

# SUMIDA AU & WONG

ATTORNEYS-AT-LAW • A LIMITED LIABILITY LAW COMPANY

*Kevin P.H. Sumida  
Anthony L. Wong  
Lance S. Au  
Stephen K. Roy*

September 19, 2017

[policecommission@honolulu.gov](mailto:policecommission@honolulu.gov)  
[dlawrence@honolulu.gov](mailto:dlawrence@honolulu.gov)

Honolulu Police Commission  
1060 Richards St., Suite 170  
Honolulu, HI 96813

Re: Puana v. Kealoha, Civil No. 16-00659 JMS-KSC

Dear Sirs/Madames:

This submission is made in response to the letter brief submitted by Commissioner Sheehan on June 21, 2017, in opposition to our request that she be disqualified from considering the present matter pertaining to the obligation of the Police Commission to provide a defense to the above-referenced matter.

Sadly, Commissioner Sheehan just does not get it. She has, by her response to the instant motion to disqualify, only emphasized how lacking in both impartiality and the appearance of impartiality she has been, requiring her recusal.

First, she does not deny making any of the statements attributed to her by the press and referenced in our opening letter brief to the Police Commission. Instead, she simply claims that they are a "misrepresentative" sample of her comments. She misses the point.

The fact is that she made these comments. They clearly show that she had already made up her mind about Chief Kealoha. She was, for example, immediately ready to conclude that he "mismanaged" the police department, give him an "unsatisfactory" rating, and to cause him to be terminated by the Police Commission. Worse, she claims she was prepared to take these actions, and/or cause the Commission to take these actions, on the strength of newspaper articles rather than an impartial and full investigation.

Second, Commissioner Sheehan does not challenge the fact that, in her single-minded quest, she violated the law and the rights of others. She offers no defense to the violations detailed in our letter brief. Instead, she attempts to divert attention by attacking the undersigned, and further attacking Chief Kealoha, for highlighting these facts to the Commission.

Commissioner Sheehan claims that all she did was "ask questions." But she did much more. In addition to the violations detailed in our prior letter brief, there is reason to believe that Commissioner Sheehan, without Commission authority, conducted her own investigation of matters by attending federal court proceedings, and speaking with the federal prosecutor and others. The law prohibits an official, who is expected to render a decision in a contested case, from consulting with "*any person on any issue of fact*" except upon notice and opportunity for all parties to participate. HRS § 91-13.

Moreover, unless authorized the Police Commission (and we have seen no evidence of this to date), the actions undertaken by Commissioner Sheehan to personally investigate matters, such as by attending federal court proceedings, would appear to be a clear violation of HRS § 92-2.5(b). That law prohibits investigations of a matter "relating to the business of" the Commission unless *specifically* authorized by the Commission. HRS § 92-2.5(b). Violation of this prohibition is not only a crime, but is grounds for the violator to be summarily removed from office. HRS § 92-13.

Commissioner Sheehan does not dispute that she violated the law and procedures as noted in our opening letter brief. Instead, she attempts to justify her actions by claiming that she was serving a noble purpose. In other words, she claims that the ends justified her means. But in raising this defense, she has done the very thing for which she has criticized members of the Honolulu Police Department. Crime prevention does not justify criminal action by any police officer, and likewise, her ends, no matter how worthy, do not justify her means.

The bottom line is that, in performing an adjudicative function, Commissioner Sheehan must not only be impartial, but must also preserve the appearance of being impartial. She has failed on both counts. If she will not voluntarily recuse herself, it is incumbent upon the Police Commission to require that she be disqualified. The ethical rules, as noted in our opening brief, requires that she be recused, and the Police Commission must preserve the integrity of its proceedings by assuring that this occurs.

Honolulu Police Commission  
September 19, 2017  
Page 3

Thank you for your attention to this matter.

Very Truly Yours,

SUMIDA AU & WONG, LLC

By:   
\_\_\_\_\_  
KEVIN P.H. SUMIDA

cc: client (w/o copy of enclosure)  
Corporation Counsel