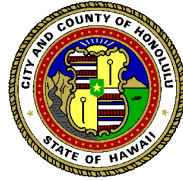


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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: July 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 (*teleconferencing*)

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

Jan K. Yamane, Executive Director and Legal Counsel (EDLC)
Laurie Wong-Nowinski, Associate Legal Counsel (ALC)
Janice K. Yonamine, Investigator

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

Members of the Media:

Nick Grube, Civil Beat
Christina Jedra, Civil Beat
Manolo Morales, KHON
Gordon Pang, Star-Advertiser

Members of the Public:

Lisa Engebretsen
V. F. (illegible)

Tim Garry
Lynn Goto-Uyema
Harrison (illegible)
Greg Lau
Ken Lawson
Jonathan Leo
Sandy Ma
Stephen Nakasone
Donald Roelper
Eric Ryan
A. Silvert
Charles W. Totto
Janis Yu

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 with Vice Chair Lilly participating via teleconference, and declared quorum.

II. New Business

A. Chair's Report

1. For Action: Approval of Open Session Minutes of June 19, 2019

Commissioner Adler made and Commissioner Monk seconded a motion to approve the open session minutes of June 19, 2019. The motion carried unanimously.

2. For Action: Approval of Executive Session Minutes of June 19, 2019

Commissioner Monk made and Commissioner Adler seconded a motion to approve the executive session minutes of June 19, 2019. The motion carried unanimously.

B. For Discussion:

1. Ethics Commission Chronology of Events and Discussion About Matters Relating to Chief Louis Kealoha (Ret.) and Katherine Kealoha; and
2. Procurement of Outside Counsel to Prosecute and Investigate Ethics Commission Cases and Other Matters Due to Conflicts of Interest

The Commission may convene an executive session pursuant to Section 92-5(a)(4), HRS, to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

Chair Marks explained that she will provide an overview for the new Commissioners, and then anyone may testify on an agenda item for three minutes, which is the standard protocol.

Chair Marks stated the Commission was gathered to correct misinformation with facts and summarized three points:

- 1) The Ethics Commission continues to prosecute two cases that the Commission has against the Kealohas;
- 2) The Ethics Commission continues its investigations of complaints against the Ethics Commission staff, and that is part of a settlement in a civil lawsuit; and
- 3) Former EDLC Charles W. Tutto voluntarily resigned from the Commission.

Chair Marks explained that Vice Chair Lilly, who was on the phone from Maui, is the longest sitting Commissioner originally appointed under Mayor Carlisle. She asked Vice Chair Lilly to speak clearly and loudly on anything he would like to share, and Vice Chair Lilly confirmed.

Chair Marks stated that information regarding investigations is considered confidential by the Revised Ordinance of Honolulu (ROH). She explained there are three main walls:

- Investigations: staff of one investigator, two lawyers
- Civil Prosecutor: staff of two lawyers
- Adjudication: staff brings the case before the Commission

During the Investigations and Civil Prosecutor phases, the Commission is not involved until staff presents the case before it to determine probable cause.

Chair Marks explained through chronology:

July 8, 2015: The Commission heard of the confidential investigations from news articles. In one of the Commission meetings, the Commission asked staff if there was a leak; staff confirmed there was none. If there was, that staff member would have violated ethics laws.

The Kealohas sued the Commission: Public Servant vs. Honolulu Ethics Commission.

A couple of weeks later, staff brought a case before the Commission to establish probable cause against the Kealohas, which was approved. This is the first case the Commission heard regarding the Kealohas.

July 24, 2015: The Kealohas filed an ethics complaint against the Commission's staff.

September 2015: The Kealohas filed a second suit in state court: Doe/Roe vs. Ethics Commission.

Chair Marks stated that the Commission became aware that staff has an apparent conflict of interest.

In the next couple of weeks, the Commission received a workplace complaint against former EDLC Charles W. Tutto.

December 8, 2015: Chair Marks stated the Commission hired Ms. Anna Elento-Sneed, a lawyer who specializes in employment matters, to investigate Mr. Tutto.

A couple of days later, the Commission hired Lincoln Ashida, a lawyer from the Big Island with Torkildson, Katz, Moore, Hetherington & Harris AAL, ALC, to take over prosecution of ethics complaints against the Kealohas because of Mr. Tutto's apparent conflict of interest that Mr. Tutto had. Mr. Ashida is a former deputy prosecuting attorney and former Corporation Counsel. The Commission sought to prevent any taint and focus on a fair process.

The Commission remained focused on the workplace investigation.

April 2016: The Commission hired Barbara Petrus, a lawyer with Goodwill, Anderson, Quinn & Stifel, LLLP, to investigate complaints filed by the Kealohas against the Commission's staff.

Chair Marks confirmed that the prosecution against the Kealohas and investigation of the Kealohas complaints against staff are ongoing.

Commissioner Amano summarized that there were three separate paths that the Commission had to manage: Mr. Ashida handling the prosecution, Ms. Petrus handling the complaints against staff, and Ms. Elento-Sneed handling the employment complaint.

Chair Marks stated that the workplace investigation had nothing to do with the Kealoha matters. On January 18, 2016, Ms. Elento-Sneed provided her report to the Commission. Effective March 1, 2016, Mr. Tutto was placed on leave. On April 4, 2016, Mr. Tutto returned to the office, and then informed the Commission that he decided to resign with multiple demands. In June 2016, Mr. Tutto signed his separation from employment agreement.

Chair Marks asked Vice Chair Lilly if he had anything to add. Vice Chair Lilly stated that there had been a lot of misinformation and misunderstanding out there of the facts. He stated that when the Kealohas were found guilty, it was, in his opinion, the "vilest" case of corruption of the highest officers of law enforcement since the Police Chief William Gabrielson scandal of the late 1940's concerning bribery and prostitution.

Vice Chair Lilly continued that Mr. Tutto deserves a great deal of credit and appreciation for investigating the early stages of the Kealohas abusive law enforcement powers and their misuse of police assets. As Chair Marks mentioned, the Commission had no knowledge about the facts of his investigations. The Commission is not permitted to learn about investigations until staff brings a report requesting probable cause as they did on two cases involving the Kealohas. As a judicial body, the Commission cannot be biased by ex parte communications on the facts of any investigations against the City employee.

Vice Chair Lilly stated that the Commission does not investigate criminal cases – only alleged violations of City ethics laws and rules. During Mr. Tutto's testimony on the stand in the federal case, he stated that he was concerned about the use of police cameras and police officers to surveil the Kealoha's home. Mr. Tutto was aware of the mailbox theft, but was focused on investigating the potential ethics violations of using police equipment and police officers for personal benefit.

Vice Chair Lilly clarified that the Commission did not shut down any investigations relating to the Kealohas. He opined that the Kealohas abused the process by filing ethics complaints against Mr. Tutto to derail the investigations, which created a conflict of interest and required the Commission to temporarily put the investigations on hold and resolve whether there is a conflict with a small staff and limited resources. The Kealohas continued to file ethics complaints and file lawsuits claiming Mr. Tutto and former investigator Letha DeCaires were investigating them based on a malicious vendetta against them. He continued that it might be a waste of resources for staff to continue the investigations on the misuse of police power because of the jury's conviction, which overrides the investigations. Vice Chair Lilly concluded that in strategic planning, the Commission will discuss how to handle future cases where the target of an investigation files an ethics complaint to cause a conflict and stop an ethics investigation.

Vice Chair Lilly clarified that the Mayor did not appoint the retired judges to remove or pressure Mr. Tutto to resign from the Commission. One article claimed that Mr. Tutto was fired, which was not true. He stated that the three judges are honorable and have the highest ethical integrity with no ulterior and improper motives. Vice Chair Lilly shared that prior to Mr. Tutto resigning, Mr. Tutto told him that he was thinking of resigning. Vice Chair Lilly implored him not to resign. Mr. Tutto became Executive Director and Legal Counsel in 2000, at a time when the Commission was dysfunctional. Mr. Tutto turned the Commission around with limited resources and meager staff into a functional organization, and deserves a tremendous amount of credit for his 16 years of stewardship. Vice Chair Lilly did not want to lose Mr. Tutto's expertise, knowledge, and ability. In the end, after he repeatedly asked Mr. Tutto not to resign, Mr. Tutto made his decision, and Vice Chair Lilly wished him well. In his opinion, Mr. Tutto chose to resign for his own reasons. Vice Chair Lilly concluded for the future, the Commission would have to resolve the question of what happens when an ethics complaint is filed against an Executive Director and Legal Counsel during the course of investigation.

Chair Marks summarized the three points:

- 1) The prosecution of the two ethics cases against the Kealohas are ongoing;
- 2) The Ethics Commission investigation into the complaints by the Kealohas against staff are ongoing subject to a civil suit settlement agreement; and
- 3) The former EDLC voluntarily resigned from the Commission which had nothing to do with the Kealohas.

Commissioner Amano asked Chair Marks if they could identify the two cases that are being prosecuted for Commissioners Adler, Monk, and Kanda. Chair Marks answered in the negative and stated that it will be handled by Mr. Lincoln Ashida.

III. Strategic Planning

A. *Ethics Commission–2027* – Update

Chair Marks explained for the past few years, the Commission has been working on strategic planning. She stated now that the staff's morale improved, they continued to do the work that is required by the Revised Charter of Honolulu and ROH. She further stated that staff continues to keep track of their time to show what time is being spent on and used as a basis to request additional staff and resources.

Chair Marks announced that we have received training funds in the budget. She stated that the EDLC and two commissioners have travelled to the mainland for training at their own expense. Staff and commissioners have been trained on Sunshine Law, OIP matters, and ethics at mainland conferences. She explained if we expect city officers and employees to undergo ethics training, staff and commissioners have an obligation to do that as well.

Chair Marks asked the Commission if there were any questions, and they had none.

At 12:02 p.m., Chair Marks opened the floor for testimony:

Eric Ryan – In his individual capacity. Mr. Ryan was a former City employee in the legislative branch with the Honolulu City Council for six months. He stated that it was his only government job, and it was disgusting. Three years ago, he filed a 1600 page ethics complaint with no follow-up communications until he received a letter signed by EDLC Yamane dated September 11, 2017 that stated it was assigned to Investigator Janice Yonamine. He never received any follow-up on his case. In conclusion, he was not satisfied with the progress.

Tim Garry – In his individual capacity. Mr. Garry thanked Mr. Totto for his service. He briefly discussed his complaint that he filed in 2016 regarding Mayor Caldwell misusing City property for his reelection campaign. He stated that the public does not have confidence in this Commission, and asked for Commissioners involved with Mr. Totto's resignation to resign from their posts immediately.

Ken Lawson – In his individual capacity. Mr. Lawson briefly discussed a rumor that the Kealohas have influenced Mayor Caldwell to shut down Mr. Tutto’s investigations. His overall concern was the allegation that the Mayor orchestrated the removal of Mr. Tutto and his investigator. After the verdict, the Mayor commented that it is time to “move on,” but the public cannot move on until it is clean. Mr. Lawson commented that the Ethics Commission, an independent body, should investigate if the Mayor overstepped his boundaries, so that the public can have trust in the process. Mr. Lawson concluded if the public cannot go to the justice system and Ethics Commission for justice, then where do we go?

At 12:09 p.m., Commissioner Suemori entered the room.

Chair Marks announced that she invites anyone who would like to investigate the Ethics Commission to do so.

Eric Seitz – Representing Gerard Puana. Mr. Seitz stated that the Puanas filed a racketeering civil suit against the City and County of Honolulu and individuals involved; that case has been stayed and is pending the outcome of the criminal cases. Mr. Seitz wrote a letter to Paul Aoki, Acting Corporation Counsel, with three actions items: 1) To investigate what went wrong; 2) To propose and enact steps to see that there will not be any reoccurrence of these kinds of events, which led to such massive corruption; and 3) that the victims are adequately compensated. At the end of the letter, he asked for a response by July 17, 2019 at 4:30p.m. Mr. Seitz stated that he has no confidence that Mr. Aoki would answer, and if he doesn’t, he will publicize the letter. He expected COR will state that the Kealohas committed the crimes on their own and that the City is not responsible, but he will argue that City resources were used. He concluded that the situation should not be ignored, and there should be steps to rectify them.

Charles W. Tutto – In his individual capacity. Mr. Tutto introduced himself as the former EDLC. He acknowledged Vice Chair Lilly’s appreciation of his work with the Commission. He stated that the Commission did not carry out its duties to the public by properly investigating the Kealohas. He explained that the Commission removed him and Letha DeCaires, former investigator and retired Honolulu Police Department (HPD) Captain, from investigations relating to the Kealohas because of false allegations filed by them. With limited staff, he and Ms. DeCaires were the only staff actively working the cases.

Mr. Tutto was concerned that the Commission did not take any action on the complaints against him and Ms. DeCaires filed in July 2015, and that he just found out at this meeting that the Commission has hired someone to investigate those complaints. He stated that he and Ms. DeCaires have been waiting for the investigation to be completed. He compared the length of the investigation to the workplace complaint that took three months to complete with conclusion and suspension without pay.

Mr. Tutto brought up another concern regarding one of the exhibits in the civil complaint, a memorandum from Mrs. Kealoha to Mr. Keith Kaneshiro that the Commission will dismiss all complaints that staff was investigating in April 2016 claiming it was a massive witch hunt. He stated that Mrs. Kealoha is someone who should not be trusted, but was worried that

the Commission might have heard details of the cases that were not brought to them. He also stated that there were 17 open investigations relating to the Kealohas at that time.

Commissioner Amano asked how the Commission would know that. Mr. Totto replied that he disclosed it in an open hearing and stated that he will email details to her.

Mr. Totto continued that Resolution 16-164 passed first reading, which requests that the Police Commission, HPD, and Prosecuting Attorney, do a review and report back to the Council on how to prevent reoccurrence. He acknowledged that the Commission should do the same, and was surprised that the Commission had already set the 2027 Strategic Plan.

Chair Marks explained the strategic planning is a ten-year plan to grow the agency. Mr. Totto commented that he hopes that the reflection occurs quicker than that.

Mr. Totto offered to provide input on how to prevent this from happening in the future, and thanked the Commission for allowing him to go over the time limit.

Chair Marks asked the audience if there was anyone else who wished to testify, and there was none.

Chair Marks asked Vice Chair Lilly if he has any comments. Vice Chair Lilly shared that it was one of the great experiences being on this Commission serving with honorable people and that he valued Mr. Totto's service as the EDLC and his friendship. He concluded that he wanted to correct the misinformation presented.

Commissioner Adler stated that the meeting was very helpful and that he had a clearer picture of what happened. He thanked Mr. Totto for testifying, and asked him to provide specific changes that should be in place since Mr. Totto went through the challenges of having a small staff and the difficulties managing the flow of complaints.

IV. Adjournment

At 12:28 p.m., Commissioner Monk made and Commissioner Adler seconded a motion to adjourn the Ethics Commission meeting. The motion carried unanimously.

- A. Next Scheduled Meeting Date: August 21, 2019
- B. Next Reserved Meeting Date: September 18, 2019