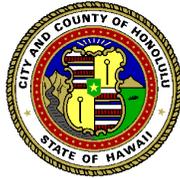


**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



JAN K. YAMANE  
EXECUTIVE DIRECTOR  
AND LEGAL COUNSEL

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**

Date and Place:        January 17, 2018  
                                 Kapālama Hale  
                                 1<sup>st</sup> Floor Conference Room  
                                 925 Dillingham Boulevard  
                                 Honolulu, Hawai'i 96817

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

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

Jan K. Yamane, Executive Director and Legal Counsel  
Laurie Wong-Nowinski, Associate Legal Counsel  
Janice Yonamine, Investigator  
Kristine Bigornia, Legal Clerk I

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

Tim Garry, Member of the Public

Absent:                 Hon. Riki Amano (ret.), Commissioner

**MINUTES OF THE ETHICS COMMISSION MEETING**

I.        Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:31 a.m., stating that all Commissioners were present except for Commissioner Amano.

## II. New Business

### A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution
2. For Action: Approval of Open Session Minutes of December 20, 2017

**Commissioner Monk made and Commissioner Adler seconded a motion to approve the open session minutes of December 20, 2017. The motion carried unanimously.**

3. For Action: Approval of Executive Session Minutes of December 20, 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.

**Commissioner Monk made and Commissioner Suemori seconded a motion to approve the executive session minutes of December 20, 2017. The motion carried unanimously.**

### B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC reported that the staff was down by one as the former Legal Clerk III (LC III) retired in December 2017. The EDLC has since taken over purchasing card responsibilities for Mindflash payments only. The Administrative Services Officer at COR will help with processing other payments.

The LC I is assuming most of the responsibilities of the LC III, in addition to her own duties. The Investigator is assisting with the minutes. All staff are pitching in to cover the vacancy.

The EDLC reported that former Po'okela Fellow Joseph Pagkalinawan will join staff again as a part-time senior clerk. The paperwork for Mr. Pagkalinawan is pending approval.

The Investigator's work report summary shows that she spends the majority of her time working on complaints, split with her administrative duties and less on training. The same is seen with the ALC's work reports summary. The ALC's work report summary shows time spent on administrative work is still consistently heavy as in prior months.

This month, however, the ALC's time spent on outreach and education has been reduced, as most of the training has been deployed. The LC I has been managing almost all the training questions and application fixes. The EDLC reported that this will change in the next

month because staff must develop another training program before the new training biennium starts on July 1, 2018.

The EDLC stated that she was going to contact Commissioner Kanda for ideas to simplify the training and welcomed any new ideas.

2. Statistics
  - a. Website Sessions, December 2017 – 588 sessions
3. Budget
  - a. FY2018 Operating Budget – None
  - b. FY2019 Operating Budget Request – Update

The EDLC reported that she was still waiting for instructions from the Budget Director and Managing Director.

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

The EDLC reported that staff continues to deploy training for board and commission members. The EDLC added that staff also deploys training to new board and commission members and new city officers who interact with boards and commissions.

5. Audit – None
6. Legislation – None
7. Education Opportunities
  - a. Strategic Communication – Commissioner Kanda

The EDLC thanked Commissioner Kanda for arranging the Strategic Communications training and inviting Mr. Hoffman to participate.

Commissioner Kanda offered to provide the Commission and the EC staff with additional specific media training.

- b. Administrative Hearings – Office of Administrative Hearings, State Department of Commerce and Consumer Affairs (State Ethics Commission, State Campaign Spending, City Ethics Commission) – Planning

The EDLC reported that she is working with the State Ethics Commission and the State Campaign Spending Commission to hold a joint training session on administrative hearings.

- c. Campaign Spending – Campaign Spending Commission – Planning

The EDLC approached and Campaign Spending agreed to conduct training for the Ethics Commissioners on political action committees (PACs) and “super” PACs. The EDLC is hopeful the training can be done in spring or early summer. The EDLC recalled that it was one of the strategic objectives to have more training for Commissioners.

#### 8. Integrity Hotline for City and County of Honolulu Employees – Update

The EDLC stated that the Integrity Hotline is a program that has been in the City since 2008 and that it is being reintroduced this year. The EDLC showed the Commission the new Integrity Hotline poster and pocket cards with the Integrity Hotline phone number and website.

Chair Marks asked the EDLC who paid for the poster and cards. The EDLC responded that the Hotline, posters, and cards are funded by the Budget and Fiscal Services Department (BFS), Internal Control Division (ICD). She also stated that ICD has the contract with the company who owns the hotline system and database.

The EDLC stated that the posters were very affordable and created and printed in-house by the City’s Print Shop. The EDLC wants to use the Print Shop for ethics brochures and other outreach items.

The EDLC also reported that she will meet with the ICD division chief, equal opportunity officer, and BFS staff to discuss resources to support the Integrity Hotline.

The EDLC concluded her report.

Chair Marks addressed Tim Garry, a member of the public, asking if he wanted to testify on anything on the agenda.

Mr. Garry replied that he was looking at the website and that he thought there was an item on the agenda relating to Kioni Dudley and his issues. Mr. Garry stated that was the reason he came to the meeting.

Chair Marks and the ALC stated that Dr. Dudley’s agenda item was heard two (2) months ago.

Mr. Garry then stated that he had another question, which Chair Marks allowed.

Mr. Garry stated that he filed a complaint two (2) years ago in regards to City employees campaigning for Mayor Kirk Caldwell’s reelection on the grounds of Honolulu Hale. Mr. Garry stated that the ALC investigated his complaint and now he wants to review the file and see what she did to investigate his complaint. Chair Marks informed Mr. Garry that he may make a request under the Uniform Information Practices Act.

Mr. Garry asked if Chair Marks was referring to a Freedom of Information request.

The EDLC responded that Mr. Gary should refer to the State Office of Information Practices website.

Mr. Garry then asked if a lawsuit was filed against the Ethics Commission, would an attorney be needed to subpoena that information, to which Chair Marks stated that the Commission was not giving Mr. Garry any legal advice.

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

IV. For Discussion: Strategic Planning

A. Exposure Draft (dated January 17, 2018) – Update

Commissioner Adler stated that the Commission should be planning communications for: (1) ongoing education; and (2) responding to crisis issues and triggers such as the occurrence of an overwhelming and unexpected sudden event.

Commissioner Adler also stated that the Commission needed to determine who would be the spokesperson and back-up spokesperson and what role the spokesperson would play.

Vice Chair Lilly suggested defining who should speak based on different situations. Vice Chair Lilly explained that there are certain things in which the EDLC and the ALC would be the natural person to respond, however; there are others (which would have to be defined) where the Chair would be the one to respond.

Commissioner Monk agreed with Vice Chair Lilly, stating that it really depends on the situation.

The EDLC stated that the Commission has a media policy; the spokesperson would be the chair; in the absence of the Chair, the Vice Chair is the spokesperson. The EDLC also fields calls; in the event that she is out of the office, she lets the Chair know ahead of time that she will not be available.

Commissioner Kanda stated that it would be good if the Commission could see the media policy and requested that it be circulated for the next meeting.

Commissioner Adler thought it would be helpful for everyone to think about more crisis oriented situations that could arise and force the Commission into “response mode” such as a volatile case or leftover issues from the previous administration.

Commissioner Suemori asked when the last media policy was created. The EDLC replied and Chair Marks confirmed that it was in 2015. Commissioner Suemori added that it was created in a totally different context.

Chair Marks then referred to the EDLC's list of Ethics Commission accomplishments for FY2017 and suggested that it be an attachment to the strategic plan. Chair Marks suggested language that says "pursuant to strategic plan, here is what we accomplished in 2017." Chair Marks referred to Commissioner Kanda's comment suggesting the strategic plan be published. As a next step, Chair Marks suggested the EDLC and Commissioner Kanda draft an editorial piece.

Chair Marks suggested that the Integrity Hotline poster, the gift guide and the "Do's and Don'ts" guidelines could be presented to the public. The ALC clarified that the Integrity Hotline is only for city employees. Chair Marks stated that the hotline dovetails with her work because other various organizations have been establishing hotlines for their employees.

The EDLC stated that Commissioners' line edits or comments were blended into one (1) draft. The EDLC also filled in the chart on page seven (7) to determine what needed to be reviewed or done.

One of the first areas the EDLC would like to pursue is amending lobbyist laws. A nagging issue has been that lobbyists are required to notarize their filings. The EDLC believes this is unnecessary and that having lobbyists self-certify would be sufficient.

Commissioner Adler inquired whether the City could combine its lobbying requirements with State Ethics Commission requirements.

The EDLC stated that the filings are different because the laws are different. The EDLC stated that she has opened up communication with Campaign Spending and the State Ethics Commission.

The EDLC questioned whether it was possible to have a shared database, since both Campaign Spending and State Ethics Commission have databases. The EDLC reminded the Commission that Commission staff still works with static excel spreadsheets and lists.

Chair Marks asked whether if the EDLC would propose legislation for an ordinance that said: "If you are a lobbyist, and you filed with the State Ethics Commission as a lobbyist, it would satisfy the City and County of Honolulu." The EDLC replied that it could be achieved.

Chair Marks suggested legislation that says you are required to file with the State, in order to relieve the City from doing filings. The ALC responded that they would need to have information about what they come to the City Council on because right now, with the State, it is only what they are lobbying the State for. The ALC surmised that if the state could add another box, which indicates it is on the county level, or for "Honolulu."

Commissioner Suemori stated that it would be interesting if all the counties were like that. Commissioner Adler agreed and stated that it would cut down on duplication. Chair Marks also agreed.

Commissioner Suemori asked whether a meeting with the county and state governments happens once a year. Commissioner Kanda mentioned HSAC – The Hawaii State Association of Counties and Chair Marks confirmed, stating that it is not just ethics. Commissioner Suemori suggested that it might be something to include. Commissioner Suemori wondered how hard it would be to add Honolulu as a “checkmark.”

Commissioner Kanda believes it would be easier for everyone, administratively, and lobbyists as well. Commissioner Suemori agreed, especially since there are four (4) counties.

Commissioner Adler reasoned that even if there was a good government person trying to “catch it all,” it would take both sides to look at this.

Vice Chair Lilly had suggested early on, that if there was some sort of “Association of Hawaii Ethics Commissions,” it would be possible to get together and talk about these issues. Vice Chair Lilly stated that since the commissions are going to know about things that ought to be “across the board” and if the Honolulu Ethics Commission were to just come across one, Vice Chair Lilly stated that this is where we can “cross fertilize.”

Chair Marks suggested talking to the State Ethics Commission Executive Director informally and for the EDLC to talk to other county ethics commissions; then come up with a formal proposal, of which the EDLC could copy to other commissions.

The EDLC stated that this year, staff redrafted lobbyist registration and annual report forms to appear very similar to the State’s. The EDLC also stated that the form is being more successfully completed this year, based on forms that have been received so far. The EDLC also hoped to fix the lobbyist process this year.

Chair Marks asked whether the EDLC wanted to talk to everyone on her thoughts on staffing.

The EDLC stated that ethics work has changed and is continuing to change. With this strategic plan, there is more emphasis on education and outreach than there was in the past. The EDLC explained that the Commission may procure more outside prosecutors and hearings officers in the future. If so, the role of the Commission as the court will diminish and our efforts will be much more heavily focused on outreach and training.

The current staffing is: one (1) Executive Director, one (1) Legal Counsel, one (1) investigator and two (2) legal clerks (Legal Clerk I; Legal Clerk III).

The EDLC stated that she would like to convert the Legal Clerk III position into an entry level professional position.

The EDLC has learned that the best education and training for organizations is shorter in length. The 45-minute or one-hour training that was once the norm has been replaced with five to 10 minute pieces. It takes a lot of resources to continuously develop these pieces.

The EDLC believes staff would benefit from another professional position to assist with investigations and training. The EDLC would also try to upgrade the LCI to an LC II position.

The EDLC reminded the Commission that the staff is in transition mode with fewer hands to do more work. The EDLC thanked the Commission for their patience.

Next year, the EDLC hopes to describe and fund an additional position on the staff's position count as an Assistant EDLC—a deputy's position.

Chair Marks suggested the EDLC look at other jurisdictions in terms of staffing and other information. Chair Marks believes the EDLC might find it helpful in justifying the position.

Chair Marks referred back to when the “plan for crisis” discussion was brought up, and believes that procedures might be one of those areas in terms of planning for crisis. Chair Marks welcomed the EDLC's thoughts on what “crisis” meant to her.

The EDLC stated that it was an insightful piece of information and reflected last year on situations that occurred. One situation happened when she had planned to be out of the office for two (2) days. On the first day, the EDLC received a phone call from the ALC regarding a developing situation. At the time, the EDLC was off-island. This is an example of a situation that should be planned and managed. It is very important to think about crisis points and anticipating and planning for the case worse scenario.

Commissioner Monk inquired that in reference to the potential retooling of the LCIII situation, it would mean anticipating a fairly prolonged situation of being down one staff member, and that if it would be a fairly long situation without a LCIII.

The EDLC responded that was possible. Reallocating a clerical series position to a professional series position can be tricky.

Chair Marks told the EDLC to let her know if the EDLC needed help getting a law student.

Chair Marks asked for a motion to go into Executive Session.

**At 12:11p.m. Commissioner Suemori made and Commissioner Adler seconded a motion to move from Open Session into Executive Session. The motion carried unanimously.**

- 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
- B. Independent Ethics Investigator Retained Due to Conflict of Interest – None
- C. For Discussion: Procedural Issues Relating to Reconsideration of Staff's Preliminary Determination of April 19, 2017 Ethics Commission Meeting Agenda Item III.A.: Whether Officer Knew or Should Have Known That Officer's Alleged Partisan Advocacy for Charter Amendment on the November 8, 2016, Ballot Violated RCH Section 11-104

**At 12:59 p.m. Commissioner Suemori made and Commissioner Adler seconded a motion to go out of executive session to return to open session. The motion carried unanimously.**

Chair Marks reported that for Executive Session item III.A., the Commission conferred with its attorneys. For item III.C., the Commission deferred the matter pending receipt of additional information.

V. Adjournment

**At 1:00 p.m., Commissioner Suemori moved and Commissioner Adler seconded to adjourn the Ethics Commission meeting. The motion carried unanimously.**