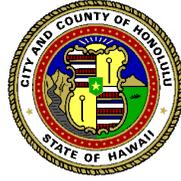


**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR

CHARLES W. TOTTO  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place: June 24, 2015  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Hon. Riki Amano (ret.), Commissioner  
Hon. Victoria Marks (ret), Commissioner  
Hon. Allene Suemori (ret), Commissioner  
Charles W. Totto, 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)  
Donna Y. L. Leong, Corporation Counsel  
Noel T. Ono, Assistant Director (DHR)  
Lila T. Tom, Division Chief, Classification & Pay (DHR)  
Gwynne Inamasu, Recruitment Section Head, Employment &  
Personnel Services (DHR)  
Keoki Kerr, Hawaii News Now  
George Hurd, Cameraman, Hawaii News Now  
Nick Grube, Civil Beat  
Jay Parasco, Mayor's/MDO's Office

Absent: Michael A. Lilly, Esq., Vice Chair

Stenographer: Lisa P. Parker, Legal Clerk III

**TRANSCRIPTION OF THE JUNE 24, 2015 OPEN SESSION MEETING OF THE  
HONOLULU ETHICS COMMISSION**

Chair Chen: Could you introduce yourselves?

Yuen: Stanford Yuen, Commissioner.

Amano: Riki Amano, Commissioner.

Marks: Vikki Marks, Commissioner.

Silva: Stephen Silva, Commissioner.

Mr. Kerr: George Herb and Keoki Kerr from Hawaii News Now.

Mr. Brasco: Jay Parasco, Mayor's office.

Ms. Leong: Donna Leong, Corporation Counsel.

Ms. Parker: Lisa Parker, Legal Clerk.

Mr. Ono: Noel Ono, Human Resources

Ms. Tom: Lila Tom, Human Resources.

Ms. Inamasu: Gwen Inamasu, Human Resources.

Ms. Bigornia: Kristine Bigornia, Legal Clerk.

Suemori: Allene Suemori, Commissioner.

EDLC Totto: Chuck Totto, Legal Counsel to the Commission.

ALC Wong: Laurie Wong, Associate Legal Counsel.

Mr. Kam: Geoff Kam, Corporation—Counsel to the Commission.

Chair Chen: Okay. Thank you. **Let's go into setting the dates and times for the next meeting.** Can we confirm July 23<sup>rd</sup>, which is a Thursday. Is that still good 11:30:

All Commissioners: Yup.

Marks: How long does it need to be?

Silva: Good point.

EDLC Totto: Oh, the meeting?

Marks: Yeah.

EDLC Totto: I don't know. Part of it will depend on what we get done today. Part of it will depend on how much we will be able to get done for you folks. Very frankly it looks—Letha will be unavailable, so that will probably slow the attorney's (inaudible) a little bit, so I don't anticipate that's it's going to be very long, but as soon as we find out how long you think it will be, we'll let you folks you know.

Suemori: Probably say two hours.

Amano: I think longer.

Marks: Yeah, yeah.

EDLC Totto: Yeah, normally it's two hours. Just because we had so many items today—

Suemori: Probably going into two—like today three hours.

Chair Chen: Yeah, I need to leave by 1:30 today. Oh, no actually they changed. I need to leave at 2 today.

EDLC Totto: Okay, good.

Chair Chen: Okay. All right. So, let's just keep July 23<sup>rd</sup> then from 11:30 to 1:30. August 21<sup>st</sup> is apparently Statehood Day, so if we could—

EDLC Totto: I think we had set it to August 19<sup>th</sup> at the last meeting?

Chair Chen: I have August 21<sup>st</sup>. But we can consider August 19<sup>th</sup>.

Suemori: August 19<sup>th</sup> was a very a good stretch of break.

Silva: Yeah. Then it got switched to the 21<sup>st</sup> for some reason, I don't know why. Because I had the 19<sup>th</sup> down also, and I scratched it out. So, 19<sup>th</sup> is okay with you guys?

Amano: Yeah, good.

Silva: Let's go with the 19<sup>th</sup>, I'll scratch the 21<sup>st</sup>.

EDLC Totto: Is it a State holiday?

Suemori: The 21<sup>st</sup> is.

EDLC Totto: Oh, the 21<sup>st</sup> is.

Suemori: We went from the 19<sup>th</sup> to the 21<sup>st</sup> and now we're gonna go back to the 19<sup>th</sup>.

EDLC Totto: 19<sup>th</sup>, okay.

Marks: And we don't know if Mike is available.

EDLC Totto: Okay. So, staff will check with Commissioner Lilly.

Suemori: But we can't change it anyway because 21<sup>st</sup> is what we changed it to, and it's a holiday.

Chair Chen: So, we'll just preliminarily schedule it for August 19<sup>th</sup> because we know that at least six people can come. September 23<sup>rd</sup> my mother's birthday.

Suemori: Yeah, the 23<sup>rd</sup> everybody confirmed that last time.

Silva: Yeah, we confirmed that.

Chair Chen: Okay. So, let's look at October and, I guess, the National Information will be October 21<sup>st</sup>? Does that work for people?

Marks: I'm not available for that.

Chair Chen: Okay.

Suemori: Are we the fourth or third ones here every month? Or just have a regularity here as opposed to month-by-month?

Chair Chen: Usually the third.

Suemori: Is it the third?

Chair Chen: The third Wednesday. We can try the fourth Wednesday which is October 28th. Does that work for people?

Suemori: I'm okay.

Silva: Either one I'm fine.

Marks: I'm not; 1

Chair Chen: Oh, you're still not.

Marks: 21<sup>st</sup> and 28<sup>th</sup>.

Silva: Both?

Marks: Yeah.

Suemori: Why we don't just set it for the 21<sup>st</sup> and change it the next time when we have more people.

Chair Chen: Well, we know that Vikki can't make it. So—

Suemori: Right.

Silva: We need four.

Suemori: We already five, so we don't have to worry about Vikki not being here.

EDLC Totto: If I could add, I mean, traditionally the Commission always tried to find the date where everybody could make it possible because everybody's point-of-view then.

Chair Chen: Something always happens.

Suemori: Let's decide October next month because Mike is not here, we'll never be able to decide. And if you want to have that policy then let's do it next month and figure out what October is.

Chair Chen: Yeah, we can do that.

Suemori: I mean, there's no point in discussing it if we don't have everybody here to have that.

Chair Chen: Do you want to do that or do you want to just preliminary schedule a different day of the week of the 26<sup>th</sup>?

Suemori: I don't care, we should hurry up because we have a lot of stuff we got to do.

Yuen: I'm okay every day.

Silva: Either one for me is fine.

Chair Chen: All right.

Marks: I'm booked both those weeks.

Suemori: We already know she can't make it, right?

Chair Chen: All right. Okay. So, what I'm going to do is because we're short on time, and I talked to Chuck Totto about priorities, making sure we do certain things, I was going to ask the Commission if we could get a **motion to move into executive session**.

Yuen: So move.

Silva: Second.

Chair Chen: All in favor?

All Commissioners: Aye.

Chair Chen: So if we could clear the room so we could move into executive session.

[pause. Everyone not participating in executive session clears the room]

[1:30 p.m. back in open session]

EDLC Totto: Chair, what I would suggest if you want to entertain a motion that the motion stated in Item B, the request for the motion stated in Item B at the end could say after the number, you could say subject to available funding.

Chair Chen: All right. So, we would have to a motion to amend?

EDLC Totto: No. There's no motion before you right now. You could just—

Chair Chen: Oh, just say that at the beginning?

EDLC Totto: Yeah.

Chair Chen: Okay. So, we're back in open session. **I'm at agenda Item III.B. If I could have a motion to confirm the salary for the Associate Legal Counsel for Fiscal Year 2016 set at \$85,416 subject to sufficient funding.**

Marks: So moved.

Silva: Second.

Suemori: Call for question.

Chair Chen: Oh, sorry.

Corp Counsel Leong: Is there an opportunity to comment from the public?

Chair Chen: Sure. You like to comment? So for the record could you state who you are?

Corp Counsel Leong: Good morning, Madam Chair, members of the Commission, staff. Donna Leong, Corporation Counsel. I just wanted to inform the Commission before you take action on this item that firstly we are still awaiting the Mayor's directive that it needs to be issued for fiscal year '16, which this item relates to. As stated in the letter, a copy of which I have provided to you, the Mayor's delegation to the Commission to Step B ALC's salary for fiscal year '16 would be pursuant to the Mayor's directive. So, we are awaiting that. I believe that the Commission needs to wait for that directive in order to exercise the power that he's going to grant you under the (inaudible). So, that's a procedural (inaudible).

Chair Chen: So, we're about to enter into a new fiscal year and this is the last meeting before the next fiscal year. So, what was timing on that?

Corp Counsel Leong: My understanding that it's going to issue within a month. It's usually issued just about this time. I'm not sure why it hasn't been issued yet. But my understanding it should be issuing within a month. And, typically it's effective as of July 1<sup>st</sup>. So, retro—the authority would be retroactive to July 1<sup>st</sup> and the Commission could exercise that power and take action in accordance with the Mayor's directive retroactive to July 1<sup>st</sup>. I'm hoping we'll have it by July 23<sup>rd</sup>.

Marks: So, you're telling us we shouldn't do it now but we should do it later and make it retroactive?

Corp Counsel Leong: I recommend that.

Marks: There won't be when any pay gets issued there will be an additional some for the delayed piece?

Corp Counsel Leong: That's correct.

Suemori: Just asking. Why we didn't just approve it subject to?

Corp Counsel Leong: Because that also contains budgetary constraints on the directors when they set, for example, myself, prosecuting attorney and other directors where Commission is (inaudible) who set the salaries of staff under that directive.

Chair Chen: Sorry, what does that mean? Your directive will include a monetary amount in it?

Corp Counsel Leong: No. There are budgetary directives in the Mayor's directive.

Suemori: Right.

Corp Counsel Leong: So, I'm not sure—I mean, you all should have in mind how much money we're being allowed to spend. The same is with me. I don't know how much money I'm going to be allowed to spend for my deputies corporation counsel.

Suemori: So, the Mayor comes in at 75 thousand, the directive was 75 thousand for her, then is that what you're saying?

Corp Counsel Leong: I guess, you could specify the number but that would be unusual. Usually the directive contains guidelines except for the folks whose salaries are absolutely set by the Salary Commission, that being the Directors of the Department, the Deputy Director, the Fire Chief, the Police Chief.

EDLC Totto: Maybe I can offer something. We have this subject to available funding and, I think Ms. Leong is saying you should also be subject to the Mayor's delegation of authority, is that correct, to the Commission?

Corp Counsel Leong: I suppose you could do it that way. I mean, I would suggest waiting until the—

Suemori: You're not asking to change the motion?

Corp Counsel Leong: I don't have that power.

Suemori: You could ask.

Corp Counsel Leong: I recommend that you defer this item until we get the Mayor's directive and you can consider it at the July 23<sup>rd</sup> meeting and assuming this is in accordance Mayor's directive, you could make it retroactive to July 1<sup>st</sup>.

EDLC Totto: My only concern is we don't have the ASO here; how the budget is set. My understanding very roughly is that the budgeted amount at the end of fiscal year '15 will be important to salary set at the end of '15 will be important to set the budget for fiscal year '17.

We put this off until into fiscal year '16 and we miss that date. I don't know if you have any information on that?

Corp Counsel Leong: As Mr. Tutto knows he has inquired about the timing for the fiscal year '17 budget and both BFS and we have advised him that it's premature. I totally understand that he may have some kind of draft budget that he wants BFS to consider, but we don't even have the direction for that yet. And that won't happen until after the Mayor's directive. I'm sorry, on the point as to whether the fiscal year '16 salary set the base for fiscal year '17, that's correct. It does but there's time to set the fiscal year '17.

EDLC Tutto: I'm actually asking about fiscal year '15, but I'm not an expert in that so I don't want to mislead or misguide anybody unintentionally.

Suemori: Why don't get back to the subject which is a request for a motion to confirm the salary and the request by Ms. Leong to defer it.

Chair Chen: So, there would have to an amendment to—Well, the motion is already out.

Suemori: Right. The motion is out, it's been seconded; we're in discussion, so she's recommending, so there's more discussion?

Chair Chen: She's recommending we defer it, so we would call (inaudible).

Suemori: Well, we can actually have discussion by the Commission members. That's what she's recommending, (inaudible) motion. So, we can discuss it.

Chair Chen: We are discussing it. What I'm saying is you wouldn't call a vote for the current motion. So, I guess, that's the question what the Commissioners want to do. If they want to defer it, call for a vote.

Yuen: I'm kind of leery about deferring it because there's always good reasons to defer anything, but I think we need to state for the record how we see it and I think they suggested like pending the Mayor's directive, I think should cover that. But, again I'm not a lawyer.

Chair Chen: So, do you have a comment on that? My concern is I don't want to pass motion that's turns out, gets invalidated because it's—

Counsel Kam: You'll pass a motion or not but I think it's all subject to the budgeting process. So, the Commission is going to state its position on what the salary should be, could be, but that's, I think is first part of (inaudible). So, Stanford's position, I think, to say something is not (inaudible). So, that would be my comment, (inaudible). But this is being a matter, this is the Commission's discussion.

Suemori: I actually would take the cautionary road and move to defer the motion as amended until July because there's no harm to (inaudible). From what I understand, tell me if I'm wrong, once the directive comes in, she gets what we recommend. No? Or within the budgeted process, but then are we saying we should do this notwithstanding budgetary process?

EDLC Totto: It is subject to the budgetary process. That's part of the motion.

Suemori: Right.

EDLC Totto: And last year we spent 12 months going over this.

Suemori: That's why I want to do it next month because it's subject to it as opposed to—

Chair Chen: So, did I understand correctly, Ms. Leong, you're saying a directive could come down with a specific number?

Suemori: No. That's not what she said.

Chair Chen: You saying he could do that?

Suemori: No.

Corp Counsel Leong: Theoretically, he could do that but he has indicated that he's delegating to this Commission, the authority to set the ALC's salary, but that has to be formalized in the Mayor's directive, and the reason—I mean, you could all adopt this if you want, I mean you could subject to the Mayor's directive which would empower you to actually do this but if it is inconsistent with the Mayor's directive I would have to ask Mr. Totto put it back on the agenda.

Suemori: Right. If the Mayor's directive came back and says everybody is going to get a 4% cut then where are we?

Corp Counsel Leong: I would have to ask the Commission to put it back on the agenda and discuss it again.

Suemori: Right. So, why don't we just wait.

EDLC Totto: Because I'm going to get down to dollars and cents because not only did we wait for 12 months last year, but every time there's a delay in this, she loses the value of the money. So, if you wait until July then there's a month. Let's say the Mayor's directive comes out next week, then I can start processing this because it will be subject to the Mayor's directive to give authority to the Commission and subject to funding, and I can at least start the process.

Suemori: Right. So, if the directive came down at minus 4% then what would you do?

EDLC Totto: Then I have to bring it back to you folks.

Suemori: Right.

EDLC Totto: Because that would be—

Suemori: And it would basically be one paycheck which is the July 15<sup>th</sup> paycheck.

Chair Chen: So, I take it the point that is a delay in a salary increase to the Associate Legal Counsel.

Suemori: Or decrease. I mean, if he comes in and says it's a minus 4% then we're back in, and if he has paid it out then what are we doing?

Marks: **Okay. It was my motion. I'm going to amend my motion that confirms the salary as stated subject to available funding and subject to the Mayor's directive.**

Chair Chen: Do we have a second?

Silva: Second.

Chair Chen: Do we have a call to vote on that?

Suemori: On the amendment.

Marks: On the amended motion.

All Commissioners: Aye.

Chair Chen: So, I'm sorry, Commissioner Amano, did you vote?

EDLC Totto: Yes, she did.

Silva: Yes, she did.

Chair Chen: Oh, okay, I didn't hear you.

Amano: It would help if you went through the normal process. You ask for ayes, you ask no no's, you ask for abstentions, then I'll come out, but I did say aye.

Chair Chen: Okay. All right. So, that's unanimous.

Suemori: That's amending the motion.

Marks: On the amended motion; yeah.

Suemori: No. That's to amend the motion; not vote on the amended motion.

Chair Chen: Did I misunderstand that. I thought you proposed a new motion.

Marks: I thought I did to.

Suemori: Then what happened to the first motion, seriously?

Marks: I withdraw the first motion.

Suemori: Okay. If she withdraws the first, you got to second it and then we have to vote on—

Chair Chair: It was seconded.

Suemori: No. She never withdrew the first motion. She moved to amend the motion. He seconded to amend, so we voted on amending the motion. We did not then vote on the amended motion.

Marks: Let's vote on the amended motion.

Suemori: Before you do that. Okay, okay, could do it that since you didn't vacate the first one.

Marks: Let's vote on the amended motion.

Suemori: Right.

**Chair Chen: All right. So, the amended motion is, you've made amended motion as stated so can we have a call to vote on the amended motion.**

Marks: Let's just vote on the amended motion. How many say aye?

All Commissioners: Aye.

Chair Chen: How many say nay? [no response] How many abstain? [no response] All right.

Marks: Okay. Passed.

Suemori: Moving right along.

**Chair Chen: So, Item III.C. For Discussion: Options for Investigative Services.**

EDLC Tutto: Okay.

Marks: We all got a letter from Ms. Kubo. So, they're gonna still send you names but this is an exempt position so you can do what you want?

EDLC Tutto: Correct. And that's one of the reasons that, although we appreciate them sending names, they don't put it through the normal process that civil positions. And, I guess, there's some—Maybe Mr. Ono could talk about that.

Mr. Ono: Thank you, Chair. We really appreciate. You have the memo from Director Kubo, and basically it's pretty much reiterating some of the information that Mr. Tutto (inaudible) attachment and narrative. We had submitted a total of 76 eligible names. So, what that means is that these individuals all met the minimum qualifications requirements for the position. So they're all qualified. What we're adding to this at the bottom was, we want to make it clear that normally we don't get involved in exempt positions but as a courtesy in assisting the Commission we provided the names. So, we do have some additional names that we have gotten, not from the civil service roster, these are civil service lists that we provided to Mr. Tutto. When we provide the names we'll probably by the end of the week. I'm not sure the number, but it might be a substantial number that you can review. Within the (inaudible) you'll have to probably contact to see their interest because it's not like an application, just an indication of interest. They may or may not be wanting to come.

Marks: Sure.

Mr. Ono: Mr. Tutto (inaudible). But that's all I have to present to you. Clearly, when we screen these sole service, the names on the list that we provided, they do meet the qualifications. After that, it's up to the Department to do the (inaudible) process.

Marks: Thank you. I—

Mr. Ono: It's much easier than civil service because you don't have to go through all the hoops.

Marks: I appreciate HR helping out with this. I have a question and that is on the temporary hire provision, apparently a notice came out saying that they wouldn't extend the 89-day appointment, and I understand that Mr. Tutto is aware of some other investigative positions in the City either with Liquor Commission, prosecutor's office or whatever that have had temporary hires for their investigators go on longer than what ours has. And, we're just wondering can we get another extension of the current investigator for this Commission?

Mr. Ono: First of all, let me—Regarding the other departments, the prosecuting attorney, currently they are filling in positions. In all of the departments we've always comment to them

as well as other departments that you need to fill certain positions. So, we send reminders to them and (inaudible) we're not going to renew it. But, you know, they do provide pertinent information that shows there's an attempt, we may extend. In this case, the prosecuting attorney they are filling their positions according to my staff. The Liquor Commission, those investigators are not professional investigators. They are Unit 3 type versus Unit 13, professional. As you know, they have years and years of problems there. They're undergoing a reorganization and they have filled some of the lower levels but they're trying to fill the higher. So, in that situation we think it's much different. They are attempting to fill, but, yes, they do have contracts. In reference to the investigators we use, these are only 19-hour investigators that we use if a Department cannot conduct an investigation for whatever reason because it's a sensitive one, investigating a director or somebody or the staff don't have the time, they make a request to us if we could utilize these investigators to do the investigation. So, it's like a fee (inaudible), they provide reimbursement to us. It's goes back to the general fund at the end of fiscal year and we start off the next year again. They are only 19 hours. Right now we currently have two that we're trying to remove. So, they don't work regularly. In fact, one of them, whenever they have time. So, we have a problem, we need to find investigators as well that would be willing to work and, of course, they're not highly paid.

Chair Chen: So, Mr. Totto has written out his attempts to find somebody. There's still a denial to extend the 89-day.

Mr. Ono: Okay. So, theoretically how it works, sorry Chair Chen. The request comes to us. The first step of the process, we could actually deny it and send it back or could appeal, but this extension request was at the MD's level, and the MD is the one that, I believe is denying it. So, it's sort of out of our hand.

Chair Chen: So, is he—

Mr. Ono: But you could submit a request for extension. It's not out of our hand at this point.

Corp Counsel Leong: Chair Chen, I would like to (inaudible) questions that have been asked. I know that the administration has advised Mr. Totto of the need to fill the position which is the civil service position—

EDLC Totto: Excuse me, it's not a civil service position. It's an exempt position, and I have a point to make about that later.

Corp Counsel Leong: Okay. I'm sorry, I'm not an HR expert. I do my best to fill this position, and it's been going on for a long time. So, earlier this year when I know that Mr. Totto and his open session memo indicated that he has made requests for extensions of this contract. We're on the 7<sup>th</sup> renewal at this time. When the managing director found out about it, he issued a direction to all of the directors and a copy was provided to Mr. Totto that these PAC contracts should terminate and so that's a city-wide direction to the directors. He realizes that it's not always

practical to do that. And, so there are extensions. I can't speak to any of other departments. I'm not going to defend the long-term renewals of the PAC contracts. I'm just providing the information.

Chair Chen: So, is he not satisfied with the efforts that have been made to find a replacement?

Corp Counsel Leong: So earlier this year—This request that's before the Commission today is not a new one. The administration has been trying to work with Mr. Totto to provide him with the appropriate candidates as Mr. Ono has indicated, and I have to defer to DHR on that. But with regard to the extension of the PAC contract, I know in the open session memo that Mr. Totto indicates there was a March 19th email and, in fact, a request attached says open-3, and he indicates in the memo that no response has been received. With the Chair's permission, I'd like to distribute to you my email of April 9<sup>th</sup> to Mr. Totto with a copy to the Ethic's staff in which I asked her to process the CAC I for the—

EDLC Totto: I apologize, that's correct, but—

Corp Counsel Leong: The CS-C1 for the investigator with instructions to amend it be deleting the overtime amount that had been requested and to extend through June 30<sup>th</sup>, approving the extension, through June 30<sup>th</sup>. Now, this is April 9<sup>th</sup>, so it was in my mind generous extension because this was not the first request to extend. And, I indicated in my email that I totally can relate with the difficulties in filling positions. I've had an Investigator II position in corporation counsel open for a long time. We go through the same process. Our investigator who does service the department, you know, he has a very work load but we have been trying to fill that position, I want to say for a year. It's challenging, I don't deny that, but you have to make efforts to do that, and I think all of the names sent by DHR are those efforts. And, I told Mr. Totto that even if he finds someone soon, because of the candidates likely need to give a two-week notice and other processing requirements, it usually takes anywhere from three to four weeks to bring them on board, therefore, I was approving the extension to June 30<sup>th</sup> to allow for a transition period. So, I just wanted to clarify that note in the—and I'm going to hand it to Laurie for distribution.

Chair Chen: So, going back to my previous question, is the managing director now denying an extension because he's not satisfied with the efforts to find a suitable replacement or what's the basis for him denying another extension?

Corp Counsel Leong: Mr. Totto did recently reach out to the managing director. I believe it was earlier this month requesting an 89-day extension which is the full period of the extension that's permitted. And, the managing director did deny that request, but said that he would consider an extension for shorter period of time, but he wanted to know that the recruitment efforts have been. I'm not always copied on email, but I have not seen a reply to that email. So, the managing director is awaiting information to my knowledge.

Chair Chen: Did you want to address that?

EDLC Totto: Yes. Just couple of things. First of all, I didn't think I misled the Commission because I do in the open session. So, after we were unable to find a suitable candidate in March we requested certification, so on. I thought that I had put it in there that they had relented and given the contract. But in any event obviously we have it through June 30<sup>th</sup>. The managing director did very recently a couple of days ago, deny the extension of an 89-day contract. He did say he would consider other things. He was very disappointed that we had not filled the position. He had looked at some of the applicants and found that they had either high level of education or lots of government experience. I'm going to belabor the issue with the—when the MD was not here, but the problem was that we had been finding a very little or sometimes no one who has had any experience dealing in employee investigation. And, that's a big difference as to what we do.

The other issue I wanted to point out, was my understanding, maybe Mr. Ono can confirm or correct. My understanding is that the reason for not wanting to have personal service contract for civil service positions is in order to ensure that civil service positions are filled properly. This is not a civil service position. We're asking actually somebody who's going to be an exempt employee who will not have the same benefits or protections under a union contract. And, I'm not sure why we're being—We're kind of getting thrown in to the same mold as if this were a civil service position.

But, in any event, I appreciate the Commission asking these questions because I'm not sure why—I guess, the last distinguishing point is, the third point here is, unlike Donna Leong's Corporation Counsel or the other places that we looked at, this is our only investigator. You remove this investigator position, we don't have any investigation on going. Liquor Commission, Prosecutor's office and the Equal Opportunity Office, even Corporation Counsel. I understand that they have more than one position, so hopefully they have employees that can investigate even if they miss somebody contract and or haven't filled the position yet.

Anyway, from what I can see, it looks like it's—I'm not sure, I got no sense from the MD's email that he would reconsider. So, just most of this focus is what can we do in the future other than—

Marks: Well, if he left open. I think he needs to go back and ask for 60 days extension. Well, I'm happy to do that. You know it's been couple of days so I haven't had a chance to go back. But, yeah, maybe the Commission can help in that. But I appreciate that. Good point.

Chair Chen: So are you reviewing any candidates right now?

EDLC Totto: Yes. We have—what happened was we did get the list in May of 13 folks around, I think it was May 15<sup>th</sup>. We had selected out of that group five people, two responded that they're interested in the position. What we do is because nobody has applied for the investigator at the Ethics Commission we send off to them. We say this is the job duties and if you're

interested please give us your experience in conducting administration investigations and specifically regarding employees. We got two back in that situation and then we got the next list June 15<sup>th</sup> after talking with—Anyway, we got the next list on June 15<sup>th</sup> and we're in the process today, yesterday and today actually sending out to find out who might be interested number one and then have them refine their qualifications towards what we do as opposed to going to prosecuting attorney or the Liquor Commission something like that.

So that's the process and we hope to start—We've given them until a week from today to respond whether they're interested and then we'll start conducting our interviews after that.

Chair Chen: Mr. Ono, would you—

Silva: May I ask you something? What Mr. Totto is describing is partial of, you know, sending them forms to fill out. It's sort of like following the civil service format. But you know in conversing with my staff because it's an exempt position, you don't have to even go that far, Mr. Totto. Essentially you could just invite the person to your office, question them, interview them and offer them a job. So, you don't have to go through all this hoops that might delay things.

EDLC Totto: Excuse me—

Mr. Ono: Understand, okay. Let me finish please. In addition, when you recruit for these positions, when the departments set up the interview process, you know, like you have a panel, you have a bunch of questions, you set a bar, like maybe there's a certain percentage where I think he refers to 70%. They didn't hit the 70%, where if you don't score high enough to that then they're eliminated. Sometimes you don't have to set the bar that high. I mean looking at the minimum qualifications first, you have eligible, then you interview them to see whether they can do the job. Not everyone is going to be equipped or have all the knowledge you need. So, if you say they say they got to know just cause, you gotta know all the contracts, there's no such person can do that right off the bat. There's very few of them that actually have that experience. They might be retired. The thing is if you're going to have a permanent position you need to fill it. So, if you reach too high you're going to have a hard time filling it. So, we tell people sometimes that's why we recommend downgrading positions, although that might be workable here because you pretty much attorney man type to come in and do the job. But perhaps Mr. Totto you're setting the bar too high. You need to look at someone that can come in do the job, quick learner and can perform the job.

Now, granted Ms. DeCaires is very experienced and knowledgeable in being on the job for this length of time. Perhaps she may have not known she can do today because she's developed that knowledge over time. You know a lot of these investigators get picked up by various departments, they don't know everything. But they're very capable and they learn on the job. So, we believe that if you do set the bar too high, you'll never going to be able to hire anyone and we're going to be constantly seeing a request for extension or contract. So, we try to gently recommend to the department, don't keep extending. Now, this MD is very serious as well as

formal one about pushing the end to express service contracts. I mean, these are clear marching orders. So, it's just not the Commission that's undergoing scrutiny from the MD. It's other departments. Sorry, sorry, Mr. Totto.

Chair Chen: So, I have a point. I guess, I take your point which is in the process of evaluating these candidates is your expectation that they come with all this knowledge and no expectation of training or is it—

EDLC Totto: Not at all.

Chair Chen: Okay. I guess, I thought I read somewhere you talked about there's a notable disadvantage or difficulty if the investigator changes because she's already interviewed hundreds of people and somebody else stepping into that role could set the investigation back. That's sort of a separate issue whether someone is qualified to assume the position.

EDLC Totto: I agree.

Chair Chen: So, I guess, are those two things getting muddled because if there is a difficulty because she is so experienced that to replace her you expect someone with equal caliber which is very difficult to do without downgrading the investigation.

EDLC Totto: Actually they do have to be looked at completely separately. The normal course of our investigation versus the ones that are we'll be trying to change midstream but the qualifications necessary. We set the bar relatively low 70%, we have written questions, we have maximum points for each question, we had three interviewers, one out of our office, one outside of our office from the State Attorney General's office so on. I don't think we were being unrealistic. The area where we think we were trained in, and this is what we had to do with Ms. DeCaires is ethics laws and ethics issues and that type of thing. Not necessarily whether or not you know how to interview somebody or you know the difference between interview and interrogation or you know the basics of just cause that kind of thing.

Obviously, I mean, I hear nobody trusts what we did. So, they're giving us a second chance to find somebody. That's good. We will continue with that. I'm still puzzled by DHR coming in here and saying they don't really, they're not concerned about just cause, I shouldn't say that's a misstatement. But they don't think that you have to know just cause issues before you become and Ethics Commission investigator. We were trying to find qualified. Not the same qualifications as Ms. DeCaires because she retired as an HPD captain and she had a lot experience in internal affairs investigations, so we were looking for somebody who could hit the ground running but there will be other areas that we'll look at. Now, I do think we need to divide it and look at what we could do for somebody who's going to be coming on board and what do we do with the cases the 15 to 17 cases where we expanded hundreds of hours and changing out. I don't think you could find anybody who could sit down and just pick up these cases without expecting that it would take them months to do. Because some of these are quite detailed,

complex issues, and we had up to, Ms. DeCaires told me 200 interviews. So, at this point, I think Commissioner Mark's idea is really a good one. I'll go back to the MD, tell him what we done and we're doing and ask for continued period, if not 89 days, and then the other options that I laid out in the memo are to consider for those cases where it would be very difficult, time consuming and counterproductive to have a new investigator to take over to look at having an outside contract as a vendor as opposed to personal services contract. The difference there being personal services contract is like an employee, outside services is a vendor and focus her on those items and then continue working with the AGs and continue in trying to find our exempt full-timer.

Marks: I have a question to something you said, Mr. Ono. For an exempt position you're saying no formal process has to be followed? He can just—

Mr. Ono: Not like the civil service process where it's really structured.

EDLC Totto: I'd like to comment on that because we've received several complaints over the years that I've been here about our personal contracts getting jobs and then when it becomes a civil service position, hey, I'm the one that had the personal service contracts for those years and they just drop in the civil service position because they have the experience in that area. Laurie and I, along with the other people in our office made a concerted decision not to simply do the quick and dirty approach. Because number one, we're the Ethics Commission, we want to make a fair process. And we're not trying to delay things. Actually, you know, it's a little humbug because you gotta ask people to send in things and you gotta interview them and so on, but that's a much fair process then simply finding somebody who, hey, I heard they're pretty good and saying okay you're on board. Also, when you hire somebody like that it's not better to fill the position then to have no one. That's something you have to be really careful about—

Marks: No, I agree.

EDLC Totto: Yeah, and so—Anyway, that's why we were taking that approach.

Mr. Ono: The reason why I was using that as an example is just to illustrate that perhaps, your process is maybe too formalized in trying to protect ethics reputation, it's great. But if you too formalize it, it slows the process down and that's why I'm saying really—I use extreme example which you can do, which is why I can see you wouldn't use it, but that's all it was an example. The thing about just cause, it was just an example, knowing just cause, knowing collective bargain agreements and whatever the bar you're setting you need to consider whether or not that setting it too high. Because you're looking at Investigator III here, you know, based on the duties that were described, the minimum qualifications to come with this class. A lot of these guys are qualified, yet we cannot find anyone? Naturally, we're going to wonder.

Marks: Corp Counsel can't find anyone either.

Mr. Ono: Really, if you really get too picky you're not going to find anyone. So that leads to then the extension to contract. Again, this contract people a lot of them are good. You want to keep them, but honestly we have to fill.

Corp Counsel Leong: I have to say my position as an Investigator II, the salary is really low. That's the challenge. Chuck's position as Investigator III.

Mr. Ono: Well, there are ways in our processes in discussing it via Director Leong or with us, there are ways to address certain things like salaries, (inaudible) rationale that can allow for maybe hiring. So, you just got to sit down and talk to us.

Corp Counsel Leong: And I'm pleased to say we found someone and he's starting within a week or two.

Marks: Good. Does he have any friends.

Corp Counsel Leong: Investigator II.

EDLC Totto: Well, I'm curious, what are you talking about? You're talking about actually, we have to prove to you folks that we've taken all reasonable efforts to find somebody Investigator III entry level but you'll allow higher payment?

Mr. Ono: I was just saying that in you effort to show that you are or you have been trying to fill the position, we told you before you got to show that you tried. And for our purposes perhaps an extension of the contract makes sense because you're in the process of trying, but if you're—All I'm saying is if you're setting it too high—

EDLC Totto: I understand—

Mr. Ono: ...then you're not going to find anyone. That's our concern. We're not saying you did this on purpose or whatever to keep Letha or whatever your reason is. Believe me we've seen many reasons why contracts are extended, and you know some of them they wanted to keep the contract person, others because they don't to train the new civil service person, so there's a lot of reasons why contracts continue to be extended. We just want to assist you to get somebody on board. That's why we're providing these names for you.

Chair Chen: Commissioner Yuen.

Yuen: You know we talk about setting the bar too high. That's a relevant subjective term. We all have different ideas of what that level is, what it really defines. But I would have to defer to the person I think would be most knowledgeable of what that bar setting is and that would be somebody who have been in the job and who would establish these criteria for that level. So, I would, you know, seem like everybody got their own different interpretations so in a way we're

saying, “well, your bar is too high or maybe you should drop it.” But what is too high? And, I would have to defer to the legal counsel on that because he’s been in the job.

Mr. Ono: I can understand what you’re saying. It’s a tough choice but, you know—

Chair Chen: Commissioner Silva.

Silva: I got a question. We’re talking about lowering the bar, 70% is kind of low, right? You want to go 60, 50, or 40? I don’t think so. The other question I have is, I think, we’re all looking for investigators. You’re looking for investigators, everybody else is looking for investigators. Why is it such a difficult situation to hire a retired police officer who’s been in investigation for 20 years or so. Because, I think, probably some of these rules need to be changed. I look at civil service, okay. Civil service, federal civil service, somebody in the military who is what they call a warrant officer specialty whatever he is in, infant specialties whether in ordinance or administration or whatever, they go immediately on retirement from military to civil service and they get a heck a lot more pay, you know what I’m saying? Whereas we go from police department to our position and they’re making less pay, right?

ECLD Totto: Correct.

Silva: I mean, she’s dedicating herself to do a good job. We’re not investigating Joe Blow down the street who maybe had some pakalolo on him or something. We’re investigating politicians and everybody else. So, we need somebody with not with lower bar, higher bar than anything else. So, I don’t know how you guys can maybe change some of those rules, but I think that’s the criteria that needs to be changed. We’re going around and around for it, trying to find to somebody that will fit the bill. And all of these cases that she’s handled, she’s handled from probably a month on the job she was handling cases already, right?

EDLC Totto: Oh—

Silva: Yeah, you know what I mean?

EDLC Totto: The first day job I gave her 30 open cases. She didn’t leave after that.

Silva: Yeah. And she come up with detailed information on these cases. Whereas we go with somebody with a lower bar type situation, we’re going to be looking at itty, gritty type—

Mr. Ono: All we’re saying is that you have to have permanent position, you need to fill it.

Suemori: We’re between a rock and a hard place. One, is she’s retired, she’s making her police salary retirement. If she joins us, she loses that and then to come on salary it’s lower. So, we’re in between a rock and a hard place because of her position and that’s a problem we’re going right

into the dead wall of (inaudible). As an Ethics Commission, I think we should not, we should actually not run into a wall.

Yuen: That's what I'm saying. Federal government they don't lose their retirement.

Suemori: Well, it is what it is.

Yuen: You know, that's why saying rules need to be changed.

Suemori: And, so right now it isn't what we want, but we're the ones as Ethics Commission. So, I think we should. That's all. I think it's unfortunate but it is what it is.

Marks: I have a question. Does DHR put out a newspaper advertisement like on a Sunday in the Classifieds for positions open in the City?

Mr. Ono: Yeah.

Suemori: You used to.

Mr. Ono: Except for civil service. We don't advertise for exempt—

Marks: You have anything for exempt like UH has, you know, instructional—

Mr. Ono: I remember correctly, we usually have the department if they want to issue. They got to pay it for themselves. But we don't because we only advertise for civil service—

Marks: So, there's no way for us to coattail on you without having to pay for the ad?

Mr. Ono: Well, in a sense we kind of helped you by giving you the list of what we had.

Marks: No, no, and we appreciate that.

Mr. Ono: So, short of advertising, you've gotten all the names.

EDLC Totto: And we have, in the March round we advertised and we also went on Craig's list—

Marks: And Jobs on Demand, I think you said—

EDLC Totto: Yeah, right, right.

Mr. Ono: And we will provide you additional names.

Marks: Thank you. Okay.

Chair Chen: Okay. Anything else on that?

EDLC Totto: Thank you for the input, appreciate it.

Chair Chen: **All right. So, moving on to Item III.D.** I wanted to talk about the no contexts of III.J. So, it seems like to me it makes more sense to discuss III.J. first what the procedures are for evaluating the work performance of executive director and then deferring the actual performance evaluation to a later time.

If I understand that correctly from you, Mr. Totto.

EDLC Totto: I mean, whether you talk about III.J. today or not, I just wanted to say that for D and E, which are the performance evaluation for the EDLC and E is the setting of the salary for fiscal year '16, it was going to be deferred. I understand that the Commissioners have not been able to communicate all their evals yet and I understand that particular issue, and if you want to take up Item J today, which is procedures for evaluating the work performance of the EDLC that's fine.

Chair Chen: Okay. I guess, I would want to clarify Item J so they're all on the same page about we're moving forward because I didn't receive any evaluations from any of the Commissioners for Mr. Totto.

Silva: I turned mines in.

Chair Chen: Oh, sorry. There was one from Commissioner Silva which needs to be getting passed on to me. But I had earlier requested that all the evaluation—Like in the past what has been done, the previous Chair is that the Chair collected all the evaluations from the different Commissioners and summarized them and then had a discussion with Mr. Totto.

Suemori: Who had discussion?

Chair Chen: The Chair had a discussion with Mr. Totto about the evaluations that were submitted. And, so—

Suemori: Like you said a committee of one for personnel is that what it was, the Chair?

EDLC Totto: I have to say, it seemed to me it was kind of an informal—everybody did their evals, and I think I saw all of them, but Chair would try to summarize them and then sit down and talk about that. And, I don't personally, I'm happy to hear from all at once or have it done, collected and then done. I do think it's important that the Commissioners have a chance to in

exec session or something to say, well, this is what I'm concerned about or this is what I really like or whatever or are you thinking about this for the future.

Suemori: When do we usually do this?

EDLC Totto: Good question. It's really been irregular. You know, I—

Marks: I think one time you said it happened generally in September, but we thought we should move it up to June to coincide with salary.

EDLC Totto: Thank you; yes.

Chair Chen: With the budget; right.

EDLC Totto: So, my last one, I think was September of last year, but because we've been told that if you're going to give a raise, do an eval and then you can, then you get set the salary based with having that evaluation information. So that's why I put it on this point. And then I thought it would be good to get it going before the new fiscal year, in this case fiscal year '17. So, I've asked to be put together at least it'll give the Commission a set point to start with.

Chair Chen: I think it makes sense to have an evaluation prior to setting the salary because if it's a merit based increase, I want bases that increases based on. That's my first point. My second point was that I know that you had mentioned sending the evaluations to you. I feel, in my personal opinion just because it was done—Well, it was done a different way before, and I think it's more appropriate that it goes to the Chair as opposed to it goes to the Commission, which—

EDLC Totto: Oh, you mean to the staff—

Chair Chen: Oh, sorry, to the staff. Rather than have the staff collect the evaluation for their own—

Suemori: Absolutely.

Chair Chen: ...for their own supervisory—

EDLC Totto: It was really just the intent of having us collect the stuff and then send it as opposed to reviewing or anything like that. But that's fine.

Suemori: I had some questions about what was the actual instrument—

Chair Chen: Instrument?

Suemori: Yeah. The (inaudible) of what it was serving and did it track the job and responsibilities and that kind of thing. It was sort hit with like in a vacuum, because I don't what's before and I don't what's going on. And, I know I raised that at the last meeting, but it was like—So, that's where I was coming from.

EDLC Totto: If we do have some more time. There's no formal job position description for my job, but I have in the past put down these are the 15 things I'm supposed to make sure that I do and how much time there is. In terms of the (inaudible) perform the Commission back in mid-2000s looked at a number of different executive director evals from different similar Commissions and then set the one you're looking at now. Commissioner Marks had asked also a similar question, so I asked corporation counsel to get a copy of what they do for the supervisors at corp and just got a copy of that. I haven't really looked at it. It looks very similar to the one they use any corp deputy but they could probably be a marriage between those two because I do have some issues or some responsibilities that are different and I'm happy to give that information over whatever way you think would be more sufficient.

Chair Chen: So, Commissioner Silva already completed the existing form. Other Commissioners, are you satisfied with continuing that current form knowing the origin?

Suemori: What's the origin?

[colloquy between Chair Chen and Suemori]

Is there a way we can see the job description?

EDLC Totto: I'm happy to send that out.

Suemori: Because we're getting the evaluation, I don't even know what I'm supposed to evaluate.

EDLC Totto: Sure.

Chair Chen: You can disperse the form again along with the job description at the same time.

EDLC Totto: Okay.

Chair Chen: And then if we were to evaluate you before setting the salary at the next meeting, then I would ask the Commissioners if they could complete the forms and send it back to me within the next couple weeks, and then I can meet with you to discuss it prior to the next meeting.

Suemori: Is it possible that you could actually meet with us?

Chair Chen: Yeah, we could do that too.

Suemori: (Inaudible) prior that we meet with him only because I would think you would want a consensus of us first before you try get the consensus from our documents to give to him or you think you could do that take it from the paper and then just represent—

Chair Chen: Well, my understanding the way it was done before is the Chair review them all and summarized them. And, I think if I had a difficulty summarizing it, if I felt things were inconsistent, I could go back to the individual Commissioners that completed the forms and ask for clarification if I think it was inconsistent with the others. I could do that. But if you wanted to have a particular meeting just to discuss that, we could do that as well.

Suemori: I don't know, how do you guys feel?

Marks: Well, I think the other thing we can do is put on executive session, and all of us could have a discussion with Chuck.

Suemori: Yeah, next meeting.

Marks: Next meeting.

Suemori: Yeah.

Chair Chen:

Amano: I'm interested in big picture policy. So in an ideal world, would it be better that we did evaluations in March or April so that we would be able to do this process and everything ready for the next budget year?

Suemori: Yeah, I agree with that.

Amano: So, we could put that timing together, that was my only hitch that all of sudden it came out from I don't where, and I know that supposed to be done an evaluation in September. I don't know what happened to that one because I was just a month a board. So, I don't think it went to the Chair. There was some discussion about the Chair not participating. Did those evaluations go to you?

Chair Chen: No.

Amano: Then it must've gone to you.

Marks: Were they done?

Amano: Yeah, they were done.

EDLC Totto: They were done. Actually I can't remember.

Amano: I don't think—I thought he collected them.

Suemori: Yeah, he did collect them. Who's he?

Chair Chen: The Chair.

EDLC Totto: The Chair at the time, Charles (inaudible) Gall. And, I do remember we had a Commission meeting where the Commissioners talked to me about issues that were brought in the evaluation. I remember that now. And, I just don't remember—I apologize—

Suemori: Where are the evaluations?

EDLC Totto: I would assume we've got them.

Suemori: Yeah, I would assume too.

EDLC Totto: Probably either—

Chair Chen: Commissioner Gall returned them.

EDLC Totto: Yeah.

Chair Chen: You're right. There were certain points in there that were addressed, I remember you addressing. No, actually I thought you met with him individually and then you responded to the Commissioners.

EDLC Totto: I think the problem was there was a limitation on his participation.

Marks: You know, let's talk about going forward. We're going to get your job description, copies of the evals sent out to all the Commission members. We'll complete them. At the next meeting, we'll be on executive session to discuss things with them.

Amano: So, we all get copies then?

Suemori: We should also get copies of his past evaluations to see how the past evaluations measures up to know, right? I mean, if it's the same issue. I mean, if he's blowing successful then we should know that. But if we're all going to do it and nobody knows topics before and after, how good is that?

Marks: Yeah.

EDLC Totto: I have no problem with that.

Suemori: Yeah, okay.

EDLC Totto: Well, I don't know. It sounds—

Marks: So, you need to go and find those old evals at least from last year if not two years.

EDLC Totto: Okay.

Amano: We go ahead and do the evaluation, submit to you, you would distribute to all of us, have a discussion at the next meeting, but going forward perhaps we start this process in March of next year, take a look at the tool, see it's still good to go, and we go launch right into it, make sense.

Chair Chen: Is there a formal internal policy in the evaluation process?

EDLC Totto: No, no, but I do ask, would I be able to see the evals before the reading on the evaluation?

Suemori: No.

Chair Chen: I think you should because if we're going to have a discussion about it, then he should be able to—

Suemori: Don't you think we should each other's first?

Chair Chen: Yeah, no, I agree with that. I'm saying—

Suemori: And have that discussion first?

Marks: We take too long doing stuff.

Chair Chen: Did I understand correctly you're saying at the next executive session we actually meet—

Marks: Yeah, but in advance we should see things. I think it's okay give him to Chuck. I mean, you don't want this going to two meetings, three meetings.

Suemori: Okay, fine, fine.

Marks: We got too much to talk about.

EDLC Totto: I'll put together an email also to kind of adhere the steps.

Suemori: But I think we should have a procedure for—

Amano: An evaluation policy—

Marks: Oh, yeah.

Suemori: A policy, right.

Chair Chen: So, we could ask the Commission to come up with a very basic policy that kind of aligns of what we just said, the timing for next—

Marks: Okay.

EDLC Totto: Set out the steps—

Chair Chen: Okay. So that's off D and J. So, D will be deferred to next meeting. **Sorry, D and E will be deferred to the next meeting.** Okay. **So moving on Item III.F. for Action or Request for Motion to Approve and Adopt Staff's Recommended Chartered Amendments** to submit and (inaudible). Can I have a motion to discuss.

Yuen: So move.

Silva: Second.

Chair Chen: Okay. Would you like to take that forward, Mr. Totto?

EDLC Totto: I'm cautious to say too much because I don't want to weigh the Commission's attorney-client privilege. But I have laid out. First of all, I tried in the first part, there's two alternatives. Alternative 1, I tried to capture what the Commission has talked about over the last few meetings regarding, having the attorneys, the EDLC and ACL become within the jurisdiction of the Salary Commission. The Salary Commission would set the pay ranges. And, I give an example their last approach for that, and then the Commission would set the salaries based on those pay ranges and, of course, as always based on whatever budget is going to be allowed.

The second approach is to revise, is simply a question to the Commission that's why it's up for discussion, whether the Commission wants to do the Salary Commission and makes changes regarding the attachment to corporation counsel as administratively and whether the Commission wants to look at other options whether to go administratively attached to a different department or take the model used for the City auditor, which is to say, "okay, City auditor basically we're

going to allow you to set budget and personnel matters as if the Ethics Commission in this case were a department director. Obviously, the Ethics Commission would still be subject to the guidelines, limitations, restrictions and budget of the administration in a situation like that. And, so at this point, I throw it out for discussion.

Suemori: Was there a reason why you put that as “and/or” as opposed to two different charters—

EDLC Totto: Yeah. Actually, that’s a good point. And, thank you for—

Suemori: Well, I was on the Charter Commission before—

EDLC Totto: Oh, really.

Suemori: Yeah. So, I’m—

EDLC Totto: Which one?

Suemori: The one with Bill McCorriston.

EDLC Totto: Okay. It’s a couple back. Anyway, the staff has no problem with it being set out as two and both given—or one of the other. That’s why I said “and/or”.

Suemori: Because it could go up or down on both of them go down or both, both will probably go down before they both go up. Because they both usually go down before they go up.

EDLC Totto: Well, and certainly one of things in both of the options, both alternatives we need to get input from the administration as to, I wouldn’t say we need to, but in terms of trying to figure out the vital ability of each option, you might want to have the permitted interaction group continue—

[colloquy between Chair Chen and Commissioners]

Amano: That’s all we asked for, we wanted a white paper on whether or not the salary should go under the Salary Commission. That’s it. And this is what we got in response.

Suemori: I think you need to do a white paper on that one and via white (inaudible) do not want administration attachment to corp counsel.

Amano: They need to be separated.

Chair Chen: The permitted interaction group didn’t address the removal from administrative attachment (inaudible).

Amano: First time I even heard of it was from this memo.

Suemori: Yeah. That's why we need a white paper on both. So, we can defer that to the next meeting.

Chair Chen: Okay.

Amano: Reiterate the request to have the white paper done on the salary issues.

Suemori: Pros and cons.

Amano: So, we that we can get that going to the Charter Commission.

Suemori: Yeah, because we were late.

Chair Chen: Okay. Any other—

EDLC Totto: Actually, I have a question, just to clarify. Okay. Pros and cons on white paper for both but separate or-

Suemori: Yeah.

Marks: Yeah.

EDLC Totto: Okay.

Yuen: I got a quick question. Chuck, how realistic is it being on the charter, I mean, on the (inaudible). I mean is it a long shot or—I mean, there's others—

EDLC Totto: Actually, I talked to, one thing I and perhaps others, but certainly what I need to do is go talk with the Charter Commission and get a sense of are they going to have 30 things that are battling for priority or are they going to have much fewer. Because my personal view is that there is a saturation point for the voters of maybe at tops half a dozen items. Now, I've talked with one member who says that basically if it is a housekeeping issue, like who's going to set the salary that kind of thing, but that's relatively straight forward. But on the other hand, this member also said, but we're looking for more aggressive things from the Ethics Commission. But that was his opinion only. Obviously, the more aggressive you are, the more you're going to ruffle people's feathers, you're going to have oppositions and so on.

That so the number is an issue and the level or propriety is an issue and then it.

Suemori: Can I make a point—

EDLC Totto: Sure.

Suemori: You know what really matters is there is a lot but the Commission goes through all departments, all the around (inaudible). And if you have somebody that's out there with a whole bunch of grass roots, it totally detracts from everything else or if somebody else comes in with a big issue it detracts and other ones they get to the (inaudible) and they say, oh, go (inaudible). It's like wow, we did all this work and it's all going down because the other issue is a big issue that people just want to vote on. So, it's really—You can't really call it.

EDLC Totto: That's really a good point. Because I know in 2006, there were a lot of issues, a lot of potential—

Suemori: Red flag—

EDLC Totto: Yeah. And, I think we even testified on maybe on eight or nine or of them, so a lot of them touched on ethics issues and so on.

Suemori: Probably half.

EDLC Totto: Once the Charter Commission sorted them out, the stuff for us all passed, so that's good. But it's really a political question as to how are people going to feel about things. I mean, generally, I think we have a pretty good view in the public eye, but if you never know.

Chair Chen: Ms. Leong, did you want to say something?

Corp Counsel Leong: Chair Chen, are you taking public testimony on this item?

Chair Chen: Sure.

Counsel Leong: So that I may provide information too to the Commission. Thank you. I'm going to wear my corporation counsel hat now as corporation counsel. I'd like to offer in response to Commissioner Amano's request for a white paper from the Ethics staff. I totally defer them on the white paper because I'm not sure what the request was. There is a lot of history about this type of request from a historical perspective about on this type of an issue. Perhaps not with regard to the salary—

Amano: Which issue are you talking about?

Corp Counsel Leong: The issue about the salaries or the Ethics Commission being a separate department—

Amano: So both separate issues?

Corp Counsel Leong: I can't recall exactly what the specific issue was. I do know the previous Ethics Commissioners, Commissions, have made requests of either the administration or the Charter Commission for different proposals, I'd be happy to summarize for you just the historical proposals and what happened to them because it might provide you with historical contexts when you read Mr. Totto's white paper, and it might save him some time because it's painstaking research.

Marks: Thank you.

Suemori: Okay.

EDLC Totto: It's already been done, I believe.

Suemori: Yeah. But we can get it again.

Corp Counsel Leong: Okay. I'd be happy to refresh it and address it to this Commission.

Amano: Thank you.

Chair Chen: Thank you.

Marks: Thank you.

Chair Chen: So, are we clear on the next steps?

Suemori: Yeah.

EDLC Totto: So, the Commission would like a brief white paper on each, by that I mean a couple of pages and with the pros and cons of each item and from great predominantly ethics operations and law point of view to (inaudible).

Suemori: (Inaudible).

EDLC Totto: That's fine. And—

Amano: Well, I think the next course of action was that Mike Lilly was going to take the white paper to admin and see how it fits in with their proposed changes and make a plan to go forward.

EDLC Totto: Okay. Well, I apologize for misunderstanding. So, I'll make sure—

Chair Chen: All right. Any further discussion on that item? [no response] Okay. **Item III.G. for discussion whether the Ethics Commission should recommend to the Charter**

**Commission requiring recusal of Councilmembers of Conflict-of-Interest on Bill Resolution before the Council.**

EDLC Totto: This isn't quite a white paper, but it was brought forward, Commissioner Silva had asked that it be put on. We're just trying to put together some of the history that's occurred on this issue in the past.

Suemori: So, are we going to get a white paper?

EDLC Totto: Up to you folks. Whatever you would like on this; be happy to do that. There's certainly more information that I need to dig back into my files to pull up. The original review was for 2006, Charter Commission, and then we also looked at 2008 and 2011 when the City Council had it and voted it down.

Suemori: Did it vote down on the charter too before?

EDLC Totto: I don't think—The Charter Commission did not send it forth.

Chair Chen: He had already looked at other Ethics Commission?

EDLC Totto: Right. And I want to redo that because that's 10 years old at this point.

Chair Chen: Okay.

EDLC Totto: There might be a lot more information out there about it, but that's doable, we can check with the same Commissions and others.

Suemori: Why they do and why they don't.

Chair Chen: Okay. So sounds like a good plan, moving forward—Research white paper requiring recusal of councilmembers.

EDLC Totto: Okay.

Chair Chen: Okay. Thank you. **So, moving on to Item III.H. for action, Setting a Media Policy.**

EDLC Totto: Thank you. So, what staff has tried to do is to offer something that might take care of the particular issues as we heard them or concerns and without going into detail because it is late, I'd be happy to discuss any detail but at this point, I wanted to make sure a clear understanding as to why the policies needed to make sure that there's a balance between being cautious and also allowing flexibility for staff to be responsive and to make sure to the best we can understand what the consequences of approach would be. And, so on page 9 of the open

session memo, we put together another draft, media policy with the—very brief statements in italics. This would be page 9 of the open session memo as opposed to open 6 or 7. You have the memo with you or I can share, we can get—Open Memo as opposed to, not the open exhibits.

Marks: I don't think that got sent out. I don't have it.

Suemori: We don't have it.

ALC Wong: Embedded within that open session memo.

Suemori: Is there a way we can just get one copy and all of us get it right now?

Marks: Okay, it's this one.

ALC Wong: It's within the text—

Marks: Got it.

Chair Chen: Oh, I do have it.

EDLC Totto: So, this is where the matter starts. It's Item H and what I'm referring to in particular is this Media Policy.

Chair Chen: Does anyone need a copy? [No response.] Okay.

EDLC Totto: So, basically the concerns were that the—Well, as laid out in the italics there's of the media policy itself and that's the one in the text on page 9 of the open session memo, and basically there were some word-smiting done but probably the most significant change is in Item, Procedure No. 2, all media inquiries should be directed to the EDLC. The EDLC will respond to normal course at the earliest reasonable opportunity the EDLC will inform the Commission members of email of the content or comments made to the media. As kind of an experiment on that, the request we had from Keoki Kerr and from Nick Ruby I sent to you folks, I think it was yesterday, the request came in so that you could kind of see what that would look like.

Suemori: Wait, wait, can I ask questions?

[Colloquy between Chair Chen and Suemori]

The proposed one which is the text—

Marks: Is on the letterhead.

EDLC Totto: No, no. Wow, I actually apologize for making this so confusing.

Suemori: Because the text within the text also mentions paragraph three.

EDLC Totto: Actually there's no paragraph. It's a typo.

Chair Chen: It's not—

Suemori: Oh, it's 1, 2, 4, and 5.

Chair Chen: Yeah.

EDLC Totto: Yes. I apologize. It should be 1, 2, 3, 4, and 5. Sorry about that. But let's give you couple of minutes to catch up.

Suemori: Can I just ask, in recommendation 4, within the text of the text, what is that? Is that (inaudible) recommendation 1, 2, 3—

EDLC Totto: 1, 2, 3 are on the prior pages. No. 3 is on page 8, No. 2 and 1 are on page 7 of the open session memos. Does everybody have a copy of the open session memo?

Marks: Yes.

EDLC Totto: Okay.

Suemori: Okay; yeah.

EDLC Totto: So, 1 and 2 are on page 7. Staff gave an initial suggestion and that's the one on letterhead. That is open 7. Commissioner Amano redraft that's open 6. Staff did a—

Chair Chen: Okay. So open 7 and open 6 is what we looked at the last time?

EDLC Totto: Correct.

Chair Chen: And so now you're proposing what's within the memo?

EDLC Totto: Yes. I guess, I'm going to do that differently next time. If there's too much confusion, I apologize on that, but basically—

Marks: I'm missing Open 6, does somebody have an extra copy of Open 6? Oh, no, never mind, I got it.

Chair Chen: But you're looking at the Open Memo, right?

EDLC Totto: I'm looking at the Open Memo, pages 9 to 10. And as Commissioner Suemori pointed out there should be four points, so four paragraphs in Procedures 1, 2, 3, and 4.

Suemori: So, you're asking us to approve this, page 9 and page top of 10.

EDLC Totto: Yes.

Chair Chen: Deleting the comments?

EDLC Totto: Yes, deleting the comments. They won't be included unless you want them to, but I don't think they're necessary. And, the purpose is to see if this going to be a compromise or to see if maybe this is something Commission want to try for six months and see how it works or if does not cover the major concerns then we'll go back to the drawing board.

Suemori: I only say this, could we have a better word then "should".

EDLC Totto: The reason I've used should as opposed to shall is I'm very concerned about the Commissioners are going to say they may not make a comment. I was trying to think of an example. And maybe this is not a good one. But let's say—

Chair Chen: Where are you referring to?

Suemori: New paragraph 3. I mean, should is just a bad word; shall not communicate; (inaudible) unless under the following circumstances and delineate your exceptions. And then you could have some clarity because you're fraud. If you put yourself under the should you're just laying yourself out for all sorts of criticisms and boundaries; allegations of (inaudible) boundary. So, if you wanted to sit there and say, I'm not going to comment except under X or (inaudible) misdirect circumstances. Because you have them Chuck.

EDLC Totto: There were writing of an ordinance. This is a policy, simply a guidance.

Suemori: Right. So, you're not giving yourself—

EDLC Totto: To me should is better than shall. Because if you want shall, I'll do it. That means every time I get—

Suemori: Chuck, Chuck, I said shall, subject to stating one exceptions because—

EDLC Totto: I don't know what all the exceptions are.

Suemori: Then when you get into the should, what's going to happen? You're going to have no guidance from us and you're just going to be under in harm's way. If you want to go in the harm's way, go ahead.

EDLC Totto: Okay. Maybe I misunderstanding, what would be an example of where I should respond—

Suemori: It says, to void confusion, “potentially contradiction information, Commission members and staff shall not communicate with media on behalf of the Commission unless they previously discussed it or they’ve had a joint”, whatever. Because you’re saying, oh, no, let’s all go talking around. That’s my only concern. I’m more concerned about you then us, but it’s just like—So, there’s no confusion out there in the public. Because if—a lot of the media they go out and Commission Silva and Commission what do you think about this and they say it and then you say it and then what?

Chair Chen: My concern with 3 is, well even more so if you switch it to shall, it seems it contradicts to.

Suemori: Well, that too.

EDLC Totto: I’ll be happy to put in a phrase that says, unless otherwise described herein—

Suemori: That’s all I’m saying.

Chair Chen: Yeah. I don’t understand. Sorry, I don’t want to belabor it, but—

Suemori: Yeah, I don’t want to belabor it either—

Chair Chen: 2 and 3 seem to contradict each other.

EDLC Totto: Okay. I’m happy to add a phrase that says, “unless otherwise allowed herein”. So, the 3 contemplates 2, which I think would any way, but just to make it clear—

Marks: Okay. Can I make a motion. I kind of sort of cut through this.

EDLC Totto: Thank you.

Marks: **The Draft Media Policy prepared by Judge Amano, I’m going to move that we approve it.**

Suemori: Which one is that one?

Amano: Open 6.

Marks: Open 6.

Suemori: That's this one, right, the one on the letterhead?

Marks: No. Plain one, just draft.

Silva: 6.

Amano: Second.

Chair Chen: I thought we discussed last and people didn't agree on Item No. 2.

Suemori: What do you mean, there's a motion and second on the floor. So—

Marks: Well, you can have discussion.

Suemori: We're in discussion now.

EDLC Totto: Did somebody second?

Suemori: Yeah.

Amano: I did.

EDLC Totto: Okay, thanks.

Marks: And, I think the discussion was to what extent should there be comment on opinions or advisory opinions or should the opinions sort of speak for themselves.

Chair Chen: Yeah, I thought at the last meeting, it was expressed that the procedure No. 2 went too far.

Suemori: That was part of the discussion, but so then they came out with this other draft and so now we're still under discussion because of the motion to approve this. Shall I ask or call for the question?

Chair Chen: You can. **So, I guess, all in favor of passing Honolulu Ethics Commission Media Policy Open agenda Item 6. All in favor, say aye.**

Five Commissioners: Aye.

Chair Chen: All in favor, say nay. Nay. Any abstain?

Marks: Passed.

EDLC Totto: What was the vote?

Marks: Five to one.

Suemori: Five to one.

Marks: Five ayes and one nay.

Chair Chen: Okay. So, probably the last item, **Item III.I. for discussion**, Department of Corporation Counsel's Letter Regarding Nullification of Votes where there has been no Disclosure of the Conflict of Interest.

EDLC Totto: I'm sorry?

Chair Chen: Items I.

EDLC Totto: I'm sorry, I'm a little tired, and my energy is a little low. What issue are we on?

Amano: I.

Chair Chen: III.I.

Silva: Nullification of Vote.

EDLC Totto: Let me catch up to myself.

Marks: I think we received this letter in an email. It wasn't sent out again, but we had it in the email some time ago.

EDLC Totto: The letter from Donna Leong?

Chair Chen: Yes.

EDLC Totto: Yeah. So, did everybody get a copy of open agenda, Open 8? That's the attorney-client privilege response on the item, on Item III.I?

Chair Chen: So, Ms. Leong did you want to comment following your letter?

Corp Counsel Leong: Chair Chen, I think the letter speaks for itself?

Chair Chen: Okay. I'm not aware of the (inaudible) the memorandum that Mr. Totto is referring to, so I wouldn't be able to comment on that.

EDLC Totto: Do you have Open 8, I want to make sure. Letterhead on it dated June 19<sup>th</sup>?

Suemori: From who?

EDLC Totto: From me to Katy Chen.

Chair Chen: Yes.

EDLC Totto: We're in open session, so I'm cautious about making any statement, but I think I can say without getting in to detail, but vote nullification issue is an ethics issue. It's also policy issue for the council and so on. But it's an ethics issue because if you are councilmember or, I guess, in an ordered Commission you don't disclose that you have a conflict of interest then you violated the ethics law. The public harm occurs that if there's no public disclosure then the individual's vote is under Hawaii law, appellate law void and it can leave either the vote of the council on this case or the vote of a board or commission whether something was properly passed in limbo.

The other thing I would just say about it is what I put, what I responded to the Star-Advertiser about is what has been, was in the Cachola opinion, a prior 2012 opinion regarding Councilmember Garcia and the current 2015 opinion followed suit; I think it even started as early as 2007 is simply to state the consequences of nullification vote. So, I'm happy to answer any questions.

Corp Counsel Leong: Chair Chen, if I may respond?

Chair Chen: Sure.

Suemori: Should we be in executive session?

Chair Chen: This is in open session.

Suemori: Okay. Nobody thinks we should be, keep it open?

Corp Counsel Leong: I just wish to respond on a very general level. I don't, as I mentioned, I do not have a copy of the Open 8 memorandum, which apparently is a legal opinion. I would be happy to have our department review that opinion and advise the Commission in an attorney-client privilege memorandum as to the law with regard to nullification of a vote.

With regard to the mention of the Cachola memorandum, my clear recollection of that memorandum is that there were no findings or conclusions by this Commission of any wrongdoing because it was a settlement agreement. From approximately page 4 of that document to the end, until you have the fines stated, it was basically a re(inaudible) of what the investigation would've said or the facts would've said, so any analysis in that memorandum with

regard to case law is (inaudible) I would think because there were no findings and no conclusions made by the Commission. That's my clear recollection of that opinion. So, I would be happy to set this legal analysis as the chief legal advisory to the City attorney-client privilege memorandum to the Commission.

Amano: How did the issue come up?

Suemori: On the agenda?

Amano: No. I mean, the (inaudible) at all.

Marks: I think it came up like by this. I think the settlement was made public. I think there was some news articles and then you wrote, Donna wrote a letter to the Commission. I think that's sort of the history of it.

Amano: But the news articles were involved. Why did the issue come up, I don't understand.

Corp Counsel Leong: Attached to my letter of June 1<sup>st</sup> that you have a copy of, it is reported in the Star-Advertiser article of May 28th with regard to formal Councilmember Garcia's settlement agreement as follows: "But Totto made it clear that his staff believes Garcia's votes that benefited the interest of the lobbyist who gave him unlawful gifts should be nullified."

Amano: Is that true?

EDLC Totto: Either Gordon Pang's misquoting me or Donna Leong is misquoting me. What I said is at Open 8 – 2, you'll see an email from me. It's a May 27<sup>th</sup> 2005 email, says "the Commission's staff position is that the lobbyist who donated unlawful gifts to Councilmember Garcia created a conflict-of-interest for Councilmember Garcia and he was required to disclose the conflict in writing before he voted on the Bills that affected the lobbyist's interest. Because he did not disclose the conflict before voting on the lobbyist's measures, his vote would be nullified. Then the council would have determined whether the subtraction of his vote would change whether the measure passed".

Amano: So, I'm sorry, you're responding to somebody's email?

EDLC Totto: Yes. From Gordon Pang.

Amano: So, he asked you—I'm sorry, I apologize, what did he ask you?

Chair Chen: Whether this ruling had any impact on any votes taken on legislation that affected those who made contributions?

EDLC Totto: So that's what I responded based on prior rulings of the Commission.

Suemori: But settlement, was a settlement?

EDLC Totto: Well, the appellate court decisions don't distinguish between whether—They don't say you have to have a Finding of Fact, but even if that were the case in Cachola, Cachola admitted, remember when you called it an admission, which it was in large part, he admitted that he had violated the gift law and that he had failed to disclose those gifts are required under (inaudible).

Amano: Cachola or Garcia?

EDLC Totto: I'm sorry Garcia in 2015-2.

Suemori: You know what I really think. We should be in executive session at this point.

EDLC Totto: For what purpose?

Suemori: Because we're talking about settlement cases. We're bringing up issues on that were settlement, which did not go to media.

Corp Counsel Leong: Commissioner Suemori, all the statements thus far, as far as I can hear, are actually statements that are in the settlement agreements or reported in the press. The Cachola case there was no admission of wrongdoing in the advisory opinion that was issued. The Garcia case, there was some kind of statement about what former Councilmember admitted or did not admit, so I don't want to comment outside of that advisory opinion.

I must say that I felt the need to send this letter to the Commission because back in January, there was media interest in the October 2014 Cachola advisory opinion. I don't know why there was a gap of time. At that time, the media reported that Mr. Totto said that there again, the vote was nullified. So, I had an email trade, I had an email trade with Mr. Totto back and forth a little bit in which I asked him to confirm that, in fact, as a result of the advisory opinion the vote was not nullified and reconfirmed. So, when I saw the statement that was attributed to him, I felt the need to bringing it to the Commission's attention for dealing whichever way you wish. That was the purpose of my letter.

Chair Chen: So, do I understand you correctly, you're saying there's a distinction was nullified versus would be nullified?

EDLC Totto: I think that's part of it, but I also think basically the statement to Mr. Pang is a statement of what the Commission decided in prior cases and follows on the two appellate cases from the Hawaii Appellate courts.

Amano: I guess I'm wondering why we're (inaudible) on an issue that's not before us.

EDLC Totto: Because the Commission had said in the past that the vote is nullified if there was a failure to make the disclosure of conflict.

Amano: The issue is not before us.

Marks: The issue about the vote isn't before this Commission.

EDLC Totto: So, you're suggesting that I shouldn't then say that the Commission has done this in the past? I mean, I could preface, I mean I could've written so, the Commission's—

Marks: Has the Commission in the past ever made a declaration that so and so vote nullifies a council vote?

EDLC Totto: Have you folks—

Marks: Yeah, I read the law.

EDLC Totto: No. Have you read my—

Amano: Of course.

EDLC Totto: Okay. My Open 8?

Amano: Yes.

EDLC Totto: Okay. Appreciate that.

Amano: I don't disagree or agree. I'm just wondering why we got involved because there's no issue in front of us. Nobody made a complaint, we didn't investigate, we're just finding somewhat irresponsibly in my mind because we don't know what the context is. We don't know what the facts. We're just (inaudible), and so I don't know why we did that?

Chair Chen: I think it was placed on the agenda because Ms. Leong sent a letter to the Commission.

Amano: Yes. My bottom line question is really to Mr. Totto, why are we (inaudible) about the nullification of the vote or not? I don't understand that. Nobody has complained. Nobody issued, you know what I mean?

EDLC Totto: I guess, there's been a lot of times whether it's a sensitive issue like this or other types of issues where somebody would ask questions of staff and I would respond. I mean, I've done hundreds of responses to media or to the public, etc. where it's not necessarily right before

the Commission, but we look at prior Commission advisory opinions. The aspects have been made public and then say well based on the prior Commission's opinions, this is—

Amano: I understand that.

Silva: Precedent set already.

Amano: But if I might suggest to you, as an example, on the Big Island, for instance, Mayor Kenoi has a lot of issues whatever they may be, but I do not think their Ethics Commission is (inaudible) on the various issues without a complaint being before him and they're doing the investigation which is what we do and then we do the legal research and then we give our answer. And, so we had put something out there without a complaint. There's no complaint, there's nothing.

Silva: But if precedent was set already, is it the precedent there?

Suemori: The precedent set, to answer a question when it's presented, and we have. But, I do like why would start talking about precedent when we don't know what is, in fact, the question.

EDLC Totto: How about, let me change the example. I think the one about Mayor Kenoi is a good one.

Amano: Sure. Because even before the complaints, I mean, what if the media said well, Mr. Chair or the Ethics Commission, what do you think, is this unethical or not?

EDLC Totto: Right. And you wouldn't want him saying one way or the other.

Amano: Well, I don't think it would be responsible to say it without investigating it properly, acknowledging the facts, doing the application of law, and so that's what I think as a matter of policy an Ethics Commission shouldn't and doesn't do that. I know the courts don't. We don't do that.

EDLC Totto: No. And, in fact, I have to disagree because as a matter of policy and long-term practice of Ethics Commissions around the country and in the state do not make judgments that would prejudice a case. But in July I'm going to have to do training for the councilmembers. So if councilmembers should say or ask, "what are the ramifications if I have, and I fail to make a disclosure of a conflict of interest?" I think it would be fair for me to say, "well, you have to be concerned about we go through different factors, how serious it is, how many times, and so on and so forth." But ultimately, I think, it would be appropriate given the Commission's precedent to say and "your vote may be nullified and that could affect whether or not a measure passed."

Suemori: Which you might also have to say, but if we settle it, you may not have to. But that's something for corporation counsel to see. Because what if they settled it, then you got to tell him, if you settle it then that's not for us to comment.

EDLC Totto: Well, it kind of depends on the settlement, I think. If the settlement is one where there's a full—

Suemori: Well, if he admits—

EDLC Totto: Yeah.

Suemori: ...if he admits then no.

Amano: I think there's a fine line, for example, is—But, I think you also understand Mayor Kenoi's example is another one that's rather broad and sometimes it's not responsible to applying or answer those questions without full investigation. So—

EDLC Totto: No, no, I agree. I do get questions now and then where you can tell from the context of the question and what's happening and they're asking perhaps indirectly about a particular (inaudible) and most what we'll say, well, these are the issues that we have to be reviewed. And just leave it as that.

Amano: If somebody is making a general question like that one, I mean, I think there's a room to defer that to the corporation counsel. I mean, it doesn't have to be us. In this case, I would've hoped that we had a more clear complaint of some kind or something that we would've then done our normal thorough investigation.

Chair Chen: Well, I guess, I thought Gordon Pang's question would mean more like, do you issue this opinion, I'm trying to understand it, what is the consequences of his opinion and then if he answers that. From my perspective that still seems out of point because you have someone asking for consequences or the clarification of something you issue as a Commission.

Suemori: But if you didn't actually say, if this and that, or if this and that. So, I think his answer was kind of confusing. Because he said, would. If this would happen then this would happen. But that's not what happened. He settled it.

Amano: Also bear in mind, I know that the Commission is 100% behind giving clarity about ethics to City workers, the public and so we didn't clarify things, it made things somewhat confusing.

Chair Chen: I didn't look at it as confusing, because he didn't say it was nullified. He said based on precedent, it would be nullified. I think that to me it seems fine as opposed to saying it was nullified by, you know, the administration.

Amano: But then our corporation counsel is saying, “hey, you’re not the one to call that shot, we should call that shot.” Then we started something that—Why?

Chair Chen: I guess, I looked at it and he was clarifying an opinion that was issued by the Commission. Did I misunderstand that? I guess, in light of the most recent media policy this probably won’t happen again. So, I guess, I would leave it as that. In light of the most recent meeting policy. **I need to leave now. I can’t—Are there are other people that need to leave at 2:30?** So, will there be a quorum remaining?

Suemori: Do we need anything else?

Chair Chen: There’s a bunch of other items. All the A, 1 through 6. So, if you want to continue the meeting to address A, 1 through 6, my understanding is I could appoint—

EDLC Totto: We’ve done it both ways. People volunteered or you can suggest, you could ask somebody if they wouldn’t mind taking over and acting as Chair. (Suemori volunteers to act as Chair)

Chair Chen: Okay. So, **going back to III.A.**

Suemori: Has everyone seen the handouts for **III.A., 1 through 6?**

All Commissioners: Yes.

Suemori: Is there any highlights that you want to explain or could we leave it as submitted?

EDLC Totto: I think staff has that.

Suemori: I know staff has a report, but you haven’t submitted a report. So, rather than repeating what staff has said, does staff add to this report?

EDLC Totto: We handed out something at the beginning of the session.

Marks: Thank you, I appreciate the graphs.

ALC Wong: Thank you Kristine, she did all the hard work.

All Commissioners: Thank you.

ALC Wong: So, we’re trying to make it more visual, understandable.

Suemori: Does anybody have any questions on 1 through 6? Or do you want me to take it individually?

Amano: Why is 5 there?

EDLC Totto: I figure you want to know what your executive director and (inaudible) council is up to because—

Amano: That's okay, I saw you on TV.

EDLC Totto: Basically the intent was to simply say what it's like to be on the job. I think Mr. Kerr asked me, are you supporting them. I said, I didn't take a position. State Ethics Commission is what's like.

Amano: Were you subpoenaed?

EDLC Totto: No. Volunteered.

Amano: I don't understand why we're convening at all. I don't understand the context of what they did.

EDLC Totto: Of what the State Ethics Commission?

Amano: What was that meeting about?

EDLC Totto: They asked for testimony for and against. I should just say the evaluation of their executive director. So, he said would you testify, and I said I will talk about what it's like being in the position so they have more context. That's all.

Suemori: Are there any further questions? [no response]

Marks: I do have a question about Kapalama move? Are you coordinating with like the Liquor Commission and others to make sure we have a conference room for our meetings and parking.

EDLC Totto: In terms of the physical plant we're talking to the Community Services Group that's 2<sup>nd</sup> and 3<sup>rd</sup> floor here who already share this conference room with and it looks like the only other Commission that will be going over is the Neighborhood Commission. So, we're trying to figure out what do we need collectively. I think they have nine or eleven Commissioners, so when they said they need a really bigger room they do get a lot of public folks there, etc. So, yeah, we're coordinating. And then hope to have a site visit within the next two weeks. We've been told and also to then have a conference room we can share. I think that's possible. An interview room, we're gonna want our own. And it doesn't have to be big as this. But this is just to interview people that come in.

Suemori: What's the date of moving in?

EDLC Totto: Right now the target date is October 1, and as Laurie said that probably the earlier we get there the better we can stake out our territory.

Suemori: Absolutely. Have you done a walk through?

EDLC Totto: No. I'm waiting to do that.

Suemori: Is there a lot of space opened?

EDLC Totto: I'm really not sure. I actually broke in the place a year ago when I thought we really going to go and took a look then but I think it's been reconfigured to some degree. But I think it's mostly open space and then they're going to start putting up the walls. I know DIT is in there to put in the computer access.

Suemori: Yes, all IT stuff. Any further questions? [no response] **I'll entertain a motion to adjourn if there's nothing else.**

Silva: So move.

Amano: Second.

Suemori: Okay. See you here back in July.

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Meeting ended at approximately 3:00pm.