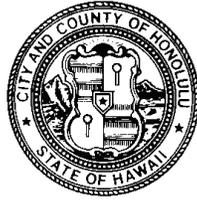


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL  
MAYOR



CHARLES W. TOTTO  
EXECUTIVE DIRECTOR &  
LEGAL COUNSEL

MINUTES  
ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

Date and Place: November 18, 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  
Katy Chen, Esq., Commissioner  
Jeffrey Burroughs, Ph.D., Commissioner  
Stephen Silva, Commissioner  
Stanford Yuen, P.E., Commissioner  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Geoffrey Kam, Deputy Corporation Counsel-COR  
Sheryl L. Nicholson, First Deputy-COR  
Diane Kawauchi, Deputy-COR  
Catherine R. Maki, Administrative Services Officer-COR  
Natalie Iwasa, CPA and Member of the Public  
Nick Grube, Civil Beat  
Gordon Y. L. Pang, Reporter-Star Advertiser  
Ember Y. L. Shinn, Managing Director

Absent: Letha A. S. DeCaires, EC Investigator  
Tierra L. Bickford, EC Po`okela Fellows Intern

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 474th meeting of the Ethics Commission ("Commission" or "EC") was called to order at 12:05 p.m. by Chair Gall, and since there were several guests in attendance, he asked them to introduce themselves.

The Commission had before it the EDLC's memorandum regarding the agenda items for the November 18, 2013 Meeting, Open Session, dated November 14, 2013.

The EDLC informed the Commission that EC Investigator, Letha DeCaires was not present because her contract was not renewed in time. After a delay of several weeks, Corporation Counsel approved it, and it is now being routed through the other departments. There is no return date at this point.

## II. NEW BUSINESS

### A. For Decision: Request for a Motion to Send a Letter from the EC to the Administration Advocating for an Increase to the Commission's Fiscal Year 2015 Budget.

The EDLC reported that he emailed a Request and Justification for Additional Ethics Commission Resources for Fiscal Year 2015 to the Department of Budget and Fiscal Services (BFS) and COR. He is now presenting a "bare bones" budget which focuses on: (1) reallocating the Investigator II position to Investigator IV with a cost of \$10,000; (2) creating and filling an Associate Executive Director Legal Counsel Position with no additional cost; (3) filling the Associate Legal Counsel position with a junior attorney with a cost of approximately \$65,000 plus benefits.

Justification for the increased budget is based on statistics that show a 400% increase in complaints investigated from 2002 to the present. [The EDLC visually demonstrated the following statistics with a graph on a dry erase board.] In sum, the EC has had a 50% increase in staff to handle a 400% increase in complaints investigated. These statistics do not include requests for advice, legislation or advisory opinions. The EDLC stated that without more resources, the EC will have to scale back its work which will result in monetary and other intangible losses to the city.

Chair Gall asked how the EC could reallocate the Investigator II to a IV when it appears that a IV must supervise another investigator. EDLC responded that we could justify the increase based on the complexity of the cases which is how the Prosecuting Attorney's office and Attorney General's office justify Investigator IV positions even though they do not supervise others. The pay range increases by \$10,000 for each level.

Commissioner Chen asked if we are reallocating the Investigator position to a Level IV because our current Investigator II is investigating the most complex cases. The EDLC confirmed and added that staff is developing criteria that will measure the complexity of cases such as: seriousness of the allegations, number of subjects, number of witnesses, and ease of obtaining information.

Commissioner Lilly commended Ms. DeCaires on her efficiency and effectiveness in brief time with the EC. The EDLC stated that the EC is very fortunate that Ms. DeCaires accepted this position. He stated that in the three months she has been here, she has closed 19 cases, in several of which violations were found. Most of the cases were returned to the departments for their review and to take corrective action. If staff finds that the department fails to take corrective action, then staff will bring the cases back to the Commission.

The EDLC stated that Ms. DeCaires has the ability to reach out to people and gain their trust even though they may be afraid of retaliation by others. For example, after speaking to a witness who was initially too afraid to come forward, Ms. DeCaires received information that allowed her to conduct a half day of surveillance and gathered sufficient evidence to save the city \$31,000 a year for overtime pay when no work was conducted. She observed employees working only one hour, but being paid overtime for six. These employees have been doing this every week for some time. Currently the office is working with the department to determine appropriate corrective action. The EDLC stated that in just six cases the EC has saved the city \$200,000 a year. Enforcement causes a ripple effect which prevents others from misusing city resources.

Commissioner Lilly commented that the Administration should endorse our ability to rule out fraud, waste and abuse to save the government money. Vice Chair Wong stated that in addition to the tangible financial return to the city, the city also receives an intangible benefit when the level of integrity increases within the city. She asked the EDLC to explain more of the differences Ms. DeCaires has made on the office.

The EDLC replied that Ms. DeCaires is expedient and efficient on contacting complainants and witnesses. She's pragmatic about the merit of a case and has an ability to interview and interrogate which is different than the way lawyers take depositions. She also has the ability to put people at ease which is important because 80% of the people who come to us are distressed.

Commissioner Lilly asked how long Ms. DeCaires will be off contract. Ms. Maki stated that she will check on the status, and that it was her understanding that the EC requested Ms. DeCaires to restart her contract tomorrow after taking the necessary break in service on Friday. The EDLC stated that he has asked COR to expedite Ms. DeCaires' contract. He is concerned about losing the continuity of her investigations, if her contract is not renewed in a timely fashion.

**[12:17 pm - Gordon Pang of Star Advertiser and  
Ember Shinn, Managing Director entered the meeting]**

The EDLC stated that he appreciated Ms. Shinn being at the meeting as she was the one who helped to clear the "log jam" in dispute matters between the EC staff and other agencies.

The EDLC introduced Ms. Shinn.

Vice Chair Wong commented that having Ms. DeCaires on staff also increases the efficiency of the legal team because the attorneys can focus on legal work. The EDLC agreed and also stated that because the cases are more serious, complex, and sensitive, upsetting the working equilibrium is dangerous.

Commissioner Lilly asked if it is fair to say that because of the EC's work and its efficacy in policing violations, people are more comfortable to bring complaints because it will be handled fairly, expeditiously, and effectively. The EDLC agreed that Ms. DeCaires alleviated the legal team's concerns about the expediency of investigations and that this office wants to ensure there is a fair and expeditious administrative response with a bare bones budget. The EDLC stated that the bare bones budget is insufficient to accomplish many other delayed projects.

Chair Gall directed the discussion to focus on the reallocation of the Investigatory II to IV position. He asked if any of the guests wanted to comment on this issue.

Ms. Sheryl Nicholson, First Deputy, COR introduced herself and explained that Ms. Leong was unable to attend the meeting due to a prescheduled trip. She read a memo from Corporation Counsel Leong and relayed that Ms. Leong believes that the administration has provided the EC with the resources to work effectively, and the issue is to ensure that the city allocates resources to the EC with fiscal prudence.

Ms. Nicholson continued reading the memo from Ms. Leong and relayed that EDLC had not discussed the matter of reallocating the Investigator II to a IV position with COR, therefore COR could not provide a position to the EC regarding this matter. Ms. Leong found out about this reallocation through the open session memo dated November 14<sup>th</sup>. The EDLC failed to provide COR with justification for the reallocation. Implementation of the upgrade will cause the EC budget to exceed its budget ceiling to a greater extent than it already does.

Commissioner Lilly asked Ms. Nicholson if Corporation Counsel finalized a position on whether it views itself as an approving authority for a budget request that the EC submits or as the entity through which the EC submits its budget. Ms. Nicholson replied that she will defer that discussion for Ms. Leong.

Commissioner Silva asked how far the proposed budget is over the ceiling. Ms. Nicholson responded that for fiscal year 2015, the ceiling is \$370,478. The budget that was submitted by Corporation Counsel which included some of the items Mr. Tutto requested was \$381,067.

Commissioner Silva commented that Ms. DeCaires is correcting a lot of violations and has been saving the city a lot of money so why are we arguing about \$10,000?

Commissioner Chen asked how the budget ceiling is determined and whether the every agency has the same cap.

Chair Gall responded that the cap is based on the prior year's expenditures plus a small increase. Ms. Maki stated that the fiscal year 2015 ceiling is based on the current year appropriation. It was adjusted for collective bargaining increases that had been approved. The EC's budget does include the 4% merit increase.

Commissioner Chen asked what is COR's position if the EC's work has increased far beyond the percentage of the increased budget ceiling?

Ms. Ember Shinn, Managing Director, asked to respond in a global context. She stated that in January 2013, the Caldwell administration had to plan the FY 2014 budget which was due to the Council by March 1, 2013. She met with the EDLC and was sympathetic to the EC's needs. The administration agreed to increase the EC budget by \$50,000 for investigative services. She noted that this was the first time the EC had a budget increase in several years. The mayor really believed in the mission of training, investigations and advice.

Ms. Shinn further explained that all departments were asked to submit their proposed FY 2015 budget based upon last FY 2014 budget plus the 4% salary increase or collective bargaining increases which is the budget ceiling. Only the salary component was increased, the operating expense component stayed at the same level. Most of the departments excluding Ethics and COR were affected after the budget was adopted by Council in June 2013 with a \$28 million shortfall. Twenty million (\$20M) were cut including \$4.5 million from HPD and \$1.5 million from HFD.

Ms. Shinn explained that every department is being asked to start at its prior year's budget as a ceiling, and this week, the administration established a process for departments that request for amounts above the ceiling. Departments need to submit a memo identifying the expenses with justifications. Whatever increases are made will depend on: (1) revenue enhancements that Council may approve and (2) Mayor's priorities to fund core city services.

Commissioner Lilly requested that she remember the EC's success stories and its value to the city when reviewing the EC's budget proposal. Ms. Shinn replied that she is only aware of the outcomes of two investigations because of the EC confidentiality laws and it's hard to give the EC credit that it deserves. The administration acknowledges the EC as an important function and wants to support the EC because it's the right thing to do, but there are financial consequences for findings of ethics violations such as those employees who abused overtime. She was certain that those employees will file grievances against the city or sue the city.

Commissioner Lilly replied that he would welcome those six grievances on the overtime violations because they were clear cases of overtime abuse. Ms. Shinn stated that every

department is passionate about what they do and feels that they are not funded appropriately at the right level like the EDLC.

Chair Gall asked when the budget needs to be submitted. Ms. Maki stated that the initial budgets were already inputted into the system in September 2013. The initial proposed budgets are being reviewed by BFS, and will then be routed to Ms. Shinn.

Chair Gall confirmed that the administration is directing the EC to submit a budget within the cap, and then to the extent the EC believes it needs funds in excess of the cap to properly do its job, the EC must submit a request for that separately in a memo which contains the descriptions of the reasons why this increase is justified. Chair Gall and Commissioner Chen asked for clarification on what needs to be submitted after the initial proposal.

Ms. Maki replied that what was inputted into the system was COR's recommendation on the EDLC's request. She stated that amounts in attachment number 6 which was provided by COR at the last meeting, were included in the online computer system. Anything in excess of the budget ceiling needs to be justified including funding for the new clerk position, the \$10,000 amount that exceeds the ceiling, and any other changes as a result of today's meeting.

Ms. Shinn commented that she would consider a Charter amendment to move the EC to another department for administrative purposes. Commissioner Lilly stated that the issue is the way the EC is being administered.

Ms. Shinn responded that the EC does not fit within the typical mold of city government although there is a similarity to the Liquor Commission and the Ethics Board of Appeals, which are administratively attached to BFS.

Ms. Natalie Iwasa, member of the public, requested an opportunity to address the Commission. She stated she met Ms. DeCaires and found her to be very skilled and professional. If the EC does not get that kind of person with those skills and experience required by the Investigator IV position, the EC is sacrificing its investigations. The EC must be independent and asked if it is possible to make the EC completely separate through a Charter amendment. She stated that tax payers have already paid for an ORI investigation conducted by COR so that information should be released to the EC. Withholding information from the EC raises a lot of transparency questions from the public. She stated that EDLC has done a good job of comparing the cost of investigating within the EC's budget as opposed to COR's budget and emphasized that COR spends millions of dollars a year on outside attorneys. She asked that the administration support an increase in the Ethics Commission budget and the Auditor's budget because they both work toward benefitting of the public.

Ms. Iwasa stated that the EC needs more money to regulate lobbying activities and updating the website to make meeting minutes and agenda items easily accessible to the public. She stated that she expected the EC's budget to increase since there were no increases in the past

to keep up with inflation. She requested that the administration examine this issue because the EC is different from other commissions and agencies and it is unclear how much costs the city will incur, if the EC cannot function adequately.

Vice Chair Wong thanked Ms. Iwasa and asked if she followed the EC. Ms. Iwasa responded that she testifies at City Council and has been following local government closely for three or four years consistently. She followed the resolutions that the EC initiated and even checked into some of the EC appointees. Although she knows the EC budget issues well, she didn't know the background details explained today.

Commissioner Silva commented that the time and money involved just to revise the EC budget did not make sense from a business standpoint.

Chair Gall asked if there was any further discussion regarding the reallocation of the Investigator II to IV position. Hearing none, he proceeded to ask the EDLC to discuss the justifications for the Associate Executive Director Legal Counsel position (AEDLC).

The EDLC stated that the EC needs to start looking at EC transition and continuity in terms of history and standard operating procedures. The State Ethics Commission began their offices over 30 years ago with an EDLC, an Assistant EDLC (AEDLC) position and a secretary. They realized that they needed to have someone who is likely to stay for a longer period than an Executive Director to retain the institutional knowledge, policy, advocacy and standard operating procedures. Also, there is an inequity in the ALC salary because the Charter requires all EC staff except for the EDLC to be within the city's pay classification. Although the ALC is an exempt employee like the COR deputies, the ALC salary is capped at the top of the SR26 range at \$88,000 whereas COR deputies are not restricted by the same salary range. The EC will not be able to retain an experienced attorney with that cap. The Council Chair has advised us to work with DHR to increase the classification with a new position instead of proposing a Charter amendment.

If DHR will allow the AEDLC to be in the EM-3 classification, it will provide a pay range comparable to that of the COR deputies. There will not be an increase in the budget by creating this position because whoever takes that position should be qualified to earn at least what the current ALC is earning, but the EC will still have to budget for a junior level attorney.

Even with our investigator's work, staff is still clearing the complaint backlog. If the EC could hire a junior level attorney with 2-3 years of experience it could help clear the backlog, among other things. The salary would be approximately \$65,000, based on the current pay for a COR deputy who has two or three years of experience.

Chair Gall asked if the EDLC was converting the current ALC position to AEDLC. The EDLC clarified that the EC is not reallocating the ALC position; it is creating a new AEDLC

position and keeping the ALC position. Commissioner Chen confirmed that the EC will be hiring a junior attorney to fill the ALC position.

Commissioner Silva asked if the AEDLC position was in the current budget proposal. The EDLC responded no. He referred to his three-page memo that recommended justifications for filling the ALC position assuming the EC is able to create and fill the AEDLC position, and reallocate the Investigator II to a IV position. He stated that the cost for the AEDLC, the ALC and the Investigator IV is approximately \$75,000 plus benefits. Chair Gall asked if the 60% cost of benefits was included in the budget. Ms. Maki clarified that it is in the provisional budget, but the decision makers are made aware of the cost.

Chair Gall asked if Ms. Nicholson had any comments on this item. Ms. Nicholson read from Ms. Leong's memo stating that in August 2013, the EDLC requested the AEDLC position as a means to pay the current ALC a higher salary. He did not say at the time that he wanted to create a third position and have it filled. Ms. Nicholson continued to read from the memo stating that Ms. Leong did not support the new AEDLC position because of the city's fiscal constraints and suggested increasing the ALC salary by re-allocating it to a different classification. The EDLC's request to create the AEDLC position, and to fill the ALC position at a cost of \$65,000 excluding benefits, exceeds the budget ceiling. If the EC supports the EDLC's proposal, the EC should provide direction to the EDLC and COR as to what adjustments it authorizes in the event the administration rejects the EC's budget.

Vice Chair Wong asked for clarification as to when Ms. Leong became aware that the EC was discussing the AEDLC position. The EDLC referred to his August 23, 2013 email sent to Cathy Maki and Jill Narimatsu, the EC's BFS analyst. When the EDLC met with Ms. Leong, he gave copies of his August 23 email to Ms. Leong and Ms. Maki, as well as updated statistics showing the EC's increase in workload to date. In the email, the first item asked for was a new position, a full time AEDLC. Ms. Leong's response was to deny the new AEDLC position, although COR would allow the ALC position to be reallocated to the AEDLC position. Vice Chair Wong asked Ms. Nicholson to pass the information to Ms. Leong.

Chair Gall instructed the EC to take the two budget issues separately. Chair Gall asked if someone would make a motion to adopt the EDLC's recommendation in regard to reallocating the Investigator II position to an Investigator IV position.

**Commissioner Yuen made a motion to that effect. Commissioner Silva seconded the Motion. The Motion passed unanimously.**

Chair Gall asked if someone would make a motion to adopt the EDLC's recommendation in regard to creating and filling the AEDLC position and then filling and keeping the ALC position so the EC has a total of three attorneys in the office.

**Commissioner Lilly made a motion to that effect. Commissioner Silva seconded the Motion. The Motion passed unanimously.**

The EDLC stated that he will submit the EC's recommendations to COR and the Managing Director for review. Chair Gall added that the EDLC will have to address the justification for the additional \$10,000 taking into consideration any changes in salary that were approved at the last meeting.

Vice Chair Wong suggested that the EDLC include our successes to frame our budget as a compromise between the EC and the administration.

Chair Gall stated that there has been a request that Agenda Items B and D be deferred to the next meeting so that Ms. Leong can address those items at that time. Chair Gall asked for a motion that Items B and D be deferred.

**Commissioner Lilly made a motion to that effect. Vice Chair Wong seconded the Motion. The Motion passed unanimously.**

- B. For Discussion: Corporation Counsel's Lack of Response to certain Commission Staff Requests. (DEFERRED)
- D. For Information: Corporation Counsel's Response to the Commission's Amended Request Re Scope of Representation of COR in Ethics Matters, dated September 6, 2013. (TAKEN OUT OF ORDER AND DEFERRED)
- C. For Discussion: Request by the Star Advertiser to have a Question and Answer Interview with the Executive Director/Legal Counsel.

The EDLC relayed that Vicki Viotti from the Star Advertiser had requested to interview him for a two page Q&A article that features people. He has also received requests from Midweek for interviews. He has declined in the past simply because he wanted to keep a low profile. On the other hand, it is a chance for the EDLC to describe some of the issues on behalf of the Commission.

Commissioner Lilly stated that he didn't believe the EDLC needed the EC's guidance regarding this issue. The EDLC explained this item was on the agenda due to the sensitive issues. Commissioner Chen asked the EDLC if he was concerned about timing. Vice Chair Wong stated that the EDLC should be mindful of timeliness, as stories are published because of current related events. Commissioner Yuen stated that he believed it was a good idea for the EDLC to participate in the Q&A to increase public awareness and appreciation of the EC.

## VI. ADJOURNMENT

Chair Gall asked if there were any further discussion on this matter. Being none, he asked for a motion to adjourn. **Commissioner Burroughs moved to adjourn the meeting and Commissioner Silva seconded. All were in favor.**