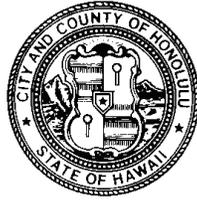


ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU

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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 4, 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  
Charles W. Tutto, Executive Director and Legal Counsel (EDLC)  
Laurie A. Wong, Associate Legal Counsel (ALC)  
Geoffrey Kam, Deputy Corporation Counsel, COR  
Letha A. S. DeCaires, EC Investigator  
Tierra L. Bickford, EC Po`okela Fellows Intern  
Donna Y. L. Leong, Corporation Counsel (Corp Counsel), COR  
Sheryl L. Nicholson, First Deputy, COR  
Diane Kawauchi, Deputy, COR  
Catherine R. Maki, Administrative Services Officer, COR  
Nick Grube, Civil Beat

Absent: Stanford Yuen, P.E., Commissioner

Stenographer: Lisa P. Parker, Legal Clerk

I. CALL TO ORDER

The 473rd meeting of the Ethics Commission ("Commission" or "EC") was called to order at 11:36 a.m. by Vice Chair Wong.

The Commission had before it the memorandum regarding the Agenda Items for the November 4, 2013 Meeting, Open Session and Executive Session, dated October 29, 2013.

### III. OLD BUSINESS

The EC confirmed the date and time of the December 4, 2013 and January 6, 2014 meetings at 11:30 a.m.

### IV. NEW BUSINESS

#### A. For Discussion: Administrative News

##### 4. Council on Governmental Ethics Laws Conference.

The EDLC decided not to send anyone to the conference since it is cost prohibitive at this time, considering the cases pending and the associated costs either for expert witnesses, outside investigators or transcription services.

The EDLC informed the Commission that the Corp Counsel requested Executive Session Item V.C. and V.D. be heard in Open Session. The EDLC had no objection to the request.

#### **11:55 – Chair Gall arrived and greeted everyone.**

Vice Chair Wong briefed Chair Gall on the agenda items discussed.

**Chair Gall asked for a motion to hear Executive Session V.C. in Open Session. Commissioner Silva made a motion to that effect. Commissioner Lilly seconded the Motion. The Motion passed unanimously.**

**Chair Gall asked for a motion to hear Executive Session Agenda Item V.D. in Open Session. Commissioner Lilly made a motion to that effect. Commissioner Burroughs seconded the Motion. The Motion passed unanimously.**

### II. FOR ACTION: REQUEST FOR A MOTION TO APPROVE THE MINUTES OF THE OPEN SESSIONS OF THE AUGUST 19 AND SEPTEMBER 30, 2013 MEETINGS (Taken Out of Order, by request of Vice Chair Wong pending the arrival of Chair Gall)

**Chair Gall asked if there was any discussion regarding the August 19 Minutes of the Open Session. Chair Gall asked for a motion to adopt the August 19 Open Session Minutes. Commissioner Burroughs so moved, Commissioner Silva seconded, and all were in favor.**

Chair Gall asked for any discussion on the Minutes for the September 30, Open Session. The EDLC informed the Commission that there was a slight correction on page 7, and that it should read “V. Executive Session ‘Summary.’” Chair Gall noted on page 10, 2<sup>nd</sup> paragraph:

“Chair Gall asked about and was provided the status of Bill 32.” The Chair asked staff to add a short summary regarding the status. The EDLC acknowledged and that a summary would be added. The EDLC acknowledged that the last sentence in paragraph 1 of Page 14 would be deleted. The EDLC noted that p. 14, 3<sup>rd</sup> para. will be changed to read, “that person from committing a criminal violation.”

**Chair Gall asked if there was any other discussion on the September 30 Open Session Minutes, and since there was no discussion, asked for a motion to adopt, consistent with the comments that were made and suggested revisions. Commissioner Burroughs so moved, Commissioner Chen seconded, and all were in favor.**

IV. NEW BUSINESS (continued)

B. For Decision: Request for a Motion for a Letter to be Sent from the Commission to the Administration Advocating for an Increase to the Commission’s Fiscal Year 2015 Budget

The EDLC stated that independence is the cornerstone of the credibility of any ethics agency. The value of ethics agency independence is imbedded in the Hawaii Constitution, which requires the commissioners to be independent from and impartial to the pressures placed on the Commission. The Commission’s actions affect the reputation and employment of all levels of city government. In 1982, the Charter Commission emphasized the EC’s independence when attaching it to COR for administrative purpose:

So the Corporation Counsel has no control over this Commission but for administrative purposes, the Commission would be part of the department. The amendment has a legal affect of making the Commission independent of Corporation Counsel, and yet providing it with the vehicle, whereby the Commission, through Corporation Counsel’s budget goes to Council to seek any funds it wishes to request of the Council...whatever monies the Council allocates..., but then it’s up to the Commission to expend and how to expend them.

The Department of Corporation Counsel (COR) must provide the EC with access to present its budget to the Council. Now, COR appears to mistakenly believe it can manage and approve the Commission’s budget. Each budget or personnel decision by the Commission is and should be subject to the objective standards of approval by the budget and personnel department. COR, on the other hand, has no authority to manage the Commission’s budget and personnel.

In the last two months, COR has intervened to substitute its judgment for the Commission’s – first, by attempting to limit the expansion of Commission resources; second, by

trying to influence the Commission as to how its lawyers should be evaluated and paid; third, by starting an audit of the Commission's investigator contract; and, fourth, by threatening to withhold budget approval unless COR is given all budget communications between staff and the Commission regardless of whether they're privileged.

The Commission knows what programs foster public trust and it knows the budget it needs to implement those programs. The EC should not let others substitute their budget judgment. Controlling the Commission's budget is an indirect but effective way to control the Commission. To maintain our independence, it is important for the EC to set the budget.

**The Chair asked for a motion to go into executive session to discuss the salaries of the ALC and EDLC. Commissioner Burroughs so moved, Commissioner Silva seconded and all were in favor. The EC entered into Executive Session.**

**[EXECUTIVE SESSION]**

**[OPEN MEETING RECOMMENCED]**

**The Chair noted that while in Executive Session, the Commission decided it would be appropriate to allow Corp Counsel, Donna Leong, to respond to the earlier comments of the EDLC regarding the budget discussion and salaries. The Chair asked the Corp Counsel to proceed.**

Ms. Leong stated that COR is administratively responsible for the EC. She took exception to the EDLC's comments about COR intervening to substitute its judgment regarding the budget as COR is only following rules and regulations within the Administration about personal services contracts, which is how the investigator is currently working for the Commission. COR wants to ensure the budget constraints set by the Managing Director (MD) are followed by scrutinizing all personal services contracts.

She doesn't seek to substitute the EC's judgment or the EDLC's request for FY 2015 budget. She regards COR as the liaison between the administration and EC which includes advising the EDLC about the budget ceiling and the MD's policies with regard to personal services contracts.

Ms. Leong denied threatening to withhold budget approval if documents were not provided to her. She stated that one can't always get what you want due to budgetary constraints, rules and policies.

Commissioner Lilly asked Ms. Leong to define what "administratively attached" means. Ms. Leong said it includes approval of the budget and personal services contracts. Commissioner Lilly stated that he interprets "administratively attached" to mean that COR is the

vehicle by which the budget is submitted for approval to the MD and the Council. He stated he is not sure that “administratively attached” implies budget approval. Ms. Leong agreed with Commissioner Lilly, stating that the budget that COR provided to the Commission was her best judgment of the budget for the EC, with which the EDLC disagrees. The EDLC has requested time with the MD directly, which she believes is unusual because none of her other divisions interface with the MD to talk about budget issues. She believes her budget review was like an interim approval.

Commissioner Chen asked Ms. Leong if it was her position that she could approve how the EC money is spent at the line-item level, which would ultimately effect the EC’s operations. Ms. Leong confirmed that as her position.

Commissioner Lilly asked if Ms. Leong’s position was that she has the purview to submit a budget for a salary that is less than the one the Commission has determined. Ms. Leong responded that she was not taking that position. Commissioner Burroughs interjected that this is the logical consequence of her position that she can approve how the money is spent at the line-item level. Ms. Leong stated that Commissioner Lilly’s question was specific to salaries, and she understands that under the Charter, the EC is empowered to set the EDLC’s salary and that the EC delegated the authority to set staff’s salaries to the EDLC. Ms. Leong cautioned that the EC could be acting contrary to the Charter and the MD’s policies by exceeding the budget ceiling if salaries that are too high.

Commissioner Chen asked if Ms. Leong recommended reducing specific items in the EC’s budget. Ms. Leong responded that it will be up to the MD to adjust the other line items to accommodate the salary increases. She already submitted a suggestion and the EDLC will have an opportunity to speak with the MD directly. The EDLC will basically offer the larger budget for the Commission.

Vice Chair Wong asked whether the other divisions in COR were administratively attached to COR like the EC, to which Ms. Leong stated they have their budget desires, also.

Commissioner Silva asked what the budget ceiling was for FY15 and whether the EC was over it. ASO Maki stated the budget is \$370,478 and the budget recommended by COR is \$10,589 more, or \$381,067. ASO Maki said the City-wide budget instructions gave the cap based on the current year’s budget with the exception of any approved collective bargaining increases.

Chair Gall asked for the amount that the EDLC had requested before COR modified it. ASO Maki said she would provide the information. Ms. Leong estimated the difference to be approximately \$100,000.

Commissioner Lilly asked whether Corp Counsel has the authority to change the Commission’s proposed budget and whether the Commission’s budget, as originally written,

should have been submitted to the MD with whatever comments the Corp Counsel might have had. Commissioner Lilly emphasized that the Commission is distinguishable from other city agencies because of its independence.

Commissioner Silva noted that the Commission has to fight with COR over the budget to even get to the budget negotiations with the MD.

Ms. Leong stated that she considered the budget and information provided by the EDLC and that she thought the EDLC accepted COR's revised budget, except for the salaries. Commissioner Chen explained that her question is, since Ms. Leong made a recommendation to reduce the budget by \$100,000, did she ask the EDLC first to come up with a reduced budget making line-item decisions on the total? Ms. Leong explained that her discussions with the EDLC did not go in that manner. ASO Maki interjected that the EDLC was given an opportunity to give them more information on some areas.

The EDLC informed the Chair that he sent an email on August 23, 2013 to ASO Maki and to Jill Narimatsu, the EC's budget analyst. The email described six necessary budget items based on statistics showing the lack of resources to support the increasing work load which is directly correlated to mandatory ethics training. The EDLC stated that he explained to Ms. Leong and ASO Maki that the EC is perennially underfunded, especially compared to the administrative misconduct resources used by HPD in their Internal Affairs Division. The EDLC stated that Ms. Leong would not approve the addition of an Assistant Executive Director/Legal Counsel (AEDLC) position. Instead, she stated that the ALC's position can be reallocated.

Ms. Leong informed the EC that she told the EDLC that it would be highly unlikely for the MD to approve a third attorney position, and that adding the AEDLC position was only intended to increase the ALC's salary. The EDLC denied that the purpose of creating the Assistant EDLC position was to increase the ALC's salary.

Chair Gall interjected that he thought that one goal in creating the AEDLC position was to correct the ALC's pay inequity and that the EC added the third lawyer position because the Commission staff could not meet the tasks they had with the current resources. Ms. Leong said that the EDLC did not communicate the request for a third attorney position to her or to Ms. Maki. Chair Gall responded that the third attorney request was clear from the budget request in the EDLC's August 23 email to Ms. Maki. Commissioner Lilly agreed with the Chair, pointing out that there is a discussion of the workload as the justification for requesting a third lawyer position.

**Chair Gall asked for a motion to resume executive session, which was made by Commissioner Burroughs and seconded by Vice Chair Wong. All were in favor.**

**[1:35 PM – EXECUTIVE SESSION CONCLUDED AND OPEN MEETING  
RECOMMENCED]**

**Chair Gall announced that during the Executive Session the Commission reviewed the salary considerations for the ALC position as well as the EDLC for both fiscal years 2014 and 2015. For fiscal year 2014 they set the salary for the ALC position at \$75,960 and set the salary for the EDLC position at \$102,368. For fiscal year 2015 they set the salary for the ALC position at \$79,000 and for the EDLC position at \$108,000. The FY15 salary amounts did not include any merit increase that the employees may be entitled to in FY15.**

The Chair noted the Commission will not have enough members for quorum as two Commissioners had left the meeting after the Executive Session, and Commissioner Yuen was absent. Therefore, the remaining matters on the Agenda were deferred to the next meeting.

**VI. ADJOURNMENT**

**Commissioner Burroughs moved to adjourn the meeting, Commissioner Chen seconded and all were in favor.**