

**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: July 19, 2017
Kapālama Hale
1st Floor Conference Room

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

Peter S. Adler, Commissioner
Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, Commissioner
David B. Monk, Commissioner
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel
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)

Gordon Y. K. Pang, Reporter, Star Advertiser
David Moskowitz, member of the public
Dr. Kioni Dudley, member of the public

MINUTES OF THE JULY 19, 2017 OPEN SESSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:30 a.m. and announced that all Commissioners were present.

II. New Business

A. Chair's Report

1. Announcements, Introductions, and Correspondence

None.

2. For Action: Approval of Open Session Minutes of June 21, 2017

Chair Marks requested a motion to approve the Open Session Minutes of the June 21, 2017 meeting. It was moved by Commissioner Suemori, seconded by Commissioner Amano, and unanimously carried to approve the Open Session Minutes of the June 21, 2017 meeting.

3. For Action: Approval of Executive Session Minutes of June 21, 2017

The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

Chair Marks announced that this matter would be addressed during executive session.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The Executive Director and Legal Counsel (EDLC) reported that staff has prepped documents for the Department of Information Technology (DIT) to archive by scanning. Hardcopy documents would then be shredded as the e-file becomes the permanent record. The EDLC thanked all staff for their assistance with this ongoing task.

The EDLC announced that Corporation Counsel (COR) issued its official version of the new Charter incorporating charter amendments passed in the November election. Staff will update Charter provisions in the Ethics Commission's (EC) resource binders.

The EDLC informed the Commission that Ms. Parker, Legal Clerk III, had completed year-end closings of pCard purchases, as well as other year-end processing. She continues to receive incoming phone calls and check the general Ethics Commission's email account for new matters. She logs these matters in the index and sets up e-files as part of the intake process. Ms. Parker also assisted with implementation of Board and Commission online training via Mindflash. The EDLC stated that she would have further updates for the Commission later in the meeting.

The EDLC informed the Commission that Ms. Bigornia, Legal Clerk I, has been the lead in document archiving and also thanked Po‘okela Intern, Joseph Pakgalinawan, for assisting her. Ms. Bigornia completed online Microsoft Excel training courses, which were helpful when compiling and presenting data for the Commission’s fiscal year-end statistics. The EDLC reiterated that Ms. Bigornia had also completed a three-and-a-half (3 ½) day Reid Interrogation and Interview training (Reid Training) with the Investigator III and the EDLC.

The EDLC reported that both law school interns were unable to attend the meeting but were working on assigned case briefs. She also announced that Mr. Pakgalinawan’s last day with the EC would be on July 31. She reiterated that he is a University of Hawai‘i political science major who hopes to go to law school. He and Laurie Wong-Nowinski, Associate Legal Counsel (ALC), were unable to attend the EC meeting because they were attending a recognition luncheon for the Po‘okela Fellows and mentors, hosted by the Department of Human Resources and the Mayor.

Chair Marks asked if the law school interns had produced anything and the EDLC responded that they were off to a slow start.

The EDLC reported that Ms. Yonamine, Investigator III, receives new assignments while handling her existing caseload. She continues to work with DIT to obtain or develop a case management database. Currently, the EC manages its caseload via Excel spreadsheets, which do not automatically generate reports. Ms. Yonamine’s pie chart also shows time dedicated to the Reid Training.

The EDLC referred the Commission to the ALC’s chart. The ALC personally trained 743 city officers and employees in 2017 mostly during new employee orientation. A best practice is to provide ethics training when employees are new and beginning employment. New employee orientation is typically scheduled for new employees about one month after they start working for the City. The EDLC further stated that the ALC no longer provides in-person training to new employees with the advent of the DIT online training.

The EDLC continued that the ALC was also performing a wide variety of administrative tasks which unfortunately takes time away from legal work and cases. For this next reporting period, staff’s priority is to implement the online training. The ALC’s pie chart shows her breakdown of work time. The amount of time spent on administrative work has been consistent, between 45 percent and 55 percent over the past year. Staff is also bracing for a potential increase in cases and requests for advice due to training implementation.

2. Statistics

The EDLC directed the Commission’s attention to the slide of a bar graph showing increasing requests for advice. The next slide compared the number of requests over three fiscal years—FYs 2015, 2016, and 2017—and showed wide fluctuation. She also mentioned that Uniform Information Practices Act (UIPA) requests were tracked in the general log and reported to the Office of Information Practices (OIP) as required by law. OIP keeps that

data in its own tracking log. Beginning in FY2017, the EC no longer tracks UIPA requests in the case log; thus, there is insufficient data to trend these requests.

Commissioner Adler asked the EDLC if the State Ethics Commission (State EC) kept similar numbers or trends and the EDLC responded that she thought they did in its annual report but would need to research it. Commissioner Adler responded that it could be helpful to track and compare numbers from the State EC and our agency. The EDLC responded that the State EC's numbers increase during the five month legislative session while the City Council is all year.

3. Budget

- a. Fiscal Year (FY) 2018 Operating Budget
- b. FY2019 Operating Budget Request

The EDLC reported that the City Council passed the budget in June 2017 for FY2018. The budget cycle has already begun for FY2019. Every year around August, budget instructions direct agencies to begin work on the proposed budget, which then goes to the City Council the following year. At the last meeting there was a discussion about EDLC and ALC salaries and when budget requests for salary increases are due. At present, EC staff salaries lag behind one year because salary decision made this year are limited by the budget already established last year.

For example, at the last meeting, the Commission set a 10 percent salary increase for EDLC and ALC on a going-forward basis, which should have been part of the budget request for FY2018, which had been decided in 2016. She has tasked the Administrative Services Officer (ASO) to assist with creating a spreadsheet reflecting those numbers. She also has had preliminary discussions with Corporation Counsel (COR) and the Director of Budget and Fiscal Services (BFS). The EC will have to compete with other city agencies for limited resources.

She will schedule preliminary meeting with BFS and the Managing Director (MD) to lay foundation and to express some of the needs for the agency. The EDLC further stated that Chair Marks had agreed to attend meetings with her when more formal presentations are needed.

The EDLC stated that the conference room needs microphones due to the noise caused by heavy commercial, industrial, and emergency vehicles along Dillingham Boulevard. Also, sound carries from the adjacent lobby into the conference room. Commissioners and members of the public comment that they cannot hear discussions clearly. The EDLC further stated that the type of microphones needed cost about \$5,000, but that amount is not budgeted for the building.

4. Education and Outreach

- a. Ethics Training Program – Update

The EDLC reported that over the last two years staff developed an online ethics training program that would more easily reach City employees, officers, and others. With the assistance of DHR and DIT, staff is now ready to launch the all-city ethics training on August 15, 2017. Staff still needs to schedule meetings with administration prior to the launch. Also, staff must schedule and conduct train-the-trainer sessions to teach each departmental training coordinator how to use the system.

The DIT applications division chief, who created the training application, will attend and demonstrate the application at each session. The application will be able to pull reports, track employees, invite employees from departmental rosters, including much more. By the next EC meeting in August, the EDLC stated that she will have more to report. She thanked the ALC and other staff for their hard work and diligence in developing—and soon launching—the online ethics training application.

Commissioner Amano asked if Commissioner Kanda's suggestions were incorporated into the training program. The EDLC responded that she recently received Commissioner Kanda's comments. Commissioner Kanda stated that generally, she tried to simplify the language in the program to a 6th grade level since not very many people speak English as a first language. The program sounds like a legal person wrote the video and script as it contained a lot of long sentences. She suggested to write the program in an audio style, rather than in print style.

Commissioner Kanda continued that while using the *Parks and Recreation* comedy TV series clips was a good idea, she didn't feel that one department should be singled-out and suggested using other city departments. Commissioner Kanda asked the EDLC to consider using more Hawai'i examples for the next program. The EDLC responded that, in time, staff would like to create training on specific topics like gifts or conflicts of interest, not just have general training. Commissioner Amano agreed. The EDLC commented that she had received comments from other board and commission members, including the HART Board, and again thanked Commissioner Kanda. Both Chair Marks and Commissioner Amano had favorable comments.

The EDLC informed the Commission that Mindflash (private software) ethics training was still in use. Ninety-one of 109 officers and employees successfully completed the course. Staff is developing a process and procedure for those who do not complete their training within the 30-day training period.

The EDLC also informed the Commission that she will be scheduling meetings with the City Council Chair and the Managing Director (MD) to roll out online ethics training. DHR offered to help with scheduling the train-the-trainer sessions for each department training coordinator since the coordinators will be responsible for sending out the invites to employees.

5. 2016 General Election Charter Amendment Question No. 2 – Bill 057 (17), Relating to Ethics Commission Staff (Pass Second Reading, City Council, July 12, 2017)

The EDLC reported that Vice Chair Lilly testified at the Executive Matters and Legal Affairs (EMLA) Committee on June 27, 2017, and asked him if he had any comments. Vice Chair Lilly responded that the testimony was very simple.

The EDLC informed the Commission that the Committee Report was in their meeting packets for their information. The Bill passed out of Committee, unamended.

6. Audit – None

7. Legislation

a. State Ethics Bills

- i. Act 50 (Session Laws of Hawaii (SLH) 2017), Relating to Ethics (Report Title: government; ethics; fine increases; settlement agreement)
- ii. Act 51 (SLH 2017), Relating to Lobbyists (Report Title: State Ethics Commission; lobbyist law; lobbying; enforcement)
- iii. Act 52 (SLH 2017), Relating to Ethics (Report Title: State Ethics Commission; financial disclosure statements; notice; administrative fine)

The EDLC reported that Governor Ige signed the three State Ethics bills into law, and the State will be implementing the new requirements.

- b. Sunshine Law – Act 64 (SLH 2017), Relating to Public Meetings (Report Title: sunshine law; public agency meetings and records) (requires board packets to be open for inspection, effective July 1, 2018)
- 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) (enrolled to Governor)
- d. City Council
 - i. Bill 050, CD1(17), Relating to City Boards and Commissions (Pass Second Reading, As Amended, City Council, July 12, 2017)
 - ii. Bill 057 (17), Relating to Ethics Commission Staff (see Item II.B.5.)

The EDLC reported that staff is already in compliance with Act 64, which does not take effect until July 1, 2018. Act 64 requires that board and commission meeting materials be made available to the public at the same time such materials are made available to board and commission members. Ms. Bigornia explained that after Ms. Parker distributes the meeting materials to the Commissioners on the Friday prior to the meeting, Ms. Bigornia uploads the meeting materials to the EC website on the same day. The EDLC confirmed that staff was already in compliance with the new law.

The EDLC further stated that the UIPA bill having to do with adopting administrative rules, Act 165, was passed and is the end of the legislation that was being followed for this year. The Legislature is only in session from January through May; however, Council measures are still ongoing.

The EDLC also reported that Vice Chair Lilly testified before the EMLA Committee on Bill 050, CD1, which was amended at Committee. Vice Chair Lilly clarified that the bill implements a Charter amendment for periodic review of the commissions and boards, with an exception for those mandated by law. Somehow the EC was included and he pointed out that the EC was mandated by State Constitution. He explained that prior to his testimony, City Council had already amended Bill 50 to remove the Ethics Commission from the periodic review. The EDLC added that Bill 50, CD1, passed second reading and will go to third reading. The EDLC would keep the EC informed and updated.

8. Education Opportunities

- a. Society of Corporate Compliance and Ethics (SCCE), 16th Annual Compliance & Ethics Institute, October 15-18, 2017, Caesars Palace, Las Vegas, NV
- b. Council on Government Ethics Laws (COGEL), Annual Conference, December 3-6, 2017, Sheraton Centre Toronto

The EDLC informed the Commission that at the last meeting Chair Marks and Commissioner Amano committed to attend the SCCE 16th Annual Compliance & Ethics Institute conference and would pay for it themselves. The EDLC stated that she also made arrangements to attend on her own. She also stated that their absence would affect the October EC meeting date. Commissioner Amano confirmed that she would be attending. Commissioner Marks responded that she would like to attend, subject to rescheduling an arbitration.

The EDLC also informed the Commission that the COGEL brochure materials were included in their packets and commented that this is the only conference for government ethics laws. OIP, Campaign Spending Commission, State EC, and occasionally EC staff attended COGEL conferences in the past.

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

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.

The matter was still pending with COR. The EDLC asked for a motion to carry the discussion over to the next meeting.

It was moved by Commissioner Amano, seconded by Commissioner Suemori and unanimously carried to approve a motion to carry the discussion over to the next meeting.

Chair Marks requested a motion to exit open session to go into executive session. It was moved by Commissioner Suemori, seconded by Commissioner Monk and unanimously carried to approve a motion to exit open session to go into executive session.

Chair Marks requested a motion to stay in open session. It was moved by Commissioner Kanda, seconded by Vice Chair Lilly and unanimously carried to approve a motion to stay in open session.

*****AGENDA ITEMS TAKEN OUT OF ORDER*****

IV. For Discussion: Strategic Planning – Exposure Draft dated June 21, 2017

Chair Marks announced that staff provided the draft plan and testimony from Natalie Iwasa prior to the EC meeting for their review. She then asked if there were any comments.

Vice Chair Lilly mentioned that he had a few comments. He will send them to Chair Marks and the EDLC. Summarily his comments and the results of the discussion are as follows:

- The italicized prologue should state what the “longer term strategy” is about.
- Section III, “Trailing Indicators,” should include No. 10 for metrics or quantification of constitutional and ordinance provisions governing ethics and enforcement since the EC is driven by an existing charter, constitutional and ordinance laws.
- Section III, “Leading Indicators,” should include, “Anticipated new laws governing ethics and enforcement,” to address evolving circumstances.
- Section IV, “Key Values,” should include, “Instill confidence in the integrity of City government employees and that they will adhere to the higher standards of ethical conduct.” (EDLC noted that this comment was documented during the last meeting and will be included when the plan is revised.)
- Section V, “The Current Situation,” “Weaknesses,” item 6. should state: “We are not well understood by the public at large, and by some City employees.”
- Section VI, “Priority Objectives,” “Objective 1.c” should state that a county corporation counsel deputy or state government attorney could serve as a prosecutor in matters where EC staff has a conflict of interest on a case-by-case basis.
- Section VI, “Priority Objectives,” “Objective 1.e” should state in an effort not to duplicate efforts, the EC may consider whether to defer investigations to other agencies if official investigations are simultaneously being conducted by another agency taking into consideration certain circumstances such as different types of law enforcement and burdens of proof on a case-by-case basis. (Note: this was one issue raised by Ms. Iwasa.)

Commissioner Kanda commended the Permitted Interaction Group (PIG) for doing a lot of thoughtful work on the plan. When it’s completed, she would like to have a one (1) or two (2) page executive summary, including the need for more funding to support current and future work and to make training more understandable.

Chair Marks stated that the Commission gave the staff a lot of work to do and that they have already started to work on objectives identified in the draft plan such, as taking over 300 hours of sorely needed staff training, contacting outside organizations for best practices and resources (e.g., EDLC personally met with the Executive Director of the Columbia Law School Center for the Advancement of Public Integrity (CAPI) while she was on vacation in New York); directing college and law school interns on Ethics Commission work; and researching how other state and municipal ethics commissions are organized and their policies and procedures. She stated that she's extremely proud of staff and commends them on their efforts.

Commissioner Monk added that he was pleased to see that the draft document was focused and comprehensive, although it could be improved. He was looking forward to the next draft plan. Chair Marks thanked Commissioner Adler on helping the EC structure the strategic plan.

The EDLC asked if they wanted to address Ms. Iwasa's other comment regarding acceptance of anonymous complaints. Chair Marks explained that the other ethics agencies the PIG reviewed required signed written complaints and the PIG was trying to follow best practices on this issue. Commissioner Adler added that the EC needs to distinguish between a generalized inquiry versus a "complaint" as a legal term of art.

The EDLC referenced Revised Ordinances of Honolulu (ROH) Sec. 3-6.7, entitled *Complaints*, which already requires that:

"any person may submit a written complaint to the Commission which shall be signed by the complainant. The complaint shall relate to an actual situation and shall set forth the pertinent facts if known including the names of those involved in the nature of the alleged acts or omissions. The Commission shall not consider any complaint that is not submitted in writing and signed by the complainant except for the one initiated by the Commission."

Commissioner Kanda responded that in their training materials it does state that you can make an anonymous complaint. The EDLC clarified that employees can make anonymous complaints to the Integrity Hotline. Commissioner Kanda requested that this be clarified in the training. The EDLC confirmed. The EDLC further stated that historically anonymous complaints were accepted as information and, if necessary, were staff-initiated as a complaint. But the law states that a complaint needs to be in writing and signed.

The EDLC further stated that over the last six (6) or seven (7) months staff has reviewed discrepancies between the EC's process and legal requirements. Staff is working to align some of these areas.

Commissioner Amano stated that there was a semantics problem with using the word "complaint" so generically that it encompasses any incoming information as opposed to "complaint" as a legal term of art that triggers legal requirements. Commissioner Amano then

stated that the PIG discussed this at length and has reviewed practices in other jurisdictions to find a balance and to ensure people are not discouraged from reporting responsibly.

There was discussion about distinguishing whistleblowing and educating people that this was a separate issue regulated by state law. Chair Marks asked if there was any more discussion, and then acknowledged Dr. Kioni Dudley.

Dr. Dudley asked for clarification on the confidentiality of information provided to the Commission and how confidentiality bears on the necessity for anonymity. Chair Marks responded that in the Ordinances there were some areas where the investigations are confidential until they decide to go forward with taking action or an alleged ethical violation.

The EDLC responded that when complaints come in, they are confidential, as is the related work. But, staff prefers to know who the complainant is to obtain additional information and ask follow-up questions. Also, there are circumstances when there is limited access to information and it would be clear where the information came from, even if the informant were anonymous. Dr. Dudley asked if there's a category of complaint where the source would be confidential, unless the source gives permission.

Commissioner Suemori stated as an example, in domestic cases, a wife could make false allegations against the husband but wants to remain anonymous. How could the EC ensure that people are not misusing the anonymous complaint process to make false allegations?

The EDLC stated that ROH Sec. 3-6.12 requires confidentiality of the Commission's records:

“...all advisory opinions, files, records, reports, writings... prepared and received by the Commission or its staff or consultants relating to a request for advice or a complaint shall be held in confidence and no information as to the contents thereof shall be disclosed....”

As such, the Commission's work is confidential unless there is some exception. Further, “[a]ny commission member, commission staff member or consultant who discloses information related to a request for advice or complaint, ... (a) shall be subject to the applicable provisions....”

Thus, staff and the EC are held to that standard of confidentiality and will be subject to disciplinary actions for violations.

Dr. Dudley responded that with that information he would feel very comfortable in not allowing anonymous complaints.

Commissioner Adler proposed that prior to the next PIG meeting, the EC requests comments on the draft plan from the Mayor, City Council, elected officials and the department heads and all city employees and the public. The EDLC confirmed that this suggestion was brought up at the last meeting.

Vice Chair Lilly stated that with regard to the definition of a complaint, and a complaint is either one that is submitted to the Commission by a person, or initiated by the Commission based on written or non-written information. Vice Chair Lilly summarized and interpreted the two (2) sections, that an employee could call the Commission and inform them about violations in their department, but chooses not to sign anything that there are violations and the Commission could initiate a complaint based on this anonymous non-written information, which would be consistent with the Ordinance.

Commissioner Adler interjected that the Commission could do it on their own, and Vice Chair Lilly confirmed and then stated that either it's initiated by the person who signed the complaint or if the Commission gets information, either verbally, in writing or anonymous, the Commission can initiate the complaint. The EDLC confirmed that the complaint would be initiated by staff, and Vice Chair Lilly confirmed that procedure was followed historically. Vice Chair Lilly then stated that staff is the only one who can initiate a complaint, since the Commission are the decision-makers. If it's initiated by the Commission based on non-written or written information, then the staff would initiate.

Commissioner Amano asked about timing of the redraft and outreach. Commissioner Adler responded that they should ask for further input, then meet as a PIG and revise the draft, and Commissioner Amano agreed. Commissioner Adler stated that it sends the message that the EC is working hard on the plan and wants feedback from the community; that it's not just business as usual.

Chair Marks concluded that they would circulate the current draft of the plan (Draft 3) without incorporating any of the comments from Vice Chair and others. Commissioner Adler agreed and also added that the PIG wants additional feedback before doing another draft. It was agreed that the letter requesting feedback would come from the EC and not the EDLC as it was the EC's Strategic Plan and the EDLC is simply the conduit through which the EC's policy flows. Chair Marks agreed and requested that the letter contain information about the PIG, meetings, and that it be sent out as soon as possible. Also, comments should be provided to the EC by September 1.

Vice Chair Lilly asked Dr. Dudley if he wanted to provide testimony on an agenda item, and he responded that he was there because he had a matter that was still being worked on by EC staff and he just wanted to show his presence since he drove from Makakilo.

The EDLC commented that she just received technical, non-substantive comments from Commissioner Monk, which she already incorporated in the current draft. Commissioner Monk confirmed.

At 12:36 p.m. Chair Marks requested a renewed motion to exit open session to go into executive session. It was moved by Commissioner Adler, seconded by Commissioner Amano and unanimously carried to approve a motion to exit open session to go into executive session.

III. Executive Session (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.)

B. For Discussion: Kealoha vs. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawai'i, and Civil No. 1:16-CV-16-00682 JMS-KSC in the United States District Court for the District of Hawai'i

Chair Marks reported that the Commission met with their counsel.

C. For Discussion and Action: Procedural Issues Concerning the Honolulu Police Commission's Request for Advisory Opinion Regarding a Police Commissioner's Participation in Matters Relating to a Former Chief of Police

Chair Marks reported that the Ethics Commission will exercise its discretion and, pursuant to Revised Ordinances of Honolulu, Section 3-6.5 (b), decline the Honolulu Police Commission's request for an advisory opinion regarding a Police Commissioner's participation in matters relating to a former Chief of Police for good cause—the good cause being that there is ongoing litigation with former Chief of Police Kealoha and others, which would create an appearance of impropriety.

The Police Commission is capable of making a decision on this matter.

It was moved by Commissioner Amano, seconded by Commissioner Adler and unanimously carried to approve the motion.

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

At 1:19 p.m. Chair Marks made a motion to exit executive session to go into open session. It was seconded by Vice Chair Lilly and unanimously carried to approve a motion to exit executive session to go into open session.

1:21 p.m. – Testimony of David Moskowitz

Chair Marks informed Mr. Moskowitz that she had copies of his written testimony and asked if he wanted to summarize or had anything else to add.

Mr. Moskowitz provided a brief background of his activism in California and his views on bias and appointed positions. Chair Marks asked if anyone had questions for Mr. Moskowitz. Commissioner Suemori asked Mr. Moskowitz to explain the acronyms SNO and SPO, and Mr. Moskowitz explained that SNO was Sidewalk Nuisance Ordinance and SPO was Stored Property Ordinance. He further stated that the lunches served to the employees who implemented those laws reeked of political impropriety and that the EC should impose a \$100 fine.

Chair Marks asked Mr. Moskowitz if part of his complaint was the fact that it happened right before an election, which made it suspect, and Mr. Moskowitz confirmed.

Chair Marks asked the Commission if there were any other questions and if they wanted to discuss the matter in executive session. Vice Chair Lilly asked to meet with counsel.

Commissioner Adler asked about the status and if the complaint had been filed, and the EDLC responded that staff prepared and delivered its response and Mr. Moskowitz requested that the Commission review it. Chair Marks then stated that the response from staff was part of the packet and summarized that staff's position was that the lunches for the 60 people that were at the event came from the Mayor's discretionary fund, which were \$14.00 per head, and that it was basically thanking people for dealing with the homeless, which was a legitimate City function. Commissioner Adler acknowledged and asked if there was a summary, and Chair Marks confirmed.

Chair Marks asked Mr. Moskowitz to exit the room and await their decision. Mr. Moskowitz thanked everyone for their time.

At 1:26 p.m. Chair Marks requested a motion to exit open session to go into executive session. It was moved by Commissioner Kanda, seconded by Commissioner Monk and unanimously carried to approve a motion to exit open session to go into executive session.

Chair Marks asked for the record to reflect that Commissioners Suemori and Adler left the meeting and that they would not participate in the discussion.

- A. For Discussion and Action: Request for Review of Legal Counsel's Preliminary Determination Regarding Alleged City Officer Misuse of City Resources to Provide Lunch for Individuals in Violation of Revised Charter of Honolulu Sec. 11-104 (Ethics Commission Rules of Procedure Section 5.5(2))

Commissioner Monk moved to accept the analysis of the ALC's Confidential Memorandum and deny Mr. Moskowitz's complaint. It was seconded by Commissioner Amano and unanimously carried to approve the motion to accept the analysis of the ALC's Confidential Memorandum and deny Mr. Moskowitz's complaint.

Chair Marks requested a motion to exit executive session to go into open session. It was moved by Commissioner Monk, seconded by Commissioner Kanda and unanimously carried to approve a motion to exit executive session to go into open session.

1:29 p.m. - Returned to Open Session

Chair Marks informed Mr. Moskowitz that the EC appreciated him bringing the matter to the EC's attention and thanked him for the time and effort in making the complaint and for attending the EC meeting. She explained that the EC reviewed staff's recommendation and agreed unanimously with the recommendation. She informed Mr. Moskowitz that homelessness

had been an area of great concern to the City and State governments for quite a while and that thanking city employees for their time, efforts and services in addressing the issue and using the funds that are available for the Mayor to use in his discretion was appropriate.

Mr. Moskowitz informed the Commission of his own efforts to clear sidewalks of homeless with councilmembers and neighborhood boards. He also appreciated their time and for the opportunity to attend their meeting.

Chair Marks also stated that in order to address all of his concerns, the Commission unanimously agreed that the two family members who attended the luncheon in the matter were de minimus.

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 1:34 p.m.