and between 300-400 financial disclosures, which include first-time filers, annual, and exiting City officers and employees and board and commission members.

At 12:08 p.m., Commissioner Suemori made a motion to adopt an amended Commission schedule for calendar year 2019 to be on February 20, April 17, June 19, August 21, October 16, and December 18, 2019, with the rest of the dates for secondary meetings. Vice Chair Lilly seconded.

Vice Chair Lilly stated that the secondary meetings are either a date for the PIG to meet or if there is a need to meet, then the Commission can call a meeting. Commissioner Suemori agreed and reminded the Commission not to put heavy commitments on those reserved dates.

The motion carried unanimously.

Commissioner Kanda asked Chair Marks when the Commission will be noticed on when to meet. Vice Chair Lilly stated that it will be two weeks ahead. Chair Marks stated that she will let the Commission know, and the EDLC confirmed.

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

IV. For Discussion: Strategic Planning

A. Media Policy

1. City of San Jose Media Policy (Revised Date June 21, 2016)

Chair Marks thanked Commissioner Monk for researching and finding the City of San Jose's media policy.

Commissioner Monk commented that while he was researching other examples of media policies, the City of San Jose was a shining example of one that was much more focused and structured in approach. He wanted to focus on page 3, section 4, "Departments," because that is the part that affects us, which briefly says "stay in your lane." He continued that if anyone in the City has been in contact with the media, they would need to notify the administration. He stated these were the two key principles that are already incorporated in our existing media policy, so there is nothing else that we need to do to revise based on comparative analysis. Commissioner Monk concluded what we have is functional.

Chair Marks asked if the staff has any difficulty dealing with the existing policy, and staff replied none.

Commissioner Kanda stated that it is interesting to her how thorough it was. On their media policy, she pointed out Section 2.8, "Language Access and Media." She suggested that staff should translate key documents for City employees who use English as a Second Language (ESL). The ethics laws would be easier for them to understand. She stated if the Commission wants City employees to comply, they should be able to fully read and understand the ethics laws in their own native tongue.

Chair Marks wondered if DHR offers Civil Service position applications and their test in languages other than English.

Commissioner Suemori stated if the position requires you to be an American citizen, then they attest that they understand English. Chair Marks commented it would make it easier for employees who do not speak English as their first language.

Commissioner Suemori asked which languages should be used to translate documents.

Commissioner Kanda explained that translating is so inexpensive that it can be done online. Commissioner Suemori clarified that it's not the cost, rather which dialect do we use to translate documents.

Commissioner Kanda shared that Hawaii Medical Service Association (HMSA) documents were translated in eight (8) different languages. She explained that you can click on the language, and the documents are translated into the selected language. The ALC stated that HMSA is required to do that under federal healthcare regulations.

Commissioner Kanda asked Commissioner Suemori if she meant if the Commission will translate one document, should all documents be translated also. Commissioner Suemori clarified if the Commission will be translating documents in several languages, how we will determine which language to use. Commissioner Kanda replied with technology, translating is inexpensive and easy to do. Documents can be translated in all languages, reviewed by a native speaker, then posted online.

The EDLC asked Sr. Clerk Pagkalinawan for his comment since English is not his first language. He commented that from his perspective, it would be helpful for employees who do not have a strong grasp of the English language; however, from the staffs' point of view, it would be challenging and costly to implement.

Commissioner Adler asked if the Commission has a special obligation to translate in Hawaiian. He also asked if the Commission can have a disclaimer stating that documents are available for translation.

Commissioner Suemori asked how many hours of staff time will it take to put this together?

Chair Marks asked the EDLC to look into it.

Commissioner Kanda stated documents can be translated by all of the top 10 or 20 languages by population.

Chair Marks asked the Commission if there are there any discussions regarding Strategic Planning, the Commission has none. Chair Marks stated that the PIG will need to schedule a meeting sometime in January 2019.

At 12:20 p.m. Commissioner Adler made and Commissioner Monk 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: Executive Director and Legal Counsel – Annual Evaluation Feedback

The EDLC said that she asked each staff for feedback. She then shared those comments with the Commission.

At 12:57 p.m., Commissioner Kanda made and Commissioner Monk seconded a motion to move out of executive session and return to open session. The motion carried unanimously.

Chair Marks reported that EDLC shared staff comments and feedback with the Commission.

V. Adjournment – Next Meeting: December 19, 2018

At 1:05 p.m., Commissioner Adler made and Commissioner Monk seconded a motion to adjourn the Ethics Commission meeting. The motion carried unanimously.