

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR

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EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: September 20, 2017
Kapālama Hale
1st Floor Conference Room

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

Peter S. Adler, Commissioner
Hon. Riki Amano (ret.), Commissioner
David B. Monk, Commissioner

Jan K. Yamane, Executive Director and Legal Counsel
Laurie Wong-Nowinski, Associate Legal Counsel
Janice Yonamine, Investigator
Lisa P. Parker, Legal Clerk III

Moana Yost, Deputy Corporation Counsel,
Department of the Corporation Counsel (COR)

William Iwaoka, Extern, University of Hawai'i at Mānoa,
William S. Richardson School of Law

Absent: Lynette Lo Kanda, Commissioner
Hon. Allene Suemori (ret.), Commissioner

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:32 a.m. and announced that all Commissioners were present, with the exception of Commissioners Suemori and Kanda.

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution
2. For Action: Approval of Open Session Minutes of August 16, 2017

Commissioner Amano made and Vice Chair Lilly seconded a motion to approve the open session minutes of August 16, 2017. The motion carried unanimously.

3. For Action: Approval of Executive Session Minutes of August 16, 2017

Commissioner Monk made and Commissioner Amano seconded a motion to approve the executive session minutes of August 16, 2017. The motion carried unanimously.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC stated that the legal clerks attended the Office of Information Practices' (OIP) Sunshine Law training. She also stated that they met with the Mayor's staff to discuss board and commission member appointments, notification, and tracking. The EDLC also discussed the Legal Clerk I's recent investigative assignment. William Iwaoka, law school extern, provided the Commissioners with an updated status of his advisory opinion assignment.

The EDLC referred to the Investigator's and ALC's work pie charts and reported that they had worked more on the complaint case load over the past month. She also stated that the Investigator was taking pivot table training.

The EDLC stated that the ALC would not be able to continue to spend a lot of her time on cases because the office's focus will shift to year-end financial disclosure filings and lobbyist registration forms and procedures. Also, the ALC will be busy preparing ethics training for the next biennium, which begins on July 1, 2018. The next training will more fully incorporate Commissioner Kanda's comments.

The EDLC also discussed ethics training coordination with several departments (Police, Fire, and Emergency Services) who already use their own certification and training management systems. The Commission agreed that the ethics training should be maintained within the City-wide learning management system.

2. Statistics
 - a. Website Sessions, August 2017

The EDLC noted that there were 565 website sessions for August 2017.

b. Website Sessions, FY2015 – FY2017 (by month)

The EDLC described a chart comparing three fiscal years of monthly web sessions. The chart showed that the number of web sessions were consistent throughout the year (300-600 sessions per month) and spiked in December and January (700-800 sessions per month). The EDLC explained that the spike was probably due to financial disclosure and lobbyist form deadlines at the end of January. Staff cannot correlate the number of web sessions to the number of complaints received due to insufficient complaint data.

c. Complaints and Requests for Advice (by source), FY2017

i. Complaints (by source), FY2017

ii. Requests for Advice (by source), FY2017

The EDLC summarized each statistical chart showing the source of complaints and requests for advice. The largest source of complaints was the public (48 percent) and the largest source of requests for advice was the City Council (22 percent).

3. Budget

a. FY2018 Operating Budget

There were no updates on the FY2018 budget.

b. FY2019 Operating Budget Request

The EDLC reported that the EC's budget was submitted to the Department of Budget and Fiscal Services (BFS). She stated that the next budget deadline was on September 25. She further reported that she submitted two (2) budget requests per the Commission's decision to give the EDLC and ALC each a 10 percent raise. She concluded that for this fiscal year and the next, only 4 percent will be funded, leaving a shortfall of 6 percent.

She also made budget requests for travel and registration for the annual Council on Government Ethics Laws (COGEL) conference. The administration did not include funding for such training in the FY2018 budget. There was discussion and some objection to administration's line item budget deletions.

After discussion, the Commission concluded that if the administration needs to reduce the Commission's budget, it should state that a certain percentage overall must be cut. The Commission should be given latitude to make such decisions in order to maintain its independence under the Charter. Chair Marks inquired if there was any prior research on the meaning of "administratively attached." The ALC replied in the negative. The Commission requested that the ALC research case law for the meaning of "administratively attached." Corporation Counsel (COR) Deputy Yost explained that a former COR deputy had submitted a memo regarding the Commission's historical authority over its budget as an administratively attached agency to COR. The memo was a historic review of the Commission within the city

administration framework. The Commission requested that COR update the memo and that BFS' legal counsel also provide an opinion. The ALC offered to draft a resolution confirming the Commission's independence for their review and consideration at the next meeting.

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

The EDLC reported that she met with all nine (9) Councilmembers and the Cabinet in regard to the new online ethics training program for City employees. She also confirmed that three-fourths (3/4) of the Cabinet had completed their online ethics training. On September 18, 2017, staff conducted two online ethics training administration classes and were assisted by DHR employees. The Department of Information Technology (DIT) employee who created the software, demonstrated program administration. Approximately twenty-five (25) city training coordinators attended these sessions. The coordinators gave staff valuable feedback on training program issues specific to their departments. Staff and DIT addressed the issues. All City employees should be trained by the next fiscal year.

The EDLC also reported that the private software learning management system, Mindflash, was still being used to train board and commission members (Liquor Commission, Honolulu Authority for Rapid Transportation, Clean Water and Land, among others). DIT has not updated staff regarding development of its external learning management software to be used in the future for board and commission members. Staff received positive feedback from board and commission trainees.

- b. Center for the Advancement of Public Integrity (CAPI) – Update

The EDLC referenced her profile in a meeting handout and explained that CAPI invited her to be featured in its September 2017 “Profiles in Public Integrity.” CAPI also invited her to prepare an issue brief on developing an online ethics training program.

5. 2016 General Election Charter Amendment Question No. 2 – Ordinance 17-47 [Bill 057(17)], enacted August 24, 2017

Bill 057(17) was enacted.

6. Audit – None

7. Legislation

- a. City Council

- i. Ordinance 17-44 [Bill 50, CD1(17)], Relating to City Boards and Commissions, enacted August 24, 2017

Bill 050 passed and is codified as Ordinance 17-47.

8. Education Opportunities

- a. Society of Corporate Compliance and Ethics (SCCE), 16th Annual Compliance & Ethics Institute, October 15-18, 2017, Caesar's Palace, Las Vegas, NV

The EDLC, Chair Marks, and Commissioner Amano confirmed that they will attend the conference.

- b. Council on Government Ethics Laws (COGEL), Annual Conference, December 3-6, 2017, Sheraton Centre Toronto

The EDLC stated that she submitted a travel request to the administration for this conference.

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

A. For Discussion: 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 - None

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

IV. For Discussion: Strategic Planning

A. Comments on Exposure Draft (dated June 21, 2017)

The EDLC reported that she prepared an annotated draft strategic plan that incorporated comments for the Commission's review. The strategic planning Permitted Interaction Group (PIG) is scheduled to meet on September 27, 2017 to discuss the comments.

The EDLC confirmed that she received comments on the draft strategic plan from the Director of Human Resources and several unions including: Hawaii Government Employees Association (AFSCME, Local 152, AFL-CIO) and United Public Workers (AFSCME, Local 646, AFL-CIO). The Commission discussed factors that should be considered when deciding to investigate a matter when another agency is also investigating the same matter; staff's efforts should not unnecessarily duplicate other investigations. The Commission also discussed the issue of receiving anonymous complaints.

The EDLC prepared a tentative timeline for the Commission to review and approve the strategic plan that concluded in January 2018. The Commission discussed the submission of written comments and limiting oral testimony at each EC Meeting.

The Commission finally discussed adding a mission statement and executive summary to the draft strategic plan. The EDLC provided the Commissioners with a template that

reduces a strategic plan to one page.

V. Adjournment

At 12:53 p.m. Commissioner Amano moved and Vice Chair Lilly seconded to adjourn the Ethics Commission meeting. The motion carried unanimously.