

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817
PHONE: (808) 768-7787 • FAX: (808) 768-7768 • EMAIL: ethics@honolulu.gov • INTERNET: www.honolulu.gov/ethics



KIRK CALDWELL
MAYOR

JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: May 17, 2017
 Kapālama Hale
 1st Floor Conference Room

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

Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, Commissioner
David D. Monk, Commissioner
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel
Laurie A. Wong-Nowinski, Associate Legal Counsel
Janice Yonamine, Investigator
Lisa P. Parker, Legal Clerk III
Kristine Bigornia, Legal Clerk I
Moana Yost, Deputy Corporation Counsel,
Department of the Corporation Counsel (COR)

Cheryl Kakazu Park, Director (State of Hawai'i, Office
of Information Practices)
Stephen Silva, member of the public
Dr. Kioni Dudley, member of the public

Absent: Peter S. Adler, Commissioner

MINUTES OF THE MAY 17, 2017 OPEN SESSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:32 a.m. and announced that she and Commissioners Suemori, Amano, Kanda, Monk, and Vice Chair Lilly were present. Also

present was former Commissioner Steve Silva.

A. Chair's Report

1. Announcements, Introductions, and Correspondence

- a. Presentation of Award of Recognition to Commissioner Stephen Silva (term expired on December 31, 2016)

Chair Marks thanked Mr. Silva for his many years of serving the community and that his service was very much appreciated. Commissioner Suemori commented that he would be missed. Chair Marks continued to say that Commissioner Silva was the Commission's historian and that he started under the Administration of Mufi Hannemann and continued his service under the Administrations of Peter Carlisle and Mayor Caldwell. Mr. Silva gave closing remarks and thanked the Commission and the staff.

- b. Introduction of New Commissioners

- i. Commissioner David Monk (term expiring on December 31, 2021)
- ii. Commissioner Lynette Lo Kanda (term expiring on December 31, 2021)

Chair Marks informed the new Commissioners Monk and Kanda that the Commission was pleased that they joined them and were looking forward to working with them in the future.

2. For Action: Approval of Open Session Minutes of April 19, 2017

Chair Marks requested a motion to approve the Open Session Minutes of the April 19, 2017 meeting. It was moved by Commissioner Amano, seconded by Vice Chair Lilly, and unanimously carried to approve the Open Session Minutes of the April 19, 2017 meeting.

3. For Action: Approval of Executive Session Minutes of April 19, 2017

Chair Marks requested a motion to approve the Executive Session Minutes of the April 19, 2017 meeting. It was moved by Commissioner Amano, seconded by Commissioner Suemori, and unanimously carried to approve the Executive Session Minutes of the April 19, 2017 meeting.

4. Guest Presentation: Office of Information Practices Training on Sunshine Law (Chapter 92, HRS) and Uniform Information Practices Act (Chapter 92F, HRS)

Chair Marks welcomed Director Cheryl Kakazu Park from the Office of Information Practices (OIP) and informed her that they were very pleased that she came to educate the Commission on the Sunshine Law and Uniform Information Practices Act.

Commissioner Amano informed the Commission that her husband worked with Director Park at the OIP.

Director Park provided the Commission with her professional background and experience. Director Park provided the historical background of the Sunshine law, UIPA and the establishment of the OIP. Thereafter, Director Park referenced handouts of her power point presentation. She then presented a general overview of the UIPA and Sunshine Law for the Commissioners. In addition, Director Park also provided the Commission with a 2017 legislative update affecting the Sunshine and UIPA laws. Finally, she informed them of the many free resources online if they would like to learn more about the laws.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC informed the new Commissioners that work report summaries highlight the staff's work performed during the month. Also, she would provide the new Commissioner with a detailed program of work agenda used for staff meetings so they can better understand what staff does. During the past month, staff worked on a lot of forms and processes, including procurement. The EDLC also conducted staff evaluations. The EDLC informed the Commission that staff is taking online training to improve their skills and provide more professional work products for the Commission.

Legal Clerk Parker assisted EDLC with obtaining staff position descriptions, processing various forms relating to personal services contracts, and reviewing and coordinating ethics training. She also continued to perform daily administrative responsibilities and to complete online computer training.

Legal Clerk Bigornia continues to compile and graph the Ethics Commission (EC) statistics for trend analysis. She also worked closely with Joseph Pagkalinawan, the EC's Po'okela Fellow on refining the financial disclosures and lobbyists processes, as well as refreshing and redesigning the website. Mr. Pagkalinawan is also compiling advisory opinion information for a research database. The EDLC further explained that staff spent a full day debriefing lobbyist and financial disclosure processes. The debriefing addressed issues that had been encountered during the process for this year and discussed how to resolve them in the future.

UH Masters in Public Administration Intern John McDonald completed his practicum and is no longer in the office, but has continued to attend the strategic planning permitted interaction (PIG) group meetings. He provides unique insight based on his background in the federal government and his educational studies.

Investigator Yonamine continues to carry her case load. She is also assisting development of a triage intake process. Ms. Yonamine is also reviewing additional standard operating procedures and conceiving a new case database. She is also taking Microsoft Access

training to help her develop the database and is researching databases used by other city agencies. The EDLC referred the Commission to the slide of the Investigator's work hours represented in a pie chart. The EDLC explained that the increase in continuing education (CE) training portion of the chart included investigation training that was offered by the Equal Opportunity Office (EOO), Department of Human Resources (DHR). Both Investigator Yonamine and the EDLC attended four full-day trainings.

In June, Investigator Yonamine, Legal Clerk Bigornia, and the EDLC will attend three and a half days of investigative interview training provided by a private company.

The ALC continues to provide new employee outreach training and has also provided ethics refresher training for new fire captains and battalion chiefs. The EDLC stated that the ALC is recognized and welcomed by many City departments. The ALC provided 551 face-to-face trainings since August 2016. In addition, the ALC and Legal Clerk Bigornia continue work on the desktop training program with the Department of Information Technology (DIT).

Commissioner Kanda asked for clarification of Mindflash training. The EDLC explained that it is a private software application in current use to administer the ethics training program which can be taken on a desktop computer. She also explained that DIT was working on developing its own software application, which would take the place of Mindflash and relieve the Commission of any licensing fees. The ALC is also assisting in that development, as well as managing cases, answering requests for advice, and handling other administrative responsibilities, including development of additional specialized online training.

The EDLC summarized slides showing the breakdown of the ALC's two (2) pie charts. Her first chart showed that administrative duties took up 57 percent of her time. The second chart was a detailed breakdown of the ALC's administrative duties as requested at last month's meeting. The EDLC informed the Commission that the administrative pie chart took about four to five hours to create and that it was extremely onerous to breakdown time into at least ten different subcategories of administrative work. The EDLC stated she was unsure if the detail is helpful beyond an office operational standpoint.

The EDLC asked the ALC if she had anything else to add. The ALC informed the Commission that she is still keeping track of her time to the tenth of an hour. It became more difficult this past month since she had to further categorize administrative tasks, which took a lot of sorting and resorting.

Commissioner Amano commented that 41 percent of the ALC's administrative time was spent on strategic planning, which was insightful. The EDLC stated that when the strategic planning PIG meetings are done, there will still be a significant amount of administrative time spent on developing, drafting, evaluating, and revising standard operating procedures ("SOPs") on an ongoing basis.

Commissioner Amano remarked that right now there is a very small percent of administrative time spent on litigation, and the chart provided an interesting view of the ALC's time. Commissioner Suemori responded that the ALC shouldn't have to do it again.

Commissioner Amano asked the ALC and EDLC if the administrative breakdown was helpful, and the EDLC responded that she knows what the ALC is doing on a daily basis since her, the Investigator and the ALC work closely together. The EDLC informed the Commission that her time is almost entirely administrative; yet, there are no administrative positions to handle the work. She is hopeful an "assistant" executive director and legal counsel or "deputy" executive director and legal counsel position could be created to assist with ongoing administrative work. The administrative work has not diminished over the last seven (7) or eight (8) months.

The EDLC further stated that it would be nice to have another attorney, separate from an administrative position; then the legal work could be shared among three (3) people as opposed to two (2). Also, the move towards education, outreach, and training is also considered administrative time, along with core work for the Commission. Commissioner Amano thanked the ALC.

Chair Marks asked if Vice Chair Lilly had any questions and he responded by asking for clarification about the ALC being trained, versus conducting training. The EDLC confirmed that the first pie chart showed the amount of time the ALC spent developing the training program or conducting training whereas the second chart showed the percentage of time spent receiving training.

Chair Marks asked Commissioner Amano whether she wanted another breakdown of the ALC's administrative time for the next meeting. Commissioner Amano stated that she didn't need another breakdown of the ALC's time. She also hoped that it would help to justify another position.

The EDLC confirmed that she had a lot of justification for another position since there's a need to build core foundational work.

2. Statistics – Complaints, Requests for Advice, FY2017 (by quarter) and FY2015–FY2017, Quarter 3.

The EDLC reported that the 3rd quarter statistics for Complaints and Request for Advice FY2017 (by quarter) were added and that there was a comparison with the Complaints statistics. The EDLC stated that the complaint statistics were inconsistent with prior years. Trend analysis will have to proceed on a future basis.

3. Budget

a. FY2017 Operating Budget – None

b. FY2018 Operating Budget Request – None

4. Ethics Training Program – Update

The EDLC informed the Commission that staff launched the Mindflash pilot program training to Ethics and Liquor Commission members. The EDLC also stated that two (2) Liquor Commissioners failed to complete the training by the deadline. She stated that there may be an administrative burden in enforcing and tracking training requirements for city officers and employees who fail to complete training by the deadline. The EDLC stated that in June she hopes to be able to have the DIT software training application ready to present to Cabinet and City Council. The HPD Community Policing Division also requested training. Staff will need to discuss how much face-to-face training they are able to offer, given the limited resources.

The EDLC also reported that she will include a new slide on outreach and education for the next meeting. Staff is finalizing the May newsletter which identifies issues the Commission does and does not handle. The EDLC commented that many of the concerns received by the Commission are not within the Commission's jurisdiction. The last newsletter was issued in December 2016 regarding gifts. The EDLC mentioned the need for additional outreach and passed around sample poster templates from the U.S. Office of Government Ethics that could be customized for the Commission's future use.

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

At 12:50 p.m. Chair Marks requested a motion to exit open session to go into executive session. It was moved by Commissioner Amano, seconded by Commissioner Suemori and unanimously carried to approve a motion to exit open session to go into executive session.

*****AGENDA ITEMS RETURNED TO ORDER*****

5. 2016 General Election Charter Amendment Question No. 2 –Amended Bill (Draft) Repeals ROH Section 3-6.4 (Deletes Duplicative Language of Charter Amendment)

The EDLC informed the Commission that the draft bill was forwarded to Corporation Counsel for comment, then forwarded to the Managing Director's Office for processing and introduction by the City Council.

6. Audit – None

7. Legislation – Update

- a. State Ethics Bills

- i. **HB508 HD1 SD1 CD1** – Relating to Ethics (Report Title: government; ethics; fine increases; settlement agreement)
- ii. **HB511 HD1 SD1 CD1** – Relating to Lobbyists (Report Title: State Ethics Commission; lobbyist law; lobbying; enforcement)
- iii. **HB852 HD2 SD1 CD1** – Relating to Ethics (Report Title:

State Ethics Commission; financial disclosure statements; notice; administrative fine)

The EDLC summarized the above State Ethics Commission measures. HB508, HB511 and HB852 all passed and are sitting in the Governor's queue for adoption. The first House Bill increased fines from \$500 to \$1,000. HB511 pertains to Lobbyists and HB852 permits the posting of names for people who don't submit their financial disclosures on time.

- b. Sunshine Law – **HB165 HD1 SD2 CD1** – Relating to Public Meetings (Report Title: sunshine law; public agency meetings and records)
- c. Uniform Information Practices Act (UIPA) – **SB572 SD1 HD1 CD1** – Relating to Information Practices (Report Title: Office of Information Practices; freedom of information; disclosure rules)

These agenda items were previously addressed during Director Park's discussion of the Sunshine Law and the UIPA. The deadline for implementation of these laws will be July 1, 2018.

- d. City Council – **BILL078(15)** – Relating to sponsorships.

The EDLC informed the Commission that Bill 78 was recently signed into law (Ordinance 15-42) and community members voiced concerns in the Star Advertiser about potential conflicts of interest or commercial endorsements of public property. The EDLC also mentioned that she received related information from Corporation Counsel regarding a similar bill about zoo sponsorship that became law in 2015.

Chair Marks asked for a motion to update the meeting's agenda to add Bill 50 for discussion. It was moved by Vice Chair Lilly, seconded by Commissioner Monk and unanimously carried to approve a motion to update the meeting's agenda to add Bill 50 for discussion.

- e. **NEW AGENDA ITEM** - City Council – **BILL050(17)** – Relating to Boards and Commissions.

The EDLC informed the Commission that Bill 50 was recently introduced. It would establish a process for the City Council to conduct periodic reviews of Boards and Commissions created by city ordinance and eliminate ones that are unnecessary. She suggested that the Commission consider submitting testimony during the second hearing of Bill 50 during the City Council Executive Matters and Legal Affairs (EMLA) Committee to explain that the Ethics Commission is mandated by the State Constitution and should not be included in Bill 50. Vice Chair Lilly agreed. Chair Marks asked Vice Chair Lilly if he would draft testimony, and he agreed.

8. Report on Meeting with the Center for Advancement of Public Integrity (CAPI)

The EDLC informed the Commission that she met with the executive director of the Center for Advancement of Public Integrity at Columbia Law School during her recent trip to New York. The CAPI executive director provided helpful information and resources for public outreach.

C. For Discussion: Rule-Making and Mayor's Directives, Memoranda, and Department Policies and Circulars, Item V., Administrative Directives Manual Policy Guidance

The EDLC asked COR Deputy Yost to comment on administrative rule-making via Chapter 91, Hawaii Revised Statutes, versus the administrative directives in the Administrative Directives Manual Policy Guide. COR Deputy Yost explained that the administrative rule-making process would give notice to the public of items that would impact their interests whereas the manual could be used to regulate only city officers and employees with no public notice. Ms. Yost explained that although the manual indicates that the administrative directives are applicable only to executive agencies, COR believes that administrative directives are also applicable to the legislative branch based on case law.

Vice Chair Lilly asked if it was local case law, and Ms. Yost confirmed that there was Hawaii Supreme Court case law on this matter. She reiterated that administrative directives are only applicable to a limited group and not to the public at large.

Vice Chair Lilly responded that one of the potential directives would address the issue of whether an elected official needs to disclose receipt of a benefit from a super-PAC. It could be argued that it's limited to a particular official, although it's triggered by something that is done by the public, and Ms. Yost agreed.

COR Deputy Yost further stated that the question becomes, whether these internal matters will affect the public's ability to make complaints if a city officer or employee violated an administrative directive. Vice Chair Lilly responded that he would like further research.

COR Deputy Yost proposed that the Commission, through Chair Marks, send Corporation Counsel a request for legal services to respond with an analysis to a specific question, and Chair Marks agreed.

Vice Chair Lilly suggested that the EDLC ask COR to describe three (3) categories in the request for legal services: those issues that must be addressed by administrative rule-making, those that are clearly within the jurisdiction of an administrative directive, and those that fall into the cusp. Also, to provide a recommendation of whether the issues that fall in the cusp should be done by rulemaking to err on the side of caution. COR Deputy Yost agreed. She also stated that the Ethics Commission rules of procedure go through rule-making because it affects the public.

Chair Marks asked that COR draft a memo for the next meeting. Commissioner Amano asked if all of this was in conjunction with their strategic planning, and the EDLC

responded that it was related. Commissioner Amano responded that she'll await more information, and Chair Marks agreed.

- D. For Discussion: Procedures for Evaluating the Work Performance and Setting the Salary of the Executive Director and Legal Counsel Pursuant to RCH Section 11-107, as amended by 2016 General Election Charter Amendment Question No. 2
- E. For Discussion: Procedures for Setting the Salary of the Associate Legal Counsel Pursuant to RCH Section 11-107, as amended by 2016 General Election Charter Amendment Question No. 2

Agenda Items D and E were addressed together. Chair Marks asked if the Commission needed to decide on the salaries or rises for the EDLC and ALC at this meeting. The EDLC responded that she distributed the last version of the evaluation form and no decisions were made at the last meeting. The EDLC responded that a decision would need to be made no later than the next meeting so there would be enough time to include any possible raises for the next fiscal year.

III. Executive Session (The following agenda items will be reviewed in executive session pursuant to 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; and 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 Discussion: Procedural Issues Relating to Reconsideration of Staff's Preliminary Determination of April 19, 2017 Ethics Commission Meeting Agenda Item III.A.: Whether Officer Knew or Should Have Known That Officer's Alleged Partisan Advocacy for Charter Amendment on the November 8, 2016, Ballot Violated RCH Section 11-104 (HRS Sections 92-5(a)(4) and (a)(8))

*****This agenda item was discussed in open session.*****

The EDLC updated the Commission on processing the procurement for a hearings officer and special prosecutor and would be using this year's money for that purpose.

- B. For Discussion: Kealoha vs. Tutto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawai'i, and Civil No. 1:16-CV-16-00682 JMS-KSC in the United States District Court for the District of Hawai'i (HRS Section 92-5(a)(4))

This Agenda item was taken out of order. Please refer to page 6 of these minutes.

- C. Independent Ethics Investigator Retained Due to Conflict of Interest – None

IV. For Discussion: Strategic Planning – Permitted Interaction Group Report of April 24, 2017 Meeting

Chair Marks stated that the PIG met in April and that there would be a final meeting on May 25, 2017. The PIG would provide a report with their recommendations to the full Commission for consideration at the next meeting. Commissioner Amano added that it would take a full part of the next EC meeting, and the EDLC agreed and stated that more discussion may be needed for scheduling purposes.

V. Adjournment

Chair Marks asked for a motion to adjourn. It was moved by Commissioner Amano, seconded by Commissioner Monk and unanimously carried to approve a motion to adjourn.

The meeting concluded at 1:53 p.m.