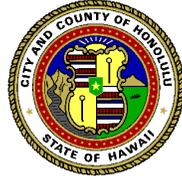


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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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: July 23, 2015
Standard Financial Plaza
Conference Room, Suite 211

Present: Katy Chen, Esq., Chair
Michael Lilly, Esq., Vice 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. Tutto, Executive Director and Legal Counsel (EDLC)
Laurie A. Wong, Associate Legal Counsel (ALC)
Letha A.S. DeCaires, Investigator
Geoffrey Kam, Deputy Corporation Counsel, Department of the
Corporation Counsel (COR)

Guests: Darryl Huff, Hawaii News Now
George Hurd, Cameraman, Hawaii News Now
Adam LeFavre, Mayor's/MDO's Office
Ann Shaver, League of Women Voters
Janet Mason, League of Women Voters
Lynne Matusow, member of the public
Gordon Pang, Star Advertiser
Junta Tokunaga, Hawaii News Now
Dr. Michael Uechi, member of the public
Roy Nakamura, member of the public

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

MINUTES OF THE JULY 23, 2015 OPEN SESSION MEETING

I. CALL TO ORDER

Chair Chen called the meeting to order at 11:35 am.

II. OLD BUSINESS

- A. Confirming the Date and Time for the August 19, September 23, and October 21, 2015 Meetings; and Setting the Meeting Date During the Week of November 16 - 19, 2015.

The Commission confirmed meetings for the following tentative dates: August 27, 2015; September 23, 2015; October 21, 2015; November 18, 2015

III. NEW BUSINESS

- A. For Action: Request for a Motion to Rescind the Media Policy Adopted at the June 24, 2015 Meeting.

Commissioner Marks moved to change the agenda item order so that agenda item III.B. would be heard before item III.A. After discussion, Chair Chen called for a vote on the Motion.

Ayes: Suemori, Amano, Marks

Noes: Chen, Lilly, Yuen, Silva

Motion Fails.

Vice Chair Lilly moved to rescind the media policy adopted at the June 24, 2015 meeting. Commissioner Yuen seconded the Motion.

The following written testimony submitted for this agenda item:

- Jerry Lam – Supports Rescission
- Natalie Iwasa – Supports Rescission
- Susan Schwichow-Lord – Supports Rescission
- Chu Lan Schubert Kwock – Supports Rescission
- Ann Shaver and Beppie Shapiro, League of Women Voters – Supports Rescission
- Lynne Matusow – Supports Rescission
- Makakilo Neighborhood Board – Supports Rescission
- Dr. Michael Uechi – Supports Rescission
- Choon James – Supports Rescission
- Cinnie Firth – Supports Rescission

Ms. Shaver, Ms. Matusow, and Dr. Uechi presented oral testimony supporting rescission of the June 24, 2015 media policy.

After public testimony, the following discussion ensued:

Commissioner Amano stated that discussion of this issue began in September 2014 following a situation where she had learned of an Ethics Commission issue on TV. She learned that the EC had no media policy at the time. She requested that the subject of adopting a media policy be placed on the agenda. She asked staff to draft a policy to work with. Her primary concern is that the EDLC should be speaking for the EC, but how can he do that without the EC having any input or review until after the issue has already been discussed with the media. She believes the media is a tool to educate the public and she wants to create parameters. She created the draft policy in order to isolate issues and have further discussion. There was a lot of confusion at the long June meeting when the policy was adopted. She wants the EC to be able to provide input to the EDLC for media responses.

Commissioner Suemori delineated between staff and commissioners and confirmed that she wanted to know what the EDLC is talking about to media.

Commissioner Marks stated that she feels it is appropriate for the EC members to learn about a media inquiry that the EC staff responded to from the staff not from the media.

Vice Chair Lilly stated that the proposed new media policy (agenda Item III.B.) does have a provision that requires the EDLC to inform the EC if he receives a media inquiry, and that he expects that the EDLC inform the EC first as to media responses. The EC's primary role is education, which is more important than enforcement. If the EC can educate the public, it will help to avoid violations. It benefits the EC for the EDLC to be able to explain the Advisory Opinions. Therefore, it is vital for staff to be able to explain and advise. The EC is the guardian of integrity in government and one of the ways to educate is via the media.

Vice Chair Lilly further stated that one of the recent issues that has affected the media policy is the EDLC's statement regarding vote nullification. The Hawaii Intermediate Court of Appeals has decided a case that is directly on point that confirms the EDLC's statement, that failure to disclose a conflict of interest renders the vote null and void. It is not the EC's duty to adjudicate that the particular votes are null and void, but the EC should point it out that vote nullification is a concern. It is up to the affected board, commission or City Council, to correct the record, otherwise it will undermine the public's confidence in the votes and in government. He stated that the policy that was adopted last month was a mistake. He further stated that he held the highest regard for the Commission members who had voted to adopt the media policy last month.

Commissioner Amano moved to defer the vote on Agenda Item III.A. until after Agenda Item III.B. has been decided. Commissioner Suemori seconded the Motion. Commissioner

Amano confirmed that she did not want to rescind the media policy until a new one was approved.

After discussion, Chair Chen called for a vote on Commissioner Amano's motion.

Ayes: Suemori, Amano, Marks

Noes: Lilly, Chen, Yuen, Silva

Motion denied.

Chair Chen called for a vote on Vice Chair Lilly's original Motion to rescind the Media Policy that had been adopted on June 24, 2015.

Ayes: Lilly, Chen, Yuen, Silva

Noes: Amano, Suemori, Marks

Motion to rescind the Media Policy that had been adopted on June 24, 2015 was adopted.

B. For Action: Request for a Motion to Adopt a New Draft Media Policy.

The following written testimony was submitted and accepted for Agenda Item III.B.

- Choon James – Supports adopting a new media policy
- Cinnie Firth – Supports adopting a new media policy
- Natalie Iwasa – Opposes adopting a new media policy

Vice Chair Lilly moved to adopt the draft new media policy identified as OPEN-3 in the July meeting materials, but striking out paragraphs 4 and 7. Commissioner Yuen seconded the Motion.

Vice Chair Lilly stated that he wanted to delete paragraph 4 because it is redundant of paragraph 3 and also because it would be cumbersome for the EDLC's to respond to media requests. Also, paragraph 7 should be deleted because it is also redundant of paragraph 3. After striking paragraphs 4 and 7, the new proposed media policy would still require the EDLC to inform the EC before it is aired on the news.

Commissioner Suemori stated that she would be more comfortable for the EDLC to run responses through at least one of the Commissioners before media response.

Vice Chair Lilly stated that Mr. Tutto is the EDLC and that he would have a sense about how the EC feels about certain things. If Mr. Tutto is not doing his job, he will be held accountable; Vice Chair reiterated his confidence in Mr. Tutto. Chair Chen also stated that the underlying issue is in regard to trusting the EDLC to respond to the media.

Commissioner Suemori stated that perhaps there should not be a media policy.

Commissioner Yuen stated that he feels that Mr. Tutto is competent to distinguish what can be addressed to the media. He further stated that we all make mistakes, and in regard to the prior

situation that was alluded to in which the Commissioners were told about a media release after the fact, the EDLC could be counselled instead of the Commission adopting a media policy. Commissioner Yuen stated that there does not need to be a media policy because the system is not broken. But, he believes that the issues regarding the media policy over the last month was worthwhile as the policy was vetted by the public. He believes that this new policy, if adopted, would be clarification so the public will know where the EC stands on it.

Commissioner Amano stated that policies are not intended to be directed at a single individual, it is to ensure consistency issued by EC, the people who are responsible. The media is a powerful tool in this fast paced society and everything the EC puts out there has to be accurate, truthful, thoughtful, transparent, and responsible. She is asking for a procedure for the EC to have some oversight of matters that are going to the media via the EC. Commissioner Amano stated that she would support adopting the proposed media policy by Vice Chair Lilly keeping the language of paragraph 4.

Commissioner Suemori stated that she likes having a media policy and that the policy is for the EDLC's benefit so that he has someone else to confer with from the EC.

Commissioner Silva stated that no-one else has more ethics law knowledge than Mr. Totto, and that Mr. Totto has the expertise on everything that is issued from the EC office; he doesn't know why there is argument.

Commissioner Amano moved to amend Vice Chair's Motion so that it will reflect approving OPEN-3 without striking paragraph 4. Commissioner Suemori seconded the Motion.

Chair Chen asked for a Motion to Recess as the meeting had already gone for an hour and a half. Commissioner Yuen so moved and Commissioner Suemori seconded the Motion. The motion passed unanimously.

The meeting recessed from approximately 12:45 pm-12:50 pm.

Ms. Matusow further addressed the Commission.

Commissioner Marks requested to review the media policies from other jurisdictions as referenced in the Open Meeting materials. EDLC provided Commissioner Marks with the referenced media policies.

Chair Chen called for a vote on Commissioner Amano's Motion to Amend Vice Chair Lilly's Motion by adopting the media policy without striking paragraphs 4 and 7.

Ayes: Suemori, Amano, Marks

Noes: Lilly, Chen, Yuen, Silva

Motion denied.

Chair Chen called for a vote on Vice Chair Lilly's Motion to Adopt the new media policy identified as OPEN-3 in the meeting materials striking paragraphs 4 and 7. The motion was adopted unanimously.

- C. For Discussion: Performance Evaluation of the Executive Director and Legal Counsel.

The Commission reserves the right to go into executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved.

Vice Chair Lilly moved to defer Agenda Item III.C. until the next meeting. Commissioner Suemori seconded the Motion.

Written testimony accepted for this item follows:

- Natalie Iwasa – Comments supporting the performance of the EDLC

Ms. Matusow addressed further comments to the Commission requesting evaluation of the Commission by the public.

Chair Chen called for a vote on the Motion to Defer Agenda Item III.C.

Ayes: Suemori, Lilly, Chen, Yuen, Marks, Silva

Noes: None

Abstain: Amano

Motion to Defer Agenda Item III.C. was adopted.

- D. For Action: Request for a Motion to Approve and Adopt Staff's Recommended Charter Amendment Regarding Setting Salaries for the Ethics Commission Attorneys and to Submit the Amendment to the Charter Commission.

Commissioner Amano moved to approve and adopt staff's recommended Charter Amendment re Setting Salaries for the EC Attorneys to Submit to the Charter Commission. Commissioner Marks seconded the motion.

Vice Chair Lilly informed the EDLC that he and Commissioner Amano were meeting with Mr. Ray Soon, the Mayor's Chief of Staff tomorrow. Commissioner Amano requested that the EDLC put the proposed Charter Amendment in form for presentation to Mr. Soon.

Chair Chen called for a vote on the Motion. The Motion passed unanimously.

Chair Chen requested a motion to enter Executive Session. Commissioner Suemori so moved. Commissioner Amano seconded the Motion. The Motion passed unanimously.

IV. EXECUTIVE SESSION SUMMARY

(The following agenda items were reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; HRS Section 92-5(a)(4), to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

- A. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.4 (Failure to File Complete Financial Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The Commission found probable cause of ethics law violations and approved the issuance of a Notice of Alleged Violation to the City Officer.

- B. For Action: Request for a Motion to Find Probable Cause of Violations of ROH Sec. 3-8.4 (Failure to File Complete Financial Disclosures) by a City Officer. (HRS Secs. 92-5(a)(2), (a)(4) and (a)(8))

The Commission found probable cause of ethics law violations and approved the issuance of a Notice of Alleged Violation to the City Officer.

V. ADJOURNMENT

Chair Chen requested a Motion to Adjourn the meeting. Commissioner Amano so moved, Commissioner Suemori seconded the Motion. The motion was passed unanimously.

The meeting adjourned at approximately 1:41 pm.