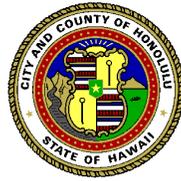


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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: April 17, 2019
Kapālama Hale
1st Floor Conference Room
925 Dillingham Boulevard
Honolulu, Hawai‘i 96817
and
371 Alae Road
Kula, Hawai‘i 96790

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

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

Jan K. Yamane, Executive Director and Legal Counsel (EDLC)
Laurie Wong-Nowinski, Associate Legal Counsel (ALC)
Janice K. Yonamine, Investigator
Kristine Bigornia (TA), Legal Clerk III (LCIII)
Joseph Benedict C. Pagkalinawan, Senior Clerk (Sr. Clerk)

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

Lori Miyashita (Member of the Public)

Absent: Hon. Allene Suemori (ret.), Commissioner

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:32 a.m. She announced all Commissioners, except for Commissioner Suemori, were present that Vice Chair Lilly was participating via teleconference, and declared quorum.

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution

- a. Resolution No. 19-57, CONFIRMING THE REAPPOINTMENT OF MS. RIKI MAY AMANO TO SERVE ON THE ETHICS COMMISSION OF THE CITY AND COUNTY OF HONOLULU (introduced March 5, 2019)

Commissioner Amano stated Resolution No. 19-57 will be heard on Tuesday, April 23, 2019, by the Executive Matters and Legal Affairs Committee.

2. For Action: Approval of Open Session Minutes of February 20, 2019

After an amendment from “he” to “the”, on the last sentence of page 2, Commissioner Amano made and Commissioner Kanda seconded a motion to approve the open session minutes of February 20, 2019. The motion carried unanimously.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC announced that this is Sr. Clerk Pagkalinawan's last meeting and he will be with the Commission staff until the end of April. The Commission thanked and wished him well.

The EDLC stated that Sr. Clerk Pagkalinawan handled the lobbyists program and was tasked to establish a better process, which he did. He also drafted an extensive frequently asked questions (FAQs) based on actual inquiries. The FAQs are posted on the website.

The EDLC thanked Sr. Clerk Pagkalinawan for his work, stating after he leaves, LCIII Bigornia will pick up where he left off until the positions are approved for recruitment. The EDLC stated that LCIII Bigornia has been handling the financial disclosure forms and that Agenda Item III.B is not needed because all forms were received prior to the meeting.

The EDLC stated Investigator Yonamine has been handling her caseload and helping with the Education and Outreach programs by tweeting and assisting with training

sessions. In addition, the Managing Director (MD) had requested ethics training for Cabinet, including Mayor's key staff. The training was held in three sessions, all of which Investigator Yonamine assisted with.

Commissioner Adler asked why there were multiple training sessions, to which the EDLC explained that the Directors were in one group, Deputy Directors in another, and key staff in another. The EDLC also stated that a session was added for the private secretaries.

The EDLC stated that the ALC has focused on the next biennium's curriculum for ethics training. The EDLC pointed out that much of the ALC's work is dedicated to Outreach and Education.

*****AGENDA ITEM TAKEN OUT OF ORDER*****

At 11:44 a.m., Commissioner Adler made and Commissioner Amano seconded a motion to enter into executive session to discuss Agenda Item III.A. The motion carried unanimously.

- A. For Discussion and Action: Request for Review of Staff's Preliminary Determinations of December 27, 2018, and March 28, 2019, Regarding Alleged Violation of RCH Sec. 11-104 by City Employees (*Ethics Commission Rules of Procedure* Section 5.5(2)(b))

The Commission affirmed legal counsel's determination under Rule 5.5(1), *Ethics Commission Rules of Procedure*, that the matter does not come within the Commission's jurisdiction.

At 12:18 p.m., Commissioner Kanda made and Commissioner Monk seconded a motion to exit out of executive session into open session. The motion carried unanimously.

2. Statistics
 - a. Website Sessions – February (525) and March (388) 2019
 - b. Financial Disclosure Filings – Update

The EDLC and LCIII Bigornia finished the processing of all filings.

- c. Lobbyist Registrations, Annual Reports – Update

The EDLC and Sr. Clerk Pagkalinawan completed lobbyist filings and the list will be posted on the website. In addition, the registered lobbyist list will be provided to City Council members for their information.

Commissioner Adler asked if there were any patterns to be aware of regarding disclosures. The EDLC replied that Electronic Forms ("EForms"), which are how certain City employees file financial disclosures internally, had an error rate of almost 50 percent with the

same repetitive error. Common issues included errors with the reporting year, using “2017” or “2019” instead of “2018,” and mistaking the type of filing “Initial” or “Annual.”

COR Deputy Yost asked whether EForms can be pre-populated with the correct year and prior year’s information. The EDLC explained that there is an option to copy last year’s EForm.

3. Budget

b. FY2020 Operating Budget Request – Update

The EDLC stated that Chair Marks provided testimony at the March 12, 2019 meeting with no questions from City Council. There was a subsequent meeting where all departments were asked to be on hold for follow up questions.

4. Education and Outreach

a. Ethics Training Program (FY19–FY20) – Update

Investigator Yonamine provided updates on training sessions using the JeoParody game and evaluation form. The feedback has been mostly positive feedback. On Monday, April 15, Investigator Yonamine, along with LCIII Bigornia and Sr. Clerk Pagkalinawan trained Honolulu Fire Department’s (HFD) Captains.

Commissioners and staff discussed training, feedback, including likes/dislikes, format, length of training, and differences among training groups. In addition, it was established that tailoring content for different groups is important for the training to be successful.

b. Twitter – Update

Investigator Yonamine updated the Commission on the social media platform, stating that staff uses low-to-no budget props and cellphone cameras. Investigator Yonamine concluded that the “likes,” “retweets” and new followers outnumber the negative comments received.

c. Newsletter – May 2019

The EDLC stated that the draft newsletter may be released in May 2019. LCIII Bigornia and Sr. Clerk Pagkalinawan developed newsletter content which may be used for more than one edition.

Chair Marks suggested targeting publication of a newsletter in October to cover elections and that the December newsletter can focus on gifts.

5. Legislation

a. Financial Disclosures – Clarify Reporting Year

The EDLC explained a flaw in the financial disclosure law, that “Annual” and “Leaving Office” filings may reflect the same information from the “preceding calendar year.” An example of this is when a City employee files their annual financial disclosure at the end of the calendar year in December and then leaves the City in middle of the next calendar year, the filer will only report the prior calendar year. To correct the flaw, draft legislation has been prepared.

b. Lobbyists – Delete Notary Requirement

The EDLC stated that the lobbyist notary requirement is not needed, noting that notarized signatures are not even a requirement in most professional vocational licenses applications. The draft legislation bill will replace notarized signatures with self-certification.

Commissioner Kanda asked if the Commission wants publicity on the two issues. The EDLC stated that she will need to discuss with Council Chair to introduce the bills first.

Chair Marks commented that these bills raise small topics which make a big impact. Commissioner Kanda offered to draft a news release for Chair Marks to review.

Commissioner Adler asked whether there is a downside to a press release to which Chair Marks responded that the bills do not change the substance of a law, just technical requirements.

Commissioner Kanda explained that this would create transparent governance because lobbyists can then easily register.

Chair Marks agreed that it would simplify the process for lobbyists and requested that Commissioner Kanda draft a press release.

Commissioner Kanda asked if she is to draft for both, to which Commissioner Amano confirmed, adding that the deletion of the notary requirement, would make registration easier for lobbyists.

Commissioner Adler asked about the progress of conforming our forms to the Hawaii State Ethics Commission. The EDLC explained that the State’s law is different. She reviewed Chapter 97 HRS, which is the State lobbyist law, and tracked the certification language. If we were to use their process, this amendment will comport with that law.

Chair Marks asked the EDLC to work with Commissioner Kanda on the press release.

6. Education Opportunities – Commissioners and Staff – None

The EDLC announced that she and the Hawaii State Ethics Commission's Executive Director Daniel Gluck, discussed holding a statewide ethics conference and inviting the neighbor islands to participate. Mr. Gluck reached out to staff, and staff is excited to participate.

Vice Chair Lilly pointed out that a strategic plan goal is to launch a statewide ethics commission association. The EDLC stated that she discussed this with Mr. Gluck and both agreed that it may be a natural outgrowth of the conference. Vice Chair Lilly was pleased to hear this.

After discussing possible dates, Commission members calendared September 5 and 6 as possible dates and the EDLC will follow up with the State Ethics Commission.

7. Evaluation Form – Executive Director and Legal Counsel

The EDLC explained that Agenda Item II.B.7 is about the evaluation form, to which Vice Chair Lilly will compile Commissioners feedback. The EDLC told Commissioners that the form is available in DropBox.

The EDLC stated that she will place the evaluation in the next meeting's agenda, which is on June 19, 2019 and she requested a copy by Friday, June 14, to give her time to review it before the meeting.

Vice Chair Lilly set the comment deadline on May 31. The EDLC reminded Commissioners to direct any questions regarding the evaluation form to Vice Chair Lilly.

III. Executive Session (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; 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; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

At 12:50 p.m., Commissioner Monk made and Commissioner Kanda seconded a motion to enter into executive session. The motion carried unanimously.

B. For Discussion and Action: Notice of Violation by a City Officer for Failure to File Complete Financial Disclosure Statement (Revised Ordinances of Honolulu (ROH) Section 3-8.4; Notice of Hearing (HRS Section 91-9.5)

Agenda Item III.B was removed from the agenda.

- C. For Action: Request for a Motion to Approve and Adopt Staff's Draft Advisory Opinion No. 2019-1 Regarding Alleged Violation of RCH Sec. 11-104 Against a City Officer

Commissioner Monk made and Commissioner Amano seconded the motion to approve and adopt staff's draft Advisory Opinion 2019-1. The motion carried unanimously.

- D. For Action: Request for a Motion to Approve and Adopt Staff's Draft Advisory Opinion No. 2019-2 Regarding Alleged Violation of RCH Sec. 11-104 Against a City Officer

Commissioner Monk made and Commissioner Amano seconded the motion to approve and adopt staff's draft Advisory Opinion 2019-2. The motion carried unanimously.

- E. For Discussion and Action: Media Articles Regarding Ethics Commission Cases and Prior Staff

The Commission discussed Agenda Item. No action taken.

At 1:11 p.m., Commissioner Adler made and Commissioner Kanda seconded a motion to exit out of executive session into open session. The motion carried unanimously.

IV. Strategic Planning

A. PIG Meeting – *Ethics Commission–2027* – Update

The EDLC stated that FY2019 accomplishments will be added to the Strategic Plan. Currently, the plan includes Attachment 1 for FY2017 and Attachment 2 for FY2018.

Commissioner Adler suggested adding these accomplishments to the appendix.

Commissioner Amano suggested a discussion on prosecution and training to enhance awareness of the Commission's jurisdiction.

Commissioner Adler stated that a remaining issue is whether to use outside hearing officers. Commissioner Amano explained that an arm of the Ethics Commission will prosecute, but a hearing body is not needed. Commissioner Adler commented that we should work on that to finish and inform the public.

The EDLC stated that the issue is stated on page 9: “d) Analyze and determine whether to have in-house prosecutors or contract a prosecutorial function” and explained that this discussion was whether to keep the prosecutorial function in-house or farm it out.

Commissioner Amano suggested a discussion of the matter regarding prosecution at the next PIG meeting and to finalize the strategic plan.

Chair Marks stated that after finalizing this strategic plan, the Commission will do a press release to distribute the plan. The EDLC reminded the Commission that the Strategic Plan will be reviewed in Year 3, which will be 2020.

Commissioner Kanda suggested that the minutes include both scheduled and reserved meeting dates. The Commission agreed.

Commissioner Kanda stated when she was doing corporate work, she would receive formal letters from the company she worked for, advising the employees that they cannot accept gifts from vendors over a certain amount in one year. When she received the letter, she became more aware. The Commission agreed that it was a good idea. Commissioner Kanda suggested that the Commission send similar letters or emails to all City vendors to citing the City's gift policy.

Chair Marks asked whether approaching the Purchasing Office ("Purchasing") to obtain a list of vendors was viable and Commissioner Adler asked whether the Purchasing could send it out.

COR Deputy Yost explained that all vendors register with the City and that we could obtain the information from Purchasing.

Chair Marks praised Commissioner Kanda for the suggestion.

The EDLC asked if such a letter could be built into the contracting process to which COR Deputy Yost recommended checking with Purchasing and perhaps posting a notice on the City's vendor self-service site.

Commissioner Adler asked about issuing a December press release on December 1st or 2nd to remind vendors of our policies; especially gifts, of which the Commission was agreeable to.

Chair Marks stated that the newsletter or the gift letter needs to be specific like "Can/No Can" and also suggested posting it in the other places, such as the Department of Planning and Permitting (DPP).

The ALC shared that such a request had been made in the past, and that DPP had declined. However; staff could make the request again. The ALC suggested that the "One Stop" Permit Center and Purchasing would be great places and suggested a sign at the counter.

The Commission discussed gift-giving in other government settings, including cultural differences in other countries, such as Japan, where gift-giving is expected.

V. Adjournment: Next Reserved Meeting: May 15, 2019
Next Scheduled Meeting: June 19, 2019

At 1:26 p.m., Commissioner Kanda made and Commissioner Monk seconded a motion to adjourn the Ethics Commission meeting. The motion carried unanimously.