

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

925 DILLINGHAM BOULEVARD, SUITE 190 • HONOLULU, HAWAII 96817
PHONE: (808) 768-9242 • FAX: (808) 768-7768 • EMAIL: ethics@honolulu.gov • INTERNET: www.honolulu.gov/ethics

KIRK CALDWELL
MAYOR



JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: May 16, 2018
 Kapālama Hale
 1st 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
Hon. Riki Amano (ret.), Commissioner
David B. Monk, Commissioner
Hon. Allene Suemori (ret.), Commissioner

Jan K. Yamane, Executive Director and Legal Counsel
Janice Yonamine, Investigator
Kristine Bigornia (TA), Legal Clerk III
Joseph Pagkalinawan, Sr. Clerk Typist

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

Absent: Lynette Lo Kanda, Commissioner

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:36 a.m., stating that all Commissioners were present except Commissioners Monk, Suemori and Kanda. Chair Marks declared quorum.

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution

Chair Marks announced that former Po'okela Fellow and current Sr. Clerk Typist Pagkalinawan graduated from the University of Hawai'i (UH) this weekend. Chair Marks added that Sr. Clerk Typist Pagkalinawan may come back over the summer to help the Ethics Commission. Commissioners and Staff congratulated and thanked Sr. Clerk Typist Pagkalinawan.

2. For Action: Approval of Open Session Minutes of April 18, 2018

Commissioner Amano made and Commissioner Adler seconded a motion to approve the open session minutes of April 18, 2018. The motion carried unanimously.

3. For Action: Approval of Executive Session Minutes of April 18, 2018

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 Adler made and Commissioner Amano seconded a motion to approve the executive session minutes of April 18, 2018. The motion carried unanimously.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC reported that Sr. Clerk Typist Pagkalinawan will be leaving at the end of May, but may rejoin staff in July. The EDLC has submitted paperwork for a full-time, 89-day hire, beginning in mid-July 2018.

At 11:39 a.m., Commissioner Monk joined the meeting.

Legal Clerk Bigornia's and Investigator Yonamine's work is ongoing with few changes over this past reporting period.

Associate Legal Counsel Wong-Nowinski's work includes looking for a UH law school student to assist with finishing the Advisory Opinion (AO) briefs, developing next biennium's ethics training program and conducting multi-jurisdictional research as requested by the Strategic Planning Permitted Interaction Group (PIG).

The EDLC added that Staff is looking to other jurisdictions for training ideas and hopes to use many of the scenarios in current cases for training to bring examples down to a more "layman's" level. Staff is experimenting with ideas and looking for video content and other

media to include for interest.

2. Statistics
 - a. Website Sessions, April 2018 – 476
3. Budget
 - b. FY2019 Operating Budget Request – Update

The EDLC presented a video clip of the testimony given by Chair Marks at the Special Committee Draft (CD) 1 budget meeting and reminded everyone that Chair Marks arrived at 10:00 a.m., was there for six (6) hours, spoke for five (5) minutes, and finished at approximately 4:30 p.m. Briefings and hearings are videotaped; the EDLC thanked Legal Clerk Bigornia for locating the testimony.

The video is available on the City Council website and labeled as “2018-04-11 SP BUD Part 1:”

2. BILL 15 (2018) – EXECUTIVE OPERATING BUDGET AND PROGRAM FOR FY 2019. Relating to the Executive Operating Budget and Program for the Fiscal Year July 1, 2018 to June 30, 2019. (Transmitted by Communication MM-23; Bill passed first reading 3/28/18)

The Commissioners commended Chair Marks on a job well done.

Commissioner Amano observed that by the lack of questioning by the budget committee, Chair Marks and the EDLC appeared to “hit every nail.”

The EDLC stated that the CD2 will be out soon; councilmember worksheets have already been distributed. As soon as the CD2 is received, the EDLC will update the Commission.

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

The EDLC reported that the neighbor island Managing Directors (MDs) were interested in the Ethics Commission’s training program. Kauai has had flooding and the Big Island is busy with the volcano, so those MDs have not completed training. However, the Maui MD watched the Ethics Commission’s program and really liked it. Staff shared a DVD of the program, which will be passed on to the Maui MD via the City’s Deputy Managing Director (DMD). Staff has offered to help the other counties.

The EDLC reported training 5,888 employees to date, which is a little lower than expected as there is only one (1) more month to go in the training biennium. The EDLC

expects that the mostly blue collar departments will batch-load their completion certificates at the end of the fiscal year.

Commissioner Adler asked what the “churn” is in the 10,000 employees, meaning, how many employees leave every year and how many come in, to which the EDLC responded that the number is unknown. The EDLC offered that new employee orientation sessions are attended monthly by upwards of 100 to 150 people.

The EDLC stated that training coordinators raised concerns regarding training and tracking new employees and employees transferring from department to department. Their question was which department reports the transferred employee in its total numbers.

The EDLC stated that Staff will probably continue to use this biennium’s training program while developing the next one because new employees and new board and commission members will not have not seen it. This gives staff time to work on the next program.

Staff looked at Ohio’s Ethics Commission’s website, which posts a compendium of courses, including one each on gifts, conflicts of interest, post-employment, and so forth, to which Chair Marks asked if it could be seen publicly. The EDLC stated that it is on their website. Ideally Staff would like to be able to do something like that, but it’s beyond Staff’s current capabilities.

Commissioner Amano asked if it could be done in the next five (5) years, to which the EDLC stated that she would hope so. Commissioner Amano asked if it could be plugged in to the strategic planning, with a goal of having a draft or setting a time table. Setting a target will result in achievement.

Commissioner Amano further expressed that she liked the idea and wanted training to be in the plan as she believes that is where the Staff ought to be. The EDLC replied that a lot of the plan will be dependent upon whether additional staff is received.

When looking at staffing for other commissions, many have fully dedicated training staff. For example, the New York Conflict of Interest Board has a fully-dedicated education and engagement staff. The EDLC hoped that the Ethics Commission would move in that direction.

Chair Marks agreed that the Commission needs additional staff, to which Commissioner Amano reminded that for many years, training was where the Commission wanted to focus—to be proactive and focus on prevention.

The EDLC agreed but described staff limitations. At present, too few staff carry a diverse load and juggle priorities. The EDLC reiterated how difficult it is to gain momentum with competing priorities and having to constantly switch gears. For example, when

Investigator Yonamine works on minutes, cases are set aside. Therefore, next year's budget request must include staffing resources.

Commissioner Amano reiterated that she would like to see a game plan so that the Commission knows that in 2019 or 2020, the Commission can see where it is going and whether the desired achievements were made. This becomes the focus of the Ethics Commission's report when going in to ask for budget.

The EDLC added that she and Commissioner Adler have had preliminary discussions on how the Staff could start putting some "meat on the bones." The strategic plan only provides a framework.

At 11:56 a.m. Commissioner Suemori joined the meeting.

The EDLC concluded that Staff is now in the last group of Mindflash training for board and commission members.

Chair Marks asked for an update regarding the board member who failed to file a financial disclosure, to which the EDLC answered that the member has since paid the fine and filed the disclosure.

6. Legislation
 - a. Sunshine Law – Update

The EDLC thanked Deputy Yost for information regarding sunshine law amendments, which have an effective date of July 1, 2018. Staff has been in compliance since the beginning of the year.

Deputy Yost agreed, stating the Ethics Commission has been in compliance so there are no changes.

- b. Resolution 18-71

The EDLC explained that she included this resolution in the Commissioners' packets because it requests the mayor to look at salaries for certain positions within his office. The EDLC further explained that such officers' salaries are apparently lagging, similar to the Ethics Commission EDLC and legal staff. Based on publically available salary data, the council has reason to believe that some exempt excluded officials are not being adequately compensated, making it difficult to attract and retain qualified people.

Chair Marks asked if the Ethics Commission could ask to be included in that review, to which the EDLC stated that it might be better to maintain distance from the mayor's appointees.

The EDLC stated that there state officials who experience a similar salary lag. For example, the Office of Information Practices (OIP) executive director's salary was well below other similar state positions and the same as the EDLC's salary. After much testimony, OIP's budget did receive an increase.

7. Education Opportunities – Commissioners and Staff
 - a. Office of Administrative Hearings, State Department of Commerce and Consumer Affairs – May 23, 2018

Commissioner Monk stated that he was going to miss this session. The EDLC reminded Commissioners that training will be with the State Ethics and State Campaign Spending Commissions.

8. For Discussion and Action: Motion to Accept Executive Director and Legal Counsel Evaluation Form and Establish Implementation Timetable

The EDLC did not receive any comments from commissioners so will ask for a two-part motion; one to accept the EDLC evaluation form itself, subject to technical non-substantive changes and edits; and two, to establish an evaluation timetable (i.e., end of fiscal year, calendar year or other).

The Commissioners discussed an appropriate time; since the EDLC started in August 2016, then at fiscal year-end in July would work. The Commissioners also discussed whether the budget cycle would impact timing; the EDLC clarified that it wouldn't really matter since the budget for the following year would have already been decided. There will always be a lag. Commissioners also discussed whether this would be done every year as it had in the past.

Commissioner Suemori suggested to start the process with a "turnaround" before the next meeting, giving approximately 30 days. Commissioner Amano suggested that it should be limited to a week, as data would need to be compiled on the Excel form.

At 12:10 p.m., Commissioner Amano made and Commissioner Suemori seconded a motion to adopt the EDLC's evaluation form and conduct the evaluation at fiscal year-end. The motion carried unanimously.

Chair Marks requested that everyone's input be sent directly to Vice Chair Lilly for compilation. Commissioner Suemori summarized that the EDLC should send the form in May with a week turnaround, Vice Chair Lilly will compile in June, and the evaluation will be conducted at the July meeting.

Deputy Yost asked whether it needs to be emailed to Staff first, to which the Commissioners stated that it would not be necessary. Commissioner Amano recognized that Deputy Yost was concerned about sunshine law and clarified that Commissioners would not be communicating with each other.

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

At 12:24 p.m. Commissioner Adler made and Commissioner Amano seconded a motion to move 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

At 12:34 p.m., Commissioner Monk made and Commissioner Suemori seconded a motion to move out of executive session and return to open session. The motion carried unanimously.

Chair Marks reported that for agenda item III.A., the Commission discussed litigation with its counsel.

IV. Strategic Planning

A. For Discussion and Action: Motion to Amend *Ethics Commission – 2027* (adopted March 21, 2018)

The EDLC stated that the only change was on page 10. The EDLC had preliminary discussions with Commissioner Adler about the short term accelerators, that is, items the Commission hoped to accomplish from now until the end of the calendar year.

Chair Marks suggested an edit on page 10, "to ensure that the Commission is adequately staffed and trained, and staff are adequately and fairly compensated," to which the Commission agreed.

Commissioner Suemori made and Commissioner Monk seconded a motion to accept the strategic plan, as amended. The motion carried unanimously.

Commissioner Adler asked about the final rollout for the plan. The EDLC stated that she would draft a memorandum for Chair Marks to sign.

Chair Marks suggested sending it out to everyone who received the initial draft. Commissioner Amano suggested that Commissioners Kanda and Monk assist in drafting a press release. Commissioner Suemori reiterated the importance of a press release and was hopeful that it would be printed.

Chair Marks thanked the Commission for their input and help.

The EDLC asked about the Strategic Planning PIG, to which Deputy Yost stated that it could not be one of those things that “goes on forever” or it would become a “standing committee” and subject to the sunshine law.

Commissioner Amano asked if it could be reappointed, to which Deputy Yost responded that if the idea is just to keep talking about the same thing, it becomes a standing committee.

Commissioner Amano expressed her belief that the Commission would have to meet once to put some “flesh on the bones” of the plan and that this would be an implementation stage. Thus, it would be the next level.

Commissioner Adler added that is what he and the EDLC were calling “accelerators.” Chair Marks asked if the Commission would allow the PIG to work for another six months to a year, to which the Commission agreed.

The EDLC asked about drafting an operational plan, which is a bigger piece of work.

Commissioner Adler added that it can be a separate piece of work. It does not have to be in this strategy and could become an annual plan, operating plan or implementation plan. It could be called anything. The idea is to take some of the key items and move them.

The Commissioners had a discussion on the purpose and length of the meeting to which Commissioner Adler added that the ALC would need to be present as well. The EDLC stated that she would work with everyone regarding scheduling.

Commissioner Amano asked if the PIG gets reappointed to which Chair Marks responded that it had been done at the last meeting.

B. For Discussion: Media Policy (dated July 23, 2015) and Crisis Management

The EDLC was asked to find out whether other commissions have media policies. She reported that the Police Commission and the State Ethics Commission do not have such policies. The Police Commission Chair served as Spokesperson in the past; however, now other Commissioners have been approached by media and responded directly.

The EDLC stated that the other item for discussion was the crisis management discussion questions. According to the EDLC, Commissioners Monk and Kanda had a discussion and were not sure on some protocol, such as who is supposed to respond, the Commission, the City or some other person.

Commissioner Monk added that it is difficult to say more unless both he and Commissioner Kanda are present at the meeting. Commissioner Monk commented that crisis

management goes beyond what he considers his own professional background as his background is in media and media relations. This has a broader scope. Commissioner Monk does not feel adequately versed in the matter, but is more than willing to participate in the discussion.

Chair Marks asked Commissioner Monk if he had any comments on the Ethics Commission's current media policy, to which Commissioner Monk replied that the media policy, to him, is a perfectly serviceable policy. Although it could be "tweaked" here and there, Commissioner Monk commented that he does not see anything in it that is problematic as it stands. Commissioner Monk believes that having a media policy is absolutely useful, if not essential because it relieves people who are placed in the position of having to respond to queries from the anxiety of not knowing how to go about it or who should go about it. Commissioner Monk concluded that the Ethics Commission should continue to examine this and added that he and Commissioner Kanda could dive into it a little deeper and see if there are any tweaks that they could recommend.

Chair Marks asked and Commissioner Amano agreed that the discussion should be kept on next month's agenda. Commissioner Amano stated that she believes there is danger when you have volunteer Commissioners in high profile situations that could become explosive. Commissioner Amano expressed her belief that a media policy is helpful.

The EDLC stated that the existing policy is easy to implement. Commissioner Suemori added that it was a "battle fought policy."

Commissioner Amano clarified that the Commission wants the EDLC to feel free to do what she needs to do, just that the Commissioners should be informed so they do not find out after-the-fact.

Chair Marks summarized that the next meeting agenda will include the media policy as well as the crisis management discussion.

Commissioner Adler asked if a crisis management policy is developed for future Commissions to use. The EDLC responded that Commissioner Kanda shared that it would become a freestanding policy or guide. The policy would articulate the steps to take when dealing with a crisis situation, including pre-drafted press releases.

At 12:41 p.m. Commissioner Suemori left the meeting.

The Commissioners and EDLC were in agreement that the crisis management policy should be added to the Commission's reference binder.

V. Adjournment

At 12:42 p.m., Commissioner Adler moved and Commissioner Monk seconded the motion to adjourn the Ethics Commission meeting. The motion carried unanimously.