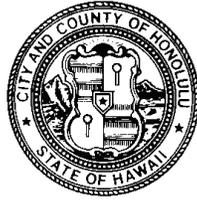


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211 • HONOLULU, HAWAII 96813-3091 • AREA CODE 808 • PHONE: 768-7786 • FAX: 768-7768 • Internet: www.honolulu.gov/ethics

KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
LEGAL COUNSEL

MINUTES  
ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: January 7, 2013  
Standard Financial Plaza  
Conference Room, Suite 211

Present: Charles W. Gall, Esq., Chairperson  
Rachael S. Wong, Dr.PH, Vice Chairperson  
Michael A. Lilly, Esq., Commissioner  
Jeffrey Burroughs, Ph.D., Commissioner  
Stanford Yuen, P.E., Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)

Absent: Katy Chen, Esq., Commissioner  
Stephen Silva, Commissioner

Stenographer: Lisa Parker

I. CALL TO ORDER

The 464th meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:30 a.m. by Chair Gall.

II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES  
OF THE OPEN SESSIONS OF THE OCTOBER 1 AND 31, 2012 MEETINGS

Approval of the Minutes of the Open Sessions of the October 1 and October 31, 2012 meetings was deferred to the next meeting.

### III. OLD BUSINESS

#### A. Setting the Date and Time for the Meeting During the Week of February 4, 2013

The meeting was set for Wednesday, February 13, 2013 at 12:00 p.m.

#### B. Setting the Date and Time for the Meeting During the Week of March 4, 2013

The meeting was set for Monday, March 11, 2013 at 11:30 a.m.

An additional meeting date in March may be needed, depending on how many tardy Financial Disclosures there are at that point, and the Commission will be informed as the Financial Disclosures come in.

### IV. NEW BUSINESS

#### A. For Discussion: Administrative News

##### 1. Complaints and requests for advice statistics:

The EDLC referred to his memo regarding agenda items for the January 7, 2013 meeting, open session dated January 4, 2013 which reported the FY 2013 total to date 219 requests for advice and complaints, 184 of which the staff has provided responses, referral, withdrawn, or no action taken; and 35 under review. The EDLC commented that there were no outstanding complaints from FY 2011. No discussion was had.

##### 2. Website Statistics:

The EDLC reported in his memo that there were 568 hits for the month of November 2012, and there were 2,682 total hits for FY 2013. No discussion was had.

##### 3. Education Training and Statistics:

The EDLC reported that 1,200 supervisors completed their initial training and/or re-training to date. The EDLC is looking forward to producing a DVD for training all line employees. These employees will watch the DVD for 20 minutes, and then complete the training with a test. This would be the initial training for employees, and thereafter retraining will be required every 2 years. The EDLC stated that staff has trained about 1,750 total City officers and employees and about 1,200 of those were trained in the last few months.

##### 4. Report Regarding Fiscal Year 2013 and 2014 Budget Issues:

The EDLC reported that per a Motion from the last meeting, Chair Gall signed a memo to the Mayor regarding funding for the Ethics Commission for FY 2013-2014. The Mayor responded to the memo by basically leaving the issue to the Caldwell Administration. Staff is

looking forward to working with the new administration. The EDLC reported that he has drafted a Memorandum regarding the budget to the new Managing Director, Ember Shinn, and through the new Budget Director, Nelson Koyanagi. The Commission has reviewed the majority of the information in the memo. The memo is basically an advocacy piece to show our workload, that the demand for our services continues to be outstripped, and we've got a large growth of new cases and demand for our services. The memo also compares the allocation of resources to the Ethics Commission with the allocation of resources to HPD administrative misconduct cases and the allocation of resources to the State Ethics Commission. The comparison shows that we have a much higher workload.

The EDLC reported that on January 4, 2013, he met with Councilmember Ann Kobayashi, City Council's Budget Committee Chair, who reviewed the memo and was very positive. She basically said to let her know the difference between what we need and what the administration gives us when they submit their budget in mid-March. The EDLC stated that he hopes she will add more to our budget at that point. The EDLC reported that he also spoke with the City Auditor, because the Auditor has to go through a similar situation in requesting funds for his office. Although the City Auditor is in the Legislative Branch, he said Councilmember Kobayashi was very positive of their work and she has always been one that supported open accountable ethical government. Outside of any political twists and turns, the EDLC stated that he thinks that she'll generally be very supportive of the Commission's budget requests.

#### Discussion: Recent Cases, Follow-Up on Prior Case Outcomes

The EDLC reported that the ALC concluded a very intricate review of a city permit center. The reason that the center is of such interest is that there is a high demand for its services. Staff received a number of relatively serious complaints, but were not able to find any direct misconduct. In the course of investigation, the ALC provided recommendations to help the department change its procedures and policies to correct various systemic problems that in turn allow for ethical misconduct.

Chair Gall asked what kind of complaints there were. The EDLC responded that there were complaints about either gifts or bribes to some counter employees in order to get permits approved. The EDLC explained that normally staff only reviews allegations of an individual's misconduct, but in this case the system was susceptible to abuse. To reduce the chances for ethical misconduct, staff decided to provide recommendations to the department. Staff hopes to continue working with administration in that department.

The EDLC reported that the City Auditor reported on the Council's Annual Contingency Allowance (ACA) policy that had been an issue in both of the Rod Tam cases before the Commission. The Auditor followed Advisory Opinion 2010-2, where the EC had suggested that the Council clarify the limits of the ACA policy and close loopholes. The Council did that to some degree, and the Auditor supports another round of changes. The Council Chair's response to the Auditor was unclear as to exactly what, if any, further changes the Chair intends to make. But the issue should come before Council and staff will monitor the changes. The major issue with the ACA policy is determining who on the Council staff will have the authority to deny reimbursement.

The EDLC stated that he thought the ACA problem was a good example how the bureaucracy can correct problems. Obviously, the ACA policy was too broad and it was abused by Rod Tam. The Commission took care of Rod Tam's abuse of the ACA, but noted the systemic problem. The Auditor, with the help of the Council, began corrections to the ACA policy. Vice Chair Wong asked whether the EDLC has used this as an anecdotal example in training. The EDLC replied that he should. Chair Gall stated that it is really for the Council's own protection to inform them of what they can and can't do.

#### 5. Report on Lobbyist and Financial Disclosure Annual Filings

The EDLC reported that the office is receiving the Lobbyists' Annual Report and Registration filings which are due by January 10, 2013. The Commission's Financial Disclosures need to be filed by January 31. Commissioner Burroughs asked if the Financial Disclosure form is online. The EDLC informed the Commission that the Financial Disclosure forms are online, but cannot be submitted online, and that staff would like to receive the original signed document, if at all possible. Vice Chair Wong asked if it is acceptable to fax the disclosure. The EDLC stated that the Commissioners may fax a copy of the disclosure to the office, and then bring the original to the next meeting.

#### 6. Passage of Council Resolution 12-54 Allowing Gifts to City to be Used to Pay the Travel Expenses to China and Japan for Mayor Carlisle's Wife

Chair Gall commented that it was interesting that the Council approved the Mayor's travel. The EDLC reported that the City Council approved the Mayor's travel in one meeting, when Breene Harimoto was named the Executive Matters and Legal Affairs Chair. The Council passed the resolution in December, so it's precedent now, and we don't know what's going to happen, whether it will be used infrequently or frequently. Chair Gall stated that at least there's a check and balance in the system and a procedure to follow. The EDLC confirmed.

B. Election of Chairperson and Vice-Chairperson

The EDLC stated that he puts this item on the agenda at this time of year annually. He stated that the Commission could vote now or hold off until those who are absent could be present. The EDLC also stated that those who are absent can also be nominated. Chair Gall asked if the positions could remain the same as the prior year. The EDLC replied that in the affirmative as long as commissioners have a chance to vote every year.

**Vice-Chair nominated Charles W. Gall, as Chairperson. Chair Gall stated that he would be happy to stay on as Chair. Commissioner Lilly nominated Rachael Wong as Vice-Chair. Commissioner Burroughs seconded all their nominations. The Commission unanimously agreed that Chair Gall and Vice Chair Wong would remain in their current positions on the Commission.**

**Chair Gall asked for a motion to enter Executive Session. Vice Chair Wong made a motion to that effect. Commissioner Burroughs seconded the motion. The motion was carried unanimously.**

V. EXECUTIVE SESSION

After some preliminary discussion, the EDLC suggested that the Commission address agenda item V.D.

D. For Discussion: Concerning a Letter From a City Officer Regarding the Commission's Policy and Procedures (HRS Secs. 92-5(a)(4) and (a)(8))

The EDLC reported that he tried to find a response to this issue by asking a top City official for clarification. Chair Gall suggested that the Commission request that their Deputy Corporation Counsel (Geoffrey Kam) respond to the letter. Commissioner Lilly stated that the issue had to be straightened out within a department.

Chair Gall asked about the underlying cases referenced in the letter. The EDLC responded that there were two cases referenced in the letter. The main case referenced is the investigation of a City officer regarding the use of his/her position to give special treatment to a certain company. The other case is regarding the investigation of another City officer regarding inconsistencies in management.

**Chair Gall asked for a motion requesting Deputy Kam to respond to the letter. Commissioner Burroughs made a motion to that effect. Vice Chair Wong seconded the motion. The motion was passed unanimously.**

A. For Action: Request for a Motion to Approve the Minutes of the Executive Sessions of the October 1 and October 31, 2012 Meetings

The minutes of the executive sessions of the October 1 and October 31 meetings will be

presented at the next meeting.

B. For Action: Request for a Motion to Approve the Staff's Recommendations on Various Complaints Against a City Officer for Violations of RCH Sec. 11-104 (Misuse of City Resources)

The EDLC referred to item V.B. in his memo to the Commission regarding agenda items for the January 7, 2013 executive session meeting that consisted of a description and a recommendation to dismiss complaints against a City officer for allegedly misusing his/her City position and City funds.

The EDLC stated that he would let the Commission decide how they want to discuss the cases. Commissioner Lilly stated that he reviewed all the cases and he is in agreement with the EDLC in that the complaints are unsubstantiated and it is a waste of the Commission's and staff's time to have to review these complaints. The EDLC responded that it is staff's job to conduct a preliminary review. Chair Gall agreed and stated that a complaint could be used as a weapon.

The EDLC asked if the Commission wanted to provide more guidance on the use of City resources for sending out legitimate government information in email blasts, or on a City website before a primary or general election. For example, the State House has a policy that prohibits using State resources for mass mailings 30 days before an election.

The EDLC stated that for the most part, the complaints were unsubstantiated.

Vice Chair Wong asked how many sources filed complaints? The EDLC replied that there were 6 or 7 sources. Vice Chair Wong asked what is the check and balance for the Commission and staff regarding amount of due diligence required to review complaints as she agreed with Commissioner Lilly's prior comment that a review of these cases was a waste of staff's time. The EDLC replied that staff looks at various criteria including the seriousness of the violation, the evidence available, and the subject of the complaint.

The EDLC reminded the Commissioners that the referenced cases accumulated over the course of a year and a half. Chair Gall stated that he believed that staff is required to look at every case.

Chair Gall commented that it is better to err on the side of a full review because staff has to protect the Commission and those who are the subject of the complaint. Commissioner Lilly stated there is a litigious litigant statute that prohibits submission of complaints although there is not one that is applicable here. The ALC stated that Ethics Commission Rule of Procedure 5.4 provides the basis for the Commission to refuse to entertain a complaint such as if the request is speculative, purely hypothetical, without jurisdiction, or frivolous. Chair Gall confirmed and also stated that staff must still review every complaint to get to that point.

**Chair Gall asked for a motion to adopt staffs recommendations to dismiss the referenced cases without prejudice based on a lack of sufficient evidence at this time. Commissioner Yuen made a motion to that affect. Commissioner Lilly seconded the motion. The motion passed unanimously.**

- C. For Action: Request for a Motion to Find Probable Cause that a City Officer Violated RCH Sec. 11-104 (Misuse of City Positions and Other Resources) for the Personal Benefit of Friends, Family and Himself/Herself

The EDLC stated that he has now focused this case on the City officer using his/her City position for only himself/herself and his/her family.

The EDLC explained that the City officer had received ethics training was aware that he/she was not allowed to use his/her government position for special treatment.

Commissioner Yuen asked if the EDLC made recommendations to try to prevent these types of situations from happening. The EDLC responded that this would have been an easy fix for a problem that has now caused so much trouble. The EDLC stated that staff tries to prevent these problems from occurring.

Chair Gall stated that this is a good example of a misuse of City resources and suggested that staff use these cases for ethics training so people will understand the prohibition against misuse of City resources. The EDLC replied that there are simple solutions to a lot of these problems. Staff finds a lot of complexities in obtaining the facts.

Staff recommended that the Commission find probable cause that the City officer violated RCH Sec. 11-104 and that staff send the City officer a Notice of Alleged Violations of the Standards of Conduct, consistent with the allegations made in the referenced memorandum.

**Chair Gall asked if there was any further discussion regarding this matter. Hearing none, Chair Gall asked for a motion to adopt staff's recommendations. Commissioner Burroughs made a motion to that effect. Vice Chair Wong seconded the motion. The motion passed unanimously.**

## VI. ADJOURNMENT

**Having no further business to discuss, Commissioner Gall asked for a motion to exit open session and to adjourn the meeting. Commissioner Yuen made a motion to that affect. Commissioner Burroughs seconded the Motion. The Motion was passed unanimously. Session adjourned at about 12:30 p.m.**