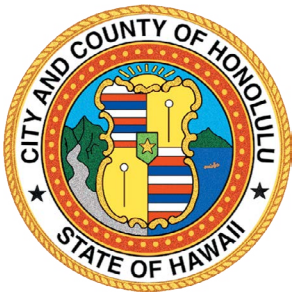


**Office of the City Auditor**



**City and County of  
Honolulu  
State of Hawai`i**

**Report to the Mayor  
and the  
City Council of Honolulu**

**Audit of the Department  
of the Prosecuting  
Attorney's Policies,  
Procedures, and  
Controls,  
Resolution 19-255**

**Report No. 20-09  
December 2020**



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# **Audit of the Department of the Prosecuting Attorney's Policies, Procedures, and Controls, Resolution 19-255**

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A Report to the  
Mayor  
and the  
City Council  
of Honolulu

Submitted by

**THE CITY AUDITOR**  
CITY AND COUNTY  
OF HONOLULU  
STATE OF HAWAII

Report No. 20-09  
December 2020





**OFFICE OF THE CITY AUDITOR**  
**CITY AND COUNTY OF HONOLULU**

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**TROY SHIMASAKI**  
ACTING CITY AUDITOR

December 4, 2020

The Honorable Ann Kobayashi, Chair  
and Members  
Honolulu City Council  
530 South King Street, Room 202  
Honolulu, Hawai'i 96813

Dear Chair Kobayashi and Councilmembers:

A copy of our report, *Audit of the Department of the Prosecuting Attorney's Policies, Procedures, and Controls, Resolution 19-255*, is attached. This audit was conducted pursuant to Resolution 19-255, requesting the city auditor to conduct a performance audit of the Honolulu Police Department and the Department of the Prosecuting Attorney's policies and procedures related to employee misconduct. In order to properly assess and evaluate these distinct city agencies, we are issuing two separate reports. This report focuses exclusively on the Department of the Prosecuting Attorney; the audit of the Honolulu Police Department is issued under separate cover.

The audit objectives were to:

1. Evaluate the Department of the Prosecuting Attorney's (PAT) existing policies, procedures, and controls to identify and respond to complaints or incidents concerning misconduct, retaliation, favoritism, and abuses of power by employees;
2. Evaluate the effectiveness of PAT's management control environment and practice elements in correcting and preventing misconduct, retaliation, favoritism, and abuses of power by employees; and
3. Make recommendations to improve and correct measures in PAT department's policies, procedures, and controls.

Due to extenuating circumstances caused by COVID-19 emergency orders, our office was unable to complete fieldwork and issue this audit report by the November 6, 2020 deadline imposed by Resolution 19-255. On November 5, 2020, the Honolulu City Council adopted Resolution 20-267 which granted our office's request for a one-month extension to issue this audit report no later than December 7, 2020. I would emphasize that the department fully cooperated with this audit and that the delay in issuing the report was caused solely by restrictions and emergency orders related to COVID-19.

### **Background**

In June 2019, Louis and Katherine Kealoha were convicted by a federal jury for abusing their power by conspiring with four police officers to frame Katherine Kealoha's uncle, Gerard Puana, for a crime he did not commit in an effort to discredit his claim that the Kealohas stole a substantial amount of money from him and his 100-year-old mother – Katherine's own grandmother – Florence Puana. The former police chief and his wife, a deputy prosecutor, entered into sentencing agreements in the case where the jury found them guilty of conspiracy to frame Katherine's uncle. Both Kealohas admitted in plea agreements that they defrauded banks with elaborate schemes in order to obtain loans to fund their extravagant lifestyles. They were

recently sentenced for their crimes. In the wake of the Kealoha convictions for conspiracy to defraud the United States and four counts of attempted obstruction for an official proceeding in a highly-publicized public corruption case, the city council expressed concern that the events of the Kealoha incident should have been evident to management and personnel within PAT long before they were brought to light by media reports.

### **Audit Results**

Despite the controversy and misconduct allegations in the department, the policies, procedures, and controls have not changed significantly and more needs to be done. We found that management did not initiate a review or evaluation of its policies and procedures that allowed one of its higher-ranking deputy prosecutors to use the office for criminal activity. Specifically, we found that:

- The department's conflict of interest practices are passive and reactive, and rely on voluntary staff disclosure;
- Supervisory practices for circuit court plea bargains are inconsistent and post-case evaluations are not designed to detect misconduct;
- The department's handling of internal complaints is inconsistent and does not effectively identify or address instances of misconduct; and
- The department's internal employee complaint process lacks specific guidelines or expectation for how complaints will be addressed.

The audit report made nine recommendations to improve the department's policies, procedures, and administration for identifying and administering staff complaints and misconduct.

In response to a draft of this audit report, the Department of the Prosecuting Attorney indicated that while it was not in complete agreement with the audit's findings, it acknowledged that it must restore the public confidence and trust in the department lost after the Kealoha matter. Management expressed a willingness to make improvements and address issues raised by our audit findings. The department's comments notwithstanding, we stand by our audit findings and recommendations. We did not make any significant amendments to the audit report as a result of management's response, but made technical, non-substantive changes for purposes of accuracy, clarity, and style.

We would like to express our sincere appreciation for the cooperation and assistance provided us by the managers and staff of the Department of the Prosecuting Attorney. We are available to meet with you and your staff to discuss this report and to provide more information. If you have any questions, please call me at 768-3134.

Sincerely,



Troy Shimasaki  
Acting City Auditor

c: Kirk Caldwell, Mayor  
Roy Amemiya, Jr., Managing Director  
Dwight Nadamoto, Acting Prosecuting Attorney, Department of the Prosecuting Attorney  
Manuel T. Valbuena, Acting Director, Department of Budget and Fiscal Services

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# Chapter 1

## Background

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### Introduction

On October 3, 2019, the Honolulu City Council adopted Resolution 19-255, requesting the city auditor to conduct a performance audit of the Department of the Prosecuting Attorney (PAT). The resolution requested that the city auditor determine whether the department's existing policies, procedures, and controls are sufficient to prevent similar misconduct, retaliation, favoritism, and abuses of power by their respective employees; whether the department complied with its existing policies, procedures, and controls in its internal operations during the time periods reflected in the First and Second Superseding Indictments of the alleged misconduct by Louis and Katherine Kealoha; and provide recommendations as to improvements and corrective measures in the department's policies, procedures, and controls so as to minimize future managerial and operational breakdowns. The city council expressed concern that the events of the Kealoha incident should have been evident to management and personnel within PAT long before they were brought to light by media reports about the mailbox case and the pending indictments against Louis Kealoha and Katherine Kealoha.

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### Background

To accomplish the charter's mandate to serve and advance the general welfare and safety of Honolulu residents, PAT investigates and prosecutes violations of all statutes, ordinances, and regulations for which there are criminal sanctions occurring within the City and County of Honolulu. The department also represents the people and the State of Hawai'i in criminal proceedings held in district court, circuit court, and family court. The department handles appeals and other matters heard by the Hawai'i Intermediate Court of Appeals and Hawai'i Supreme Court, as well as the United States District Court of Hawai'i, the 9<sup>th</sup> Circuit Court of Appeals, and the United States Supreme Court. PAT also provides services to victims of crime. The Department's mission is to promote and ensure public safety and order through effective, efficient, and just prosecution.

Prosecuting attorneys must adhere to the Hawai'i Rules of Professional Conduct Rule 3.8, Performing the Duty of Public

Prosecutor or Other Government Lawyer. A public prosecutor or other government lawyer shall:

- (a) not institute or cause to be instituted criminal charges when (the prosecutor or government lawyer) knows or it is obvious that the charges are not supported by probable cause; and
- (b) make timely disclosure of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

In addition to Rule 3.8, all prosecuting attorneys are mandated to follow applicable provisions of the Hawaii Rules of Professional Conduct such as Rule 1.7 - Conflict of Interest: General Rule, Rule 1.9 - Conflict of Interest: Former Client, Rule 1.11 - Special Conflicts of Interest for Former and Current Government Officers and Employees, and Rule 8.4 - Misconduct. Proof beyond a reasonable doubt (Sect. 701-114, Hawaii Revised Statutes) is the legal standard that the prosecution must meet in order to find a criminal defendant guilty of a crime.

PAT officials and employees are required to file financial disclosure forms annually (January 31 due date) with the Ethics Commission and reference financial activities covering the preceding calendar year for each employee, their spouse and dependent children. Categories include income, creditors, ownership or interests in businesses in Hawai'i, ownership or interests transferred, fiduciary positions, creditor interests in insolvent business, clients personally represented before city agencies, real property owned, and real property transferred. Failure to file, late filing, and errors and omissions may subject an employee to discipline, a civil fine, or both. The financial disclosure statement is a public record.

PAT employees are also required to report, in writing, any conflict of interest to his or her appointing authority, as well as to the Ethics Commission, as mandated by § 11-103, Revised Charter of Honolulu (RCH). The charter states in relevant part, *Disclosure of Interest - Any elected or appointed officer or employee who possesses or acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to such person's appointing authority and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a*

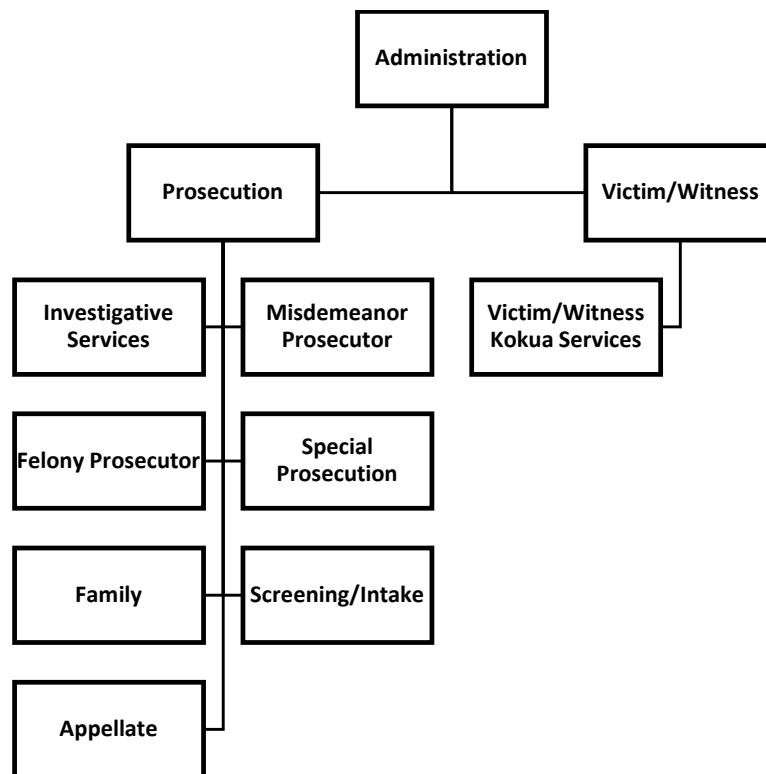
*matter of public record and be filed with the city clerk.* The purpose of the law prohibiting conflicts of interest is to prevent a public official from placing himself or herself in a position of conflict, even if the official would not take advantage of the conflict.

The department's responsibilities are divided among the following divisions:

1. Administration – Provides direction over department programs and activities; performs fiscal, budgeting, personnel, planning, legislative, audio/visual, and investigate services to support departmental programs.
2. Investigative Services Division – Provides security for department personnel and facilities, locates material witnesses, serves warrants and subpoenas, and conducts investigations for select cases pending trial.
3. Misdemeanor Prosecution Division – Represents the state in all traffic infractions, violations and criminal offenses punishable by imprisonment not exceeding one year.
4. Felony Prosecution Division – Prosecutes felony and misdemeanor jury-demand crimes committed in the City and County of Honolulu, except for cases referred to the Special Prosecution Division. Deputy Prosecuting Attorneys represent the state in criminal proceedings before the Circuit Court of the First Circuit including specialty programs which include Drug, Mental Health, Veterans' courts, and HOPE Probation.
5. Special Prosecution Division – Prosecutes crimes committed in the City and County of Honolulu that require extensive or special handling from initial referral to final disposition which include crimes committed by career criminals, crimes against the elderly, sex crimes, and special projects.
6. Family Division – Prosecutes all felony and misdemeanor crimes committed in the City and County of Honolulu involving domestic violence, non-sexual child abuse, and juvenile offenders.
7. Screening/Intake Division – Screens and initiates charges for a significant majority of felony cases that do not involve domestic violence, elder abuse, certain career criminal cases or sexual assault. The division prepares and presents cases at preliminary hearings, including the grand jury. The division also processes charging documents and prepares felony cases for arraignment and plea at circuit court.

8. Appellate Division – Represents the department in appeals before the State appellate courts and federal courts that include the United States District Court of Hawai‘i, the Ninth Circuit Court of Appeals and the United States Supreme Court. The division also provides trial attorneys and other employees with legal research assistance and direction on legal issues.
9. Victim Witness Kokua Services Division – Assists victims and witnesses of crimes and provides outreach and support services for victims of domestic abuse, both children and adults. The division’s services include crisis counseling and social service referrals; safety planning information for victims of domestic abuse; information about the criminal justice system; notification of case status and the custody status of offenders; accompanying victims or witnesses to court and coordinating their return to the neighbor islands and mainland; and handling of misdemeanor complaints.

**Exhibit 1.1**  
**Organizational Chart - Department of the Prosecuting Attorney**



Source: Department of the Prosecuting Attorney

In FY 2019, PAT operating expenditures totaled \$23.84 million and recorded \$3.39 million in revenues. Authorized staffing totaled 289 full time equivalent positions, with 63 vacancies in FY 2019. Total overtime expenditures increased 196 percent from \$54,043 in FY 2018 to \$159,743 in FY 2019. PAT attributed this increase to the mass recall of old bench warrants and staff vacancies in the Misdemeanor/Traffic Division and Witness Assistance Division. Vacancies increased by 9 percent from FY 2018 to FY 2019. The department attributes this increase to the difficulty in filling entry level, clerical typist positions, and victim witness counselors.

**Exhibit 1.2**  
**Department of the Prosecuting Attorney - Spending and Staffing, FY 2015 - FY 2019**

Year	Staffing					Overtime Expenditures	
	Revenue (\$ millions)	Total Operating Expenditures (\$ millions)	Total Authorized FTE	Total Vacant FTE	Cost Per FTE	Total	Non-Holiday
FY 2015	\$2.3	\$20.4	289	54	\$70,601	\$12,700	\$12,022
FY 2016	\$2.37	\$21.6	289	56	\$74,736	\$25,501	\$25,392
FY 2017	\$2.89	\$23.65	289	51	\$81,547	\$55,709	\$54,069
FY 2018	\$2.82	\$22.88	289	58	\$79,172	\$54,043	\$50,590
FY 2019	\$3.39	\$23.84	289	63	\$82,480	\$159,743	\$155,756
Change from last year	20%	4%	0%	9%	4%	196%	208%
Change over last 5 years	47%	17%	0%	17%	17%	1158%	1196%

Source: Department of Budget and Fiscal Services

The Department of the Prosecuting Attorney utilizes a database management system to manage its legal casework. The program, titled Prosecutor by Karpel (PBK), is administered by Karpel Solutions in its HOSTED by KARPEL secure Microsoft Azure Government cloud service. This browser-based case management program stores PAT's data and work-related events in a single database, and can cross-reference a defendant's entire criminal history in a single search. PBK also allows deputy prosecutors to virtually access and review their cases from laptops in court via the internet rather than having to transport bulky paper files.

PAT is authorized access to Honolulu Police Department (HPD) and the state Judiciary's databases. HPD provides PAT with access to its police reports and requires all users to sign a confidentiality policy agreement. HPD can, and does, monitor user access and notifies PAT of any irregularities. For all court cases, the judiciary system (JIMS/JEFS) has its own tracking system that records and/or documents court proceedings to include the attorneys appearing on record, the position taken by the attorneys, and the action taken by the court. Examples of cases include traffic citations, terroristic threatening, littering, and disorderly conduct. PAT is able to access and track cases in JIMS using trial by name, police report number, and court case number. HPD offers digital recorded records, telecommunication records, and body worn camera footage records to PAT for use in their cases. PAT management indicated that police reports are a large source of the cases ultimately conferred for prosecution by the department.

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## **Audit Objectives, Scope and Methodology**

This audit was conducted pursuant to city council Resolution 19-255, requesting the city auditor to conduct a performance audit of the Department of the Prosecuting Attorney's policies, procedures, and controls.

The audit objectives were to:

1. Evaluate the Department of the Prosecuting Attorney's existing policies, procedures, and controls to identify and respond to complaints or incidents concerning misconduct, retaliation, favoritism, and abuses of power by employees;
2. Evaluate the effectiveness of PAT's management control environment and practice elements in correcting and preventing misconduct, retaliation, favoritism, and abuses of power by employees; and
3. Make recommendations to improve and correct measures in PAT department's policies, procedures, and controls.

For this audit, we reviewed and analyzed department policies, procedures, position descriptions, rules of professional conduct, and city-related policies. We examined PAT practices and interviewed and held discussions with pertinent management and attorneys. We analyzed 30 case files pertaining to misdemeanor and felony cases and 22 internal complaint files from FY 2015 to FY 2019. We reviewed best practices nationally and analyzed operations and management structures from comparable

jurisdictions. We examined internal controls applicable to the audit objectives. Our review was conducted using the department's system of record, PBK. We determined it to be a reliable source for the department's information handling needs and further determined that the data was sufficiently valid and reliable for our review.

This performance audit was performed in accordance with generally accepted government auditing standards (GAGAS). The audit was performed from November 2019 to September 2020. Those standards require that auditors plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on audit objectives. We believe that the evidence obtained in this audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Audit Results

Despite the high-profile allegations involving one of its former Deputy Prosecuting Attorneys, the department did not initiate substantive changes to its policies, procedures and internal controls. During our review, we found that management did not initiate a review or evaluation of its policies and procedures that allowed one of its higher-ranking deputy prosecutors to use the office for criminal activity. The department continues to follow older versions of its policies and procedures established by former administrators. The department's priority is on processing its heavy workload, rather than managing its staff to ensure that cases are performed correctly and accordance with departmental and other professional standards. The department's current policies, procedures and controls are not designed to regularly monitor for potential misconduct or workplace errors.

Supervisors do not sufficiently monitor attorney performance due to the lack of resources and priority to conduct such reviews. As a result, the department takes action on attorney work deficiency, irregularity, or questionable conduct after-the-fact. Monitoring of staff performance is uneven because the department's culture of trust placed on attorneys, attorney professionalism, and the personal styles of supervision.

The department lacks adequate policies, procedures, and guidelines for handling internal complaints. Staff complaints are often directed outside the department for resolution. Complaints that are handled internally are not treated equitably and lack transparency. Based on our review, current policies, procedures,

and controls are inadequate to effectively identify or correct employee misconduct or non-compliance with operational requirements.



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# Chapter 2

## Management Oversight of Professional Staff Is Insufficient to Ensure Effective, Proactive Identification and Response to Allegations of Misconduct by Employees

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The Department of the Prosecuting Attorney (PAT) is made up of professional attorneys and staff who are expected to act in a professional and ethical manner commensurate with their respective positions.

To evaluate the extent to which PAT's existing policies, procedures and controls are sufficient oversight to prevent incidents of misconduct, retaliation, favoritism, and abuses of power, we reviewed several of PAT's internal control practices including those dealing with: conflicts of interest, supervision of professional staff, plea bargaining oversight, post-case evaluations, and personnel evaluations. We found that oversight of existing departmental practices in these areas is insufficient to ensure the proactive management and guidance of staff.

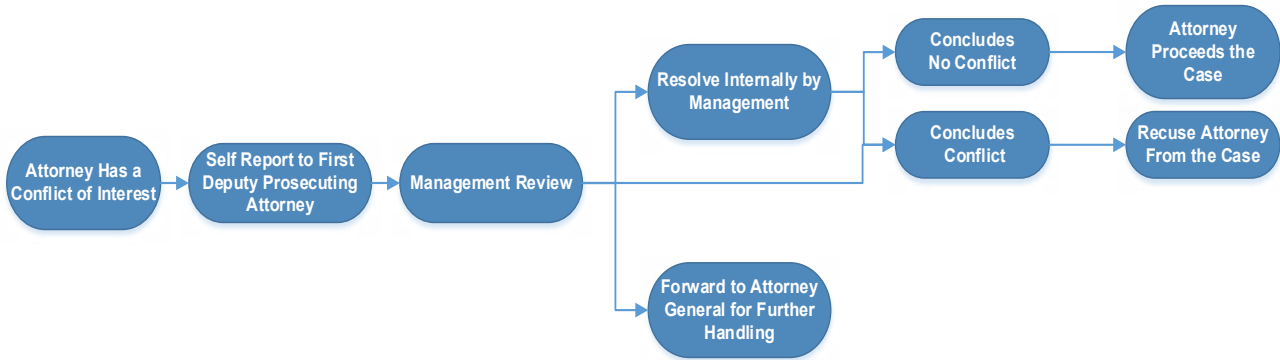
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### Conflict of Interest Oversight Relies on Self-Reporting

PAT staff are subject to state, city and county, and professional requirements to identify and disclose all instances of potential conflict of interest. The department's policy on conflict of interest establishes a self-reporting rule for staff attorneys to disclose potential conflicts of interest when assigned to prosecution cases. In accordance with this policy, an attorney with a conflict must report that conflict to management and the attorney recuses him or herself from the case after management's review or further handling from the attorney general. The current Conflict Case Policy, Administrative Policy, 2012-007 (Appendix A), requires that all potential conflict cases be brought to the first deputy prosecuting attorney's attention.

The first deputy prosecuting attorney reviews the case and decides whether the conflict can be handled internally or should be referred to the attorney general for further consideration. When feasible, conflicts are resolved internally if adequate measures can be taken to manage the staff person and his or her potential conflict. This includes preventing the staff person from accessing cases in the department's case database, and ensuring that access to case information is on a need-to-know basis only. This process is identified in Exhibit 2.1.

### Exhibit 2.1 Conflict of Interest Process



Source: OCA Analysis

We reviewed the current process for how an attorney identifies and reports a potential conflict of interest; how PAT handled these potential conflict of interest situations; and whether cases were referred to the state Attorney General for further handling. We found that the current approach for identifying and responding to conflicts of interest appear insufficient to identify and respond to potential conflict of interest situations because it does not provide enough guidance and information. Furthermore, it does not provide sufficient guidance and information on situations that should be avoided, or responsibilities to preserve an attorney’s independence.

During our review, we found that:

- The current policy is operational in nature. It does not discuss how to identify such situations, when to report them, what are considered conflict situations, or what should be done to avoid them;
- PAT has not developed clear, well-defined guidelines or tools for its attorneys to aid them with identifying and reporting conflict of interest situations for management attention;
- PAT does not provide definitions or examples in its policies to define what conflict of interest situations are;

- There is no regular or routine preventive assessment or self-declaration conducted by management prior to case assignment to identify personal or professional conflicts, or personal attitudes, beliefs, biases or other preconceived notions that may affect independence; and
- PAT has not developed specific criteria to identify and respond to conflicts of interest or independence situations.

We found that PAT's conflict of interest practices are passive and reactive, and rely on the voluntary disclosure by staff. We reviewed a report of conflicts of interest for the five-year period FY 2015 to FY 2019 and found that there were only four cases reported during this period. These four cases were all forwarded to the Attorney General for further handling in 2019 and 2020. In a follow-up comment response, PAT advised that it recorded 15 conflict of interest cases between FY 2015 and FY 2019 that were referred to the Attorney General. These cases were referred before and after the Kealoha indictments. However, these cases were not included in the case inventory provided to us during audit fieldwork and were identified after fieldwork was completed. As a result, these cases were excluded from our review.

A 2017 article in the Boston College Law Review discusses prosecutor conflicts of interest and how they may impact the criminal justice system. It indicated that prosecutors' conflicts of interest are not like those of private attorneys. Private attorneys have a conflict of interest when they are materially limited in their ability to serve their clients due to a personal interest or relationship. Prosecutors' clients are the state, the public, or the sovereign interest in the administration of justice, whose interests are more difficult to define. The article argues that conflicts can arise not only out of personal and professional relationships and financial interests, but can also include any personal belief, ambition, or institutional interest that undermines their ability to pursue justice in a fair way.

The department could strengthen its conflict of interest protocols by having management develop a routine assessment procedure prepared by prosecutors and reviewed and approved in writing by management. The signed document would take into account the conflict of interest guidelines from the state professional rules, PAT's criteria, and consideration of other pertinent independence factors. In addition, while it is presumed that staff understand what constitutes a conflict of interest, having published departmental guidelines defining and describing conflicts of interest would ensure that staff clearly understand what should be reported.

Documentation provides management with support should an undisclosed conflict of interest be discovered and enhances PAT's assurance that potential conflicts of interest are being disclosed. While this up-front affirmation still relies on voluntary self-disclosure, it places department staff in a position to actively evaluate and affirm their independence, rather than relying on future disclosure that may be impacted by rationalization, justification, or omission over time.

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### **Effective Supervision of Staff Attorneys is Limited**

Attorney supervision provides the department with the opportunity to monitor, review and provide general oversight over the actions of staff. It also allows management to identify potential misconduct, retaliation, favoritism, or abuses of power. Effective supervision also allows management to implement appropriate intervention strategies. We found that while PAT has a supervisory structure, supervisory staff contend that the ability to effectively employ this strategy is hampered by their caseload volume.

Based on our discussions with attorneys, the current caseload limits the time and resources needed to closely supervise staff attorneys. There is personal pressure caused by individual attorney workloads and the need to move cases through the process of charging, resolving, and/or sending cases to prosecution. Supervisors have little time to effectively supervise or track all the cases. As a result, supervisors rely on their relationship with subordinates and trust their staff to self-manage administrative tasks that include monitoring and oversight.

Caseloads have increased steadily between FY 2015 and FY 2019, which put a strain on department resources and ability to exercise sufficient staff supervision. Over the past five years, the total number of cases accepted has increased 75 percent from 16,348 total cases accepted in FY 2015 to 28,635 total cases accepted in FY 2019. The table below shows the number of cases over the last five years.

**Exhibit 2.2**  
**Number of Cases FY 2015 to FY 2019**

<i>Fiscal Year</i>	<i>Total Cases</i>		<i>Felony Jury Trials</i>		<i>Murder Cases</i>	<i>Elder Abuse Cases</i>	<i>Felony Domestic Violence Cases<sup>3</sup></i>	<i>White Collar Crime</i>
	<i>Accepted</i>	<i>Resolved<sup>1</sup></i>	<i>Total Convictions<sup>2</sup></i>	<i>Total Non-Convictions</i>				<i>Total Cases</i>
FY 2015	16,348	12,394	23	64	10	199	512	16
FY 2016	28,439	14,665	28	37	8	152	471	20
FY 2017	29,102	15,329	28	27	12	195	592	15
FY 2018	29,489	9,288	53	42	8	217	553	19
FY 2019	28,635	22,523	54	38	9	205	418	14

<sup>1</sup>Resolved statistic records the date a case was resolved and recognizes that cases may take years to complete and be recorded in different year than initiated.

<sup>2</sup>As of FY 2018, convictions include split decisions and felony charged defendants found guilty of a lesser crime.

<sup>3</sup>Felony Domestic Violence cases are reported by calendar year. Total includes cases charged, reclassified, and declined.

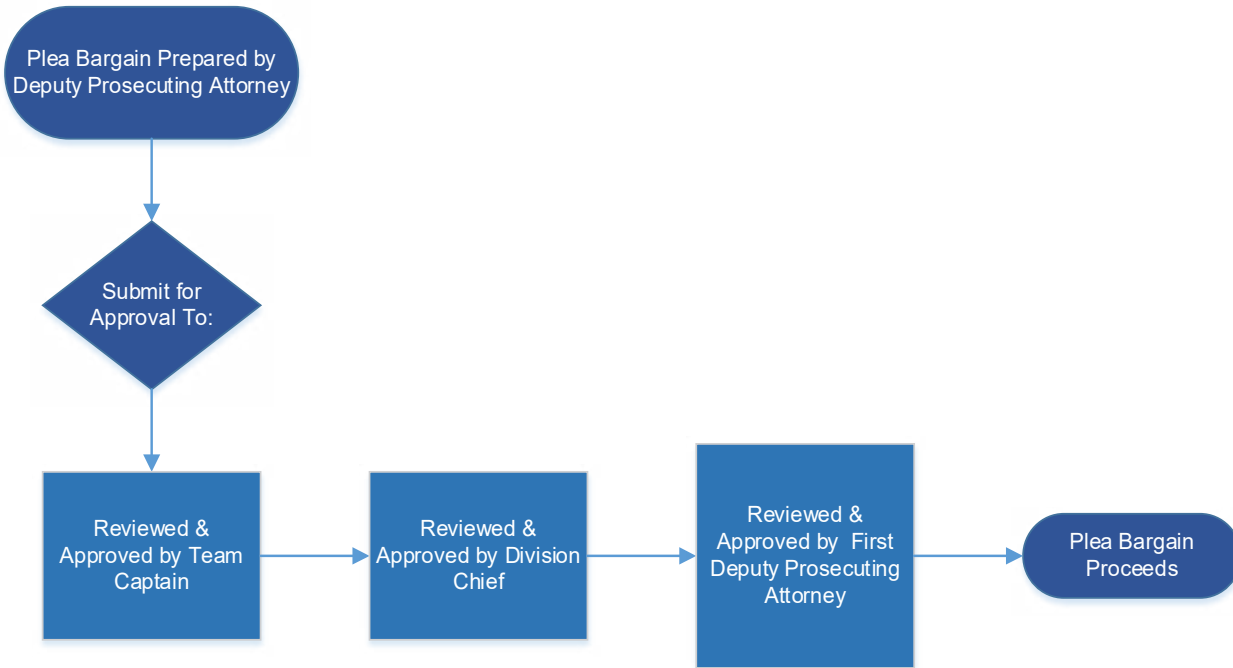
Source: FY 2019 Service Efforts and Accomplishments Report and the Department of the Prosecuting Attorney

While we acknowledge the increasing workload on PAT staff, and the strain it places on department resources, it does not absolve management from its supervisory duties. By prioritizing the department’s caseload, management did not commit sufficient resources to monitoring staff and enforcing existing guidelines. The department’s reliance on a self-regulated supervisory approach falls short of sufficient supervision.

***Supervisory practices for circuit court plea bargains are inconsistent***

We reviewed the supervisory review process for plea bargains for circuit court cases. Exhibit 2.3 depicts the process.

### Exhibit 2.3 Plea Bargaining Supervisory Review - Felony Case Process



Source: PAT'S Plea Bargaining Form for Circuit Court Cases and OCA Analysis

We found that level of detail in the supervisory review varied significantly among the 30 cases we assessed. Interviews with attorneys indicated that supervising attorneys handle this process differently. While we recognize that the plea bargain process is necessarily unique to each case, there should be some consistency with supervisory review.

We found no common approach, standard or guideline for how supervisors handle and review plea bargaining in circuit court cases. Instead, it appeared that each supervisor had developed their own evaluation process for handling and reviewing plea bargaining for circuit court cases. For example, while reviewing plea bargain approvals, one supervisor would orally discuss the charges with attorneys and before granting approval, while another would review documentation and then approve. Based on our discussion with attorneys, concerns were raised that the non-standardized approach for supervisory review could result in uneven decision-making related to plea bargains and that key elements of the case review could be missed.

We judgmentally reviewed 30 case files pertaining to misdemeanors and felony cases for the period FY 2015 to FY 2019. Due to the nature of each case and subjects, not all cases would require a plea bargain. Of the 30 files reviewed, 4 recorded a plea bargain in circuit court. We found that one of the plea bargaining forms did not contain requisite approvals and merely contained a paragraph recommendation instead. This example violated departmental policy because the supervisory activity in this example is absent. Although we found only one instance where the policy was not followed, the potential impact on a criminal case can be significant. Additionally, proper supervision and oversight would ensure that a plea bargain recommendation does not involve any potential misconduct or error in moving the case forward. In this case, if a misconduct or error did occur, it would only be identified during the supervisors case evaluation after the case was closed, disposition is final, and decision cannot be changed.

***Post plea bargain case review is also inconsistent***

We also found that there is an opportunity for supervisory comment when finalizing a plea bargain. However, we found there is insufficient case supervision up to this completion review point. Based on our assessment of the 30 plea bargaining cases in our sample and discussions with staff attorneys:

- We could not verify any formal supervisory assessment tool to track plea bargain outcomes because the department does not track this type of information.
- There is no monitoring of case progress unless a supervisor reviews the plea bargain or a problem is brought to their attention.
- Supervisors were not actively monitoring cases, but were moving them along because of the court imposed timelines and deadlines.

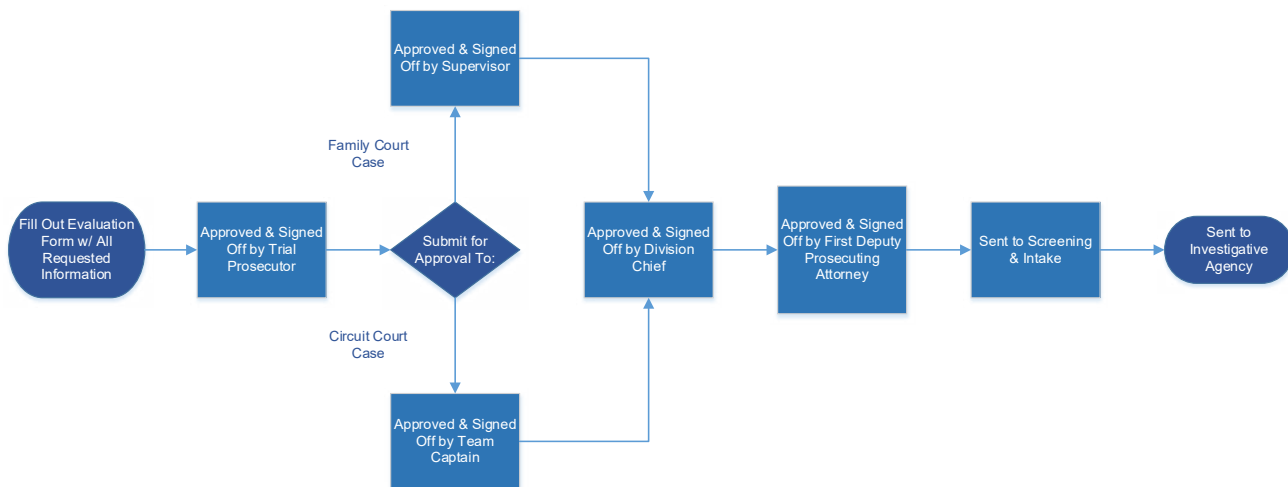
In another example we found that there is varying quality to the depth of supervisory review. One supervisor may take an added step to review case details in PAT's PBK system to obtain more background and assurance of adequate support, while others merely review what is written on the plea bargaining approval form. This inconsistent oversight can lead to uneven assessment and decision-making for plea bargain approvals. Furthermore, the lack of standardization leaves the plea bargaining process vulnerable to staff attorney misconduct and errors in judgment.

The department’s current supervisory approach lacks a detailed supervisory checklists to ensure that certain tasks have been completed. Having a detailed guideline for supervisors would lead to more consistent evaluation and better handling of cases. A checklist would enhance current processes and procedures.

### Circuit and Family Court Post-Case Evaluations Are Not Designed to Detect Misconduct

The Department of the Prosecuting Attorney utilizes a Case Evaluation Form for all circuit court felony cases and related misdemeanors, and family court felony cases. These forms are completed after a case has been concluded. This form provides chronological case information such as pre-trial information, pre-trials motions, disposition, and rational for case dismissals. Forms are signed off by the trial prosecutor, supervisor, division chief, and first deputy prosecuting attorney. Copies of the form are routed to (1) Screening and Intake and other units involved in the case, and (2) the investigative agency responsible for the investigation. The purpose of the form is to provide feedback to the investigating agency and the charging deputy and its division. Although completed post-case, the information provided in this evaluation presents an opportunity for supervisors to evaluate how a case was handled and to identify any missteps or actions that need correction. The flowchart below depicts the supervisory process.

**Exhibit 2.4**  
**Circuit Court Case Evaluation and Family Court Case Evaluations Supervisory Review Process**



Source: PAT’s Circuit Court Case Evaluation and Family Court Case Evaluations forms and OCA Analysis



Circuit and family court case evaluations require a supervisor's signature and date of the evaluation. The department also requires that a case evaluation be completed at the conclusion of each case. We reviewed a sample of case evaluations from FY 2015 to FY 2019, and found that 17 of 30 cases (57%) did not have completed case evaluation forms in their respective files. In one instance the case evaluation was not submitted to management for review until two years after sentencing. The inconsistent enforcement of post evaluation forms weakens another control the department has to exercise supervision by identifying errors or concerns over how staff attorneys conducted their work, and providing proper intervention as appropriate.

A PAT administrator explained that even after a case is charged, closed, and a case evaluation has been completed, there may still be disagreements on how a case was handled. In such instances the disagreements or dispute may be referred to the deputy attorney for review and approval. This review can potentially show that an attorney had a conflict or other situation which may have affected a case outcome. The administrator advised that in such instances the first deputy prosecuting attorney would orally discuss the concerns with the staff attorney.

Since the cases have already been completed, case evaluations may have some utility as a *lessons learned* example but has little ability to detect evidence of misconduct or case mishandling while a case is still ongoing. The post-case nature and uneven utilization of the case evaluation system is not an effective means to detect potential staff misconduct or improper case handling.

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## **The Department Lacks a Formal Internal Evaluation System**

Good communication within a department is essential for effective operations. We examined PAT's practices to receive, process, and address formal staff concerns or complaints. We found that one of the primary ways PAT receives internal complaints is through an *anonymous complaint box system*. We reviewed complaints received in this manner and found that seven complaints covered topics such as poor management communication on dress code policy, attendance and timekeeping, regulations on use of lamps, pay raises, courthouse animal, security protocols for visitors, and guidelines on selling products in the office. We found no instances of serious employee misconduct or conflict of interest concerns.

Some of the anonymous complaints were investigated by management while some were forwarded to an internal

investigator. It was not clear from the nature of complaints why they were handled differently. We also found that there was little guidance to determine how a complaint should be handled. There are no criteria or guidelines on who should handle anonymous complaints. A typical result of the investigations of anonymous complaints is an email that is sent to all staff by management or by the investigator that address the complaints and a stated solution on how it was solved.

While the anonymous complaint box system may encourage staff to submit complaints with anonymity, this informal framework lacks sufficient follow-up and resolution. Instead, the department would be better served by establishing a formal complaint and resolution structure that not only receives employee complaints and concerns, but provides appropriate follow-up action. Staff may be more willing to share concerns if they feel those concerns will be taken seriously and addressed in an appropriate way.

***There is no evidence of substantive changes in PAT's internal operations or compliance with existing policies and procedures in the First and Second Superseding Indicts of misconduct by Katherine Kealoha***

Our review of PAT's policies and procedures concluded that the existing policies and procedures were unlikely to identify that former Deputy Prosecuting Attorney Katherine Kealoha may have had conflicts or took questionable actions that affected her handling of certain cases, including her alleged involvement to protect her brother from a drug dealing investigation or her alleged role in fixing a speeding ticket. Supervisory oversight was inadequate and the department's reliance on self-disclosure for conflicts of interest was ineffective, vague, and did not promote transparency and accountability. Despite the revelations of Katherine Kealoha's misconduct and abuse of her position in the prosecuting attorney's office, we found that the department has not made any substantive changes to its policies or procedures. The department did implement a suggestion/complaint box and department hotline in 2019 to encourage employees to come forward and report misconduct. While we acknowledge these efforts that give staff an opportunity to report misconduct allegations, it falls short of making systemic changes to department policies, procedures, and operations to prevent misconduct or identify misconduct early so that appropriate action can be taken. Relying on fellow employees to police each other and report misconduct after-the-fact is not sound management practices.

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## Oversight of the Prosecuting Attorney is Limited

In our assessment, there is limited oversight for the prosecuting attorney. The prosecuting attorney is an elected executive officer whose performance is not subject to control or oversight review by the mayor or the city council. At present the prosecuting attorney can only be removed from office is by impeachment or recall. Further there are no provisions in the city charter to enable supervision or oversight over the prosecuting attorney.

The removal of the prosecuting attorney by recall requires a petition with the signatures of at least 10 percent of the total voters registered in the last regular election of the prosecuting attorney, with no more than 40 percent of this total coming from one city council district. After certification of the recall petition, the prosecutor would be given the opportunity to resign in ten days. Otherwise, a recall election would be arranged if the incumbent prosecutor did not resign prior the recall election date. Recall petitions may not be filed in the first or last year of a term of office, or within six months after an unsuccessful recall election. Even if the prosecuting attorney was found guilty of a crime, voters would have to petition to impeach and remove the city prosecutor or petition to recall the prosecutor by special election if the prosecutor did not resign from office.

We reviewed the oversight practices in other selected jurisdictions and found examples where a prosecutor was subject to formal performance evaluations by the city council or mayor.

- In Ojai, California, a performance evaluation is conducted annually by the city council. The purpose of the evaluation is to help strengthen relationships, provide a mechanism for regular evaluation, offer feedback to the attorney and identify areas where improvements may be needed. The city attorney is evaluated on criteria such as legal consultation, legal representation, staff work, cost/fiscal accountability and control, responsiveness and timeliness of actions, and communication.
- In the City of Albuquerque, New Mexico, the city council conducts a performance evaluation of the city attorney within 90 days following every 18-month period of consecutive service as city attorney. The 18-month period shall begin after the council's approval, the city attorney's appointment or after the prior performance evaluation, whichever is more recent. The council develops written evaluation criteria for this purpose and present its findings in a public, written report to the mayor and chief administrative officer.

Some jurisdictions with elected prosecutors have considered establishing a commission on prosecutorial conduct to provide independent oversight over elected prosecutors. This concept is similar to state commissions on judicial conduct. The Hawai'i Commission on Judicial Conduct was set up to investigate allegations of judicial misconduct and disability. It receives complaints and supporting information about alleged judicial misconduct. This concept would provide similar oversight over elected prosecutors.

The role of the prosecuting attorney is the most important role to fairly enforce criminal statutes in the City and County of Honolulu. In appointment jurisdictions, an oversight body such as the mayor or city council can evaluate the city prosecutor's performance and help reduce the potential for misconduct.

In November 2020, Honolulu voters approved a charter amendment that limits a prosecuting attorney to two consecutive four-year terms. Although future prosecuting attorneys are term limited, it does not prevent potential misconduct or poor performance from occurring unchecked. The city council may still wish to consider implementing an oversight mechanism.

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## Recommendations

The Department of the Prosecuting Attorney should:

1. Implement a conflict of interest disclosure affirmation for each case handled by staff attorneys;
2. Standardize pre- and post- plea bargain case evaluation;
3. Enforce case evaluation requirements for all applicable cases;
4. Amend the staff attorney evaluation process to include specific action plans or corrective actions, when appropriate; and
5. Establish a formal internal complaint system that describes the intake process, potential criteria that will be used to evaluate complaints, timelines, potential outcomes, and action plans, as appropriate.

The Honolulu City Council should:

1. Consider establishing a commission on prosecutorial conduct, or similar entity, to annually evaluate the city prosecuting attorney.

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# Chapter 3

## Complaint Handling Needs Improvement to Prevent Mismanagement and Inappropriate Behavior

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The Department of the Prosecuting Attorney's (PAT) handling of internal complaints is inconsistent and does not effectively identify or address instances of misconduct. Internal complaints can be a useful tool for management to identify potential cases of misconduct. We found that PAT does not have a formal complaint process to manage internal staff complaints. Instead, the department relies on the use of internal email complaints or the use of an anonymous information box where written complaints may be deposited. We concluded that PAT could improve its complaints processing by ensuring that there are more specific guidance to ensure that management is fully aware of staff concerns and has the opportunity to either correct or otherwise address staff concerns.

Internal departmental complaints are generally about interpersonal challenges with management and coworkers, issues relating to work conditions, and problems with discrimination and harassment on the job. We found that improvements are needed. The department is not using its complaints process effectively to monitor for current problems happening in the work environment. Updated policies and procedures, and improved training, will likely lead to a better work environment.

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### Department Has an Informal Complaint Process

The department's complaint process is informal and relies either on the submission of a complaint or concern via email or through submission of an anonymous note in the department's information/suggestion box. There is no formal or suggested format for submission of an email complaint. Use of email identifies who is submitting the complaint and does not promote anonymity. Furthermore, emails are not secure as they can easily be forwarded or lost.

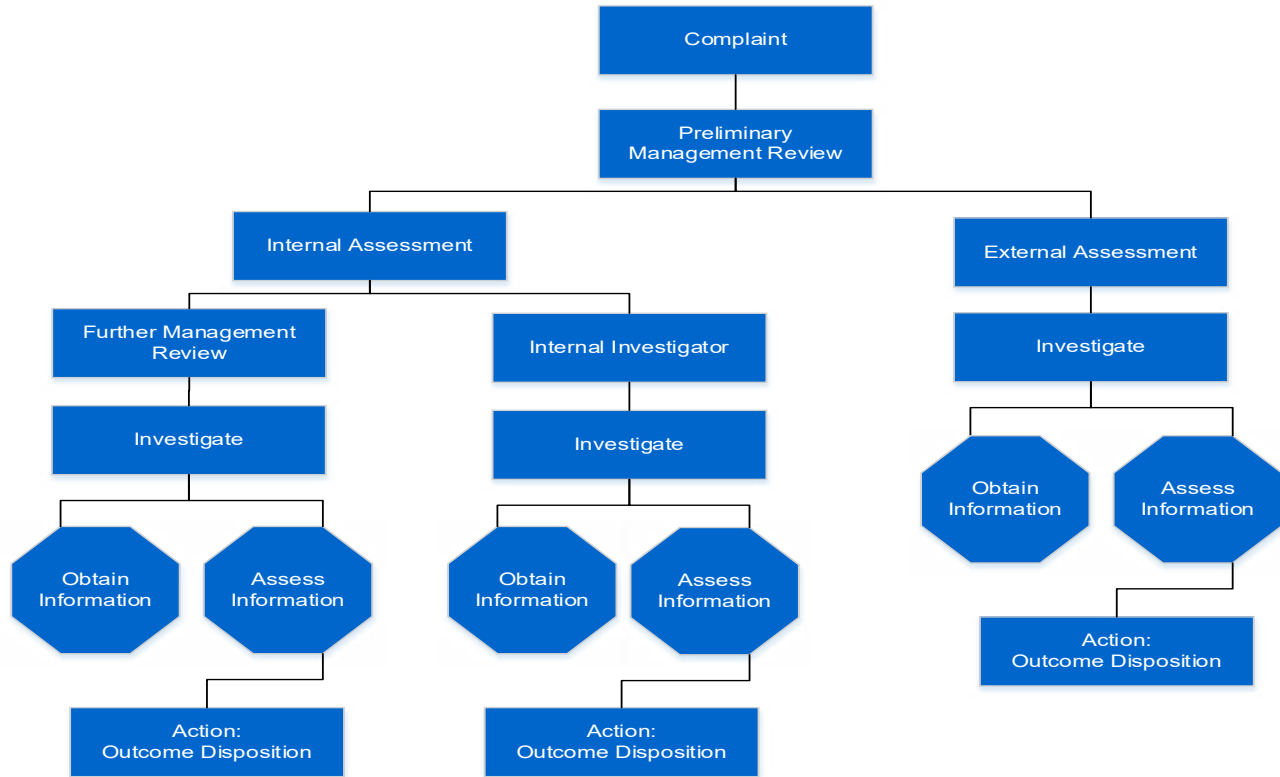
In 2019, PAT implemented use of an information/suggestion box located in its conference room where written complaints may also be submitted. While a complaint's author could choose to be identified, it appears that this was intended to facilitate the submittal of anonymous complaints. Management reports that it monitors the information box regularly.

***Complaint handling assessment***

After a complaint is filed and received, management (the acting prosecuting attorney, executive assistant or the administrative service officer) reviews and assesses how the complaint should be addressed. If a decision is made to review the complaint internally, the complaint is either further reviewed by management or assigned to an internal investigator to assess and determine the appropriate course of action. An internal investigator could be assigned to evaluate the complaint. This investigator is a PAT employee and prosecution team member. This prosecution team member is someone who normally conducts case investigations and has investigation experience.

Complaints related to hostile work environment, harassment, or discrimination are generally referred outside of the department for review and resolution. External agencies include the Equal Opportunity Office, Department of Human Resources, or a private investigation agency such as Star Protection Agency. The complaint handling process is shown in Exhibit 3.1.

**Exhibit 3.1  
Complaint Process**



Source: OCA Analysis

***Department is receiving many complaints about workplace issues***

We reviewed complaints submitted to management in for the five-year period from FY 2015 to FY 2019. During this period, the department received 65 internal complaints from its staff. In FY 2018, there were 30 complaints, and in FY 2019, 23 complaints. Of the 65 complaints, we judgmentally sampled 22 internal complaints and reviewed the department’s internal complaint process.

Complaints involved the following topic areas:

- Eleven complaints of hostile work environment, harassment, discrimination, 6 of which were referred for an external assessment;
- Seven complaints of violation of the respectful workplace policy;
- One complaint of the unauthorized use of access;

- One breach of confidential agreement;
- One complaint insubordination, and;
- One complaint performing work related duties on comp leave.

Exhibit 3.2 shows how the complaints were distributed and the outcomes from an internal assessment or external assessment review.



### Exhibit 3.2 Complaint Review

#	Complaint Subject	Internal Assessment	External Assessment	Outcome
1	Hostile work environment, harassment, discrimination		✓	Advised a Right to Sue; Case Closed
2	Hostile work environment, harassment, discrimination		✓	Insufficient Evidence; Case Closed
3	Hostile work environment, harassment, discrimination		✓	Sustained; Letter Was Issued
4	Hostile work environment, harassment, discrimination		✓	Insufficient Evidence; Case Closed
5	Hostile work environment, harassment, discrimination		✓	Insufficient Evidence; Case Closed
6	Hostile work environment, harassment, discrimination		✓	Insufficient Evidence; Case Closed
7	Hostile work environment, harassment, discrimination	✓		Insufficient Evidence; Case Closed
8	Hostile work environment, harassment, discrimination	✓		Insufficient Evidence; Case Closed
9	Hostile work environment, harassment, discrimination	✓		Insufficient Evidence; Case Close
10	Hostile work environment, harassment, discrimination	✓		Case was reviewed internally then later referred to an external agency to handle, resulting that no further action is necessary; Case Close
11	Hostile work environment, harassment, discrimination	✓		Case was initially closed due to insufficient evidence and later open which was forwarded to another agency
12	Violation of the respectful workplace policy	✓		Insufficient Evidence; Case Close
13	Violation of the respectful workplace policy	✓		Insufficient Evidence; Case Close
14	Violation of the respectful workplace policy	✓		Insufficient Evidence; Case Close
15	Violation of the respectful workplace policy	✓		Suspension
16	Violation of the respectful workplace policy	✓		Written Reprimand
17	Violation of the respectful workplace policy	✓		Disciplinary Action
18	Violation of the respectful workplace policy	✓		Disciplinary Action
19	Unauthorized use of access		✓	Verbal Warning
20	Breach of confidential agreement	✓		Insufficient Evidence; Case Close
21	Insubordination	✓		Oral Reprimand
22	Performing work related duties on comp leave	✓		Advise

Source: OCA Analysis

We found that the department handles complaints inconsistently. Department administrators arbitrarily decide each time how to handle a complaint rather than follow set guidelines for assessing, reviewing, investigating, and resolving complaints. There are no written guidelines to help management assess whether these should be reviewed internally or be referred externally, and complainants have no guidance or expectation for how their complaints will be addressed. In our review, 68 percent of complaints were handled internally by the department. We were unable to determine the rationale for why some of the complaints were referred to the external agency and some were not. PAT does not document how it administers complaints.

Specifically, our review found that:

- There are no clear guidelines or defined process for handling complaints, which guides acceptance, assessment, information gathering, review, and disposition. For example, we found that four of the complaints that were handled internally, concerning hostile work environment, harassment, and discrimination complaints, were not sustained due to lack of evidence. However, there is no formal criteria or guidance for either the reviewer or the complainant.
- We also found that there is no documented guidance for selecting internal investigators or other staff to be assigned as complaint reviewers. Internal investigators are trained to investigate crime for prosecution, but this does not provide assurance that they will appropriately investigate a human resource or workplace issue complaint.
- There is no assessment of independence before handling a complaint case. We found no assurance that conflicts of interest are declared and reviewers are independent.
- The external reviews, unlike the department's internal review process, provided a more defined complaint handling process, assurance of complete review, and was independent.
- External reviews also added value after sustaining a complaint by identifying training needs that may help avoid or prevent future complaints or workplace environment violations.

We found that there are procedural differences in complaint handling between internally and externally reviewed complaints.

For internal reviews, management and internal investigators do not have a formal review guide, policy, procedure, or criteria to review complaints. Comparatively, we found that external reviewers follow more structured procedures for conducting their review. The external review provided a better complaint handling process and assurance of complete review, which was also independent.

***Most respectful workplace complaints are handled internally***

Our sample review included seven respectful workplace complaints. Two of the complaints were forwarded to the Equal Opportunity Office (EEO) but were returned because the EEO lacked jurisdiction over the complaints. As a result all seven respectful workplace complaints were reviewed internally. We were unable to determine why PAT chose initially to refer two complaints to the EEO and address the others in-house since there is no documentation regarding the decisions.

Similar to the hostile working environment complaints, there are no formal review guidelines or policy and procedures for reviewing complaints.

When an internal investigator completes their review of the complaint and investigation, a findings report is prepared for management's review. Based on the report, management decides on the appropriate action to take.

These seven internally reviewed complaints resulted in:

- Three were closed due to lack of evidence;
- One sustained complaint led to a two-day suspension;
- One sustained complaint led to a written reprimand; and
- Two resulted in disciplinary action.

While four of the seven respectful workplace complaints resulted in some type of disciplinary action we found no evidence that management made any adjustments to PAT's policies, procedures, or training to prevent future occurrence.

***Hostile work environment complaints may indicate serious concerns about workplace safety***

Between FY 2015 and FY 2019, PAT received 65 internal complaints. Of the 65 complaints, 11 related to hostile work environment and 7 involved respectful workplace complaints. Combined, these two types of serious workplace complaints represented 28 percent of the total complaints filed.

Despite the relatively high number and proportion of serious workplace complaints, we found no evidence that management sought to update or assess its policies and procedures to improve the workplace environment. Instead, we found that management responds to complaints individually, but does not evaluate the overall impact that complaint trends may have on the work environment. PAT's current approach to addressing workplace misconduct is punitive, rather than corrective.

***More training is needed***

Training is essential to ensure that managers, supervisors and staff have the proper skills to effectively do their jobs. In discussions with attorneys about supervisory and leadership training, we found that supervisors do not regularly attend supervisory training. Because supervisors are tasked with reviewing and assessing employee conduct, performance, and internal complaints, they should be properly trained to effectively conduct such assessments.

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**The Department Lacks a Formal Process to Deal With Attorney Misconduct**

PAT does not have specific policies to address attorney misconduct. As previously noted, attorneys are required to adhere to the *Hawaii Rules of Professional Conduct Rule 3.8. Performing the Duty of Public Prosecutor or Other Government Lawyer*. We found no specific departmental policies and procedures addressing the handling of attorney misconduct.

Management has the duty to report attorney misconduct to the Office of Disciplinary Counsel. The department has not developed any review procedures to identify and determine if an attorney is committing misconduct. There is no guidance from management that attorneys or supervisors should be aware of the possibility of misconduct, or how to identify it and report it as necessary to management for review and resolution. Absent such guidelines, staff and management may not be aware of potential misconduct and are unable to address it in a timely manner.

We confirmed with PAT management that the department did not file any reports to the Office of Disciplinary Council during the FY 2015 to FY 2019 time period for violation of professional conduct. We also reviewed the list of disciplined Hawai'i attorneys and verified with management that no other department attorneys were disciplined over the past five years other than the former prosecuting attorney Katherine Kealoha. PAT noted that no other departmental attorneys have been disciplined by the office of Disciplinary Counsel. If a PAT attorney is investigated

by the Disciplinary Board such as a complaint of unethical misconduct, the department does not get informed or involved with the investigation process. Rather, the department is notified when a final outcome from the disciplinary board if an attorney's misconduct is sustained. We believe that having a formal misconduct handling process that routes misconduct complaints to disciplinary counsel would help management identify and respond to internal misconduct similar to Katherine Kealoha.

***Attorney misconduct handling process in other jurisdictions***

We compared PAT's practice for addressing attorney misconduct with a sample of other jurisdictions' practices. Our review showed that each prosecuting attorney offices we reviewed have formal reporting methods for attorney misconduct. Throughout the process, complaints about attorney misconduct are forwarded to a designated oversight body to administer. The prosecutor's offices we reviewed were: The Baltimore City State's Attorney's Office, Denver District Attorney, Multnomah County District Attorney, Seattle City Attorney, and the Wayne County Prosecuting Attorney. Exhibit 3.3 displays an overview of the complaint handling process that the various prosecutor's office used in their offices.

### Exhibit 3.3 Jurisdiction Comparison on Complaint's Handling

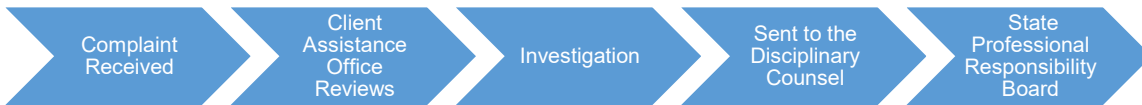
#### Baltimore City State's Attorney's Office



#### Denver District Attorney



#### Multnomah County District Attorney



#### Seattle City Attorney



#### Wayne County Prosecuting Attorney



Source: Various websites

The department should evaluate misconduct processing procedures from these and other jurisdictions to implement its own formal procedures. Having a formal process for handling attorney misconduct complaints could improve department oversight. This may increase public confidence because there is a process for management to identify and respond to potential misconduct complaints.

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## **Recommendations**

The Department of the Prosecuting Attorney should:

1. Implement policies, procedures and practices to identify, respond, correct and prevent erroneous and unethical behavior;
2. Develop a formal internal process for managing employee complaints; and
3. Provide supervisory and other appropriate training related to complaint handling and disposition.

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# Chapter 4

## Conclusion and Recommendations

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### Conclusion

The Department of the Prosecuting Attorney's (PAT) office adheres to the Rules of Professional Conduct, Rules of the Supreme Court, and Rules of the Disciplinary Board. Each staff attorney self-polices and is held individually accountable to their duties and responsibilities. The former deputy prosecuting attorney's alleged misdeeds have raised concerns about misconduct and the department's ability to identify, respond, correct, and prevent such misconduct. The department is led by temporary leadership due to affected personnel who have been placed on leave and undergoing federal investigation. Despite the controversies and allegations in PAT, policies, procedures, and controls within the prosecuting attorney department have not changed significantly and more needs to be done. The department needs to be motivated to make changes necessary to identify and prevent misconduct.

Improvements in the conflict case policy is warranted to help staff avoid, minimize, or prevent conflict of interest and to maintain independence. It would be useful if the department provided staff with pertinent information and guidelines so they can determine when a conflict of interest exists and the protocols for reporting and evaluating misconduct. This would allow management to more effectively exercise proper oversight.

From a supervisory perspective, the department should standardize its supervisory review for plea bargaining in circuit court cases. This would ensure consistency in the supervisory process and assure that tasks have been thoroughly reviewed and completed. By standardizing the supervisory process, staff and supervisors are more active during the process and can more readily identify potential issues and address them in a timely manner.

Employees report instances of misconduct within the office. However, the current informal complaint handling process is not effective for properly managing the workplace environment. The department relies on informal processes or an information box to identify and receive workplace complaints. This reactive approach places workplace monitoring solely on employees and management is unaware of potential problems until it is brought to their attention. Instead, the department should consider a more proactive approach by establishing formal guidelines

for staff to identify and report misconduct and establish an appropriate corrective action plan. This would encourage staff to come forward with complaints and have the assurance that there is a formal process in place to identify and respond to misconduct complaints effectively. Routine training, specific to the department, would also improve the workplace environment.

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## Recommendations

The Department of the Prosecuting Attorney should:

1. Implement a conflict of interest disclosure affirmation for each case handled by staff attorneys;
2. Standardize pre- and post- plea bargain case evaluation;
3. Enforce case evaluation requirements for all applicable cases;
4. Amend the staff attorney evaluation process to include specific action plans or corrective actions, when appropriate;
5. Establish a formal internal complaint system that describes the intake process, potential criteria that will be used to evaluate complaints, timelines, potential outcomes, and action plans, as appropriate;
6. Implement policies, procedures and practices to identify, respond, correct and prevent erroneous and unethical behavior;
7. Develop a formal internal process for managing employee complaints; and
8. Provide supervisory and other appropriate training related to complaint handling and disposition.

The Honolulu City Council should:

9. Consider establishing a commission on prosecutorial conduct, or similar entity, to annually evaluate the City Prosecutor.

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## Management Response

The Department of the Prosecuting Attorney (PAT) indicated that while it was not in complete agreement with the audit's findings, it acknowledged that it must restore the public confidence and trust in the department lost after the Kealoha matter. It was willing to consider making improvements to address issues

raised by our audit findings. The department commented on several aspects of the audit. We provide the following clarifying comments.

This was an audit of the department's policies, procedures, and controls, and not an investigation. The department commented that the audit report does not cite specific instances of misconduct that Ms. Katherine Kealoha was convicted for in the federal trial, which directly related to the course and scope of her employment as a deputy prosecuting attorney. This comment seems to misunderstand the city council's reason for requesting this audit. We were not asked to investigate and discover specific instances of misconduct that related to her employment as a deputy prosecuting attorney, or within the office generally. Our audit was tasked to review whether the department's existing policies, procedures, and controls were sufficient to prevent similar misconduct, retaliation, favoritism, and abuses of power by its respective employees, and whether the department complied with its existing policies, procedures, and controls. We also recommended improvements and corrective measures to minimize future managerial or operational breakdowns. This is what we did in the audit.

We understand that the department's current administration is in a difficult position and under increased scrutiny after the Kealoha matter. Interim leadership is responsible to ensure that cases can be appropriately evaluated, reviewed, and prosecuted, while also making improvements it feels are necessary to avoid similar problems from occurring in the future. We acknowledge the current efforts to maintain a culture of professionalism that expects and demands the highest levels of competence, ethics, and professionalism, and the high expectations for professional conduct within the legal profession. We considered management's response from this point of view and note that there is opportunity for the newly-elected prosecuting attorney to further consider our recommendations.

The department indicated that the increasing caseloads without adequate funding have caused staff to *do more with less* and provided clarifying information about when its supervisors have opportunities to review cases during the plea bargaining process. Management also acknowledged there are differences in supervision, and that changes could be made to improve consistency and its monitoring. We emphasize that there is a need for uniform supervision to effectively manage the increasing caseload volume. We reiterate that supervisors have insufficient time to supervise or track all cases. Thus, supervisors rely on their relationship with subordinates and trust their staff to self-manage.

The department would benefit from more consistent monitoring and supervision throughout the case process.

The department commented that developing a routine assessment procedure and signing an affirmation for potential conflicts does little to ensure that conflicts are identified and timely disclosed. However, management acknowledged it could provide guidance to its attorneys where it can. In our view, a routine assessment procedure or self-declaration would improve the administrative process and heighten the department's ethical culture.

In regards to our sample review of internal complaints from FY 2015 to FY 2019, we note that disciplinary action was taken on some of the violations of the respectful workplace complaints. However, the department can improve by making adjustments to its policies, procedures, or training to prevent future violations. Lastly, the department seemed unable to verify or review the processes of other jurisdictions described for *formal reporting methods for attorney misconduct*. Our point is if there is a misconduct complaint or suspected misconduct, we believe that it would be beneficial for the department to have a process in place that directs the misconduct complaint to the Office of Disciplinary Counsel for independent review.

The department's comments notwithstanding, we stand by our audit findings and recommendations. We did not make any significant amendments to the audit report as a result of management's response, but we made technical, non-substantive changes to the draft report for purposes of accuracy, clarity, and style. We thank the Department of the Prosecuting Attorney's Office who assisted us during this review. A copy of management's full response can be found on page 37.

Department of the Prosecuting Attorney  
**City and County of Honolulu**

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DWIGHT K. NADAMOTO  
ACTING PROSECUTING  
ATTORNEY

LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY

December 3, 2020

Mr. Troy Shimasaki  
Acting City Auditor  
Office of the City Auditor  
City and County of Honolulu  
1001 Kamokila Blvd., Suite 216  
Kapolei, HI 96707

Re: Audit of the Department of the Prosecuting Attorney's Policies, Procedures and Controls, Resolution 19-255

Dear Mr. Shimasaki:

Enclosed you will find the Department of the Prosecuting Attorney's Response to the Audit of the Department of the Prosecuting Attorney's Policies, Procedures and Controls, Resolution 19-255. Thank you for the Audit Report and the opportunity to provide a response.

If you have any questions, please feel free to contact me at your convenience. Thank you.

Sincerely,

DWIGHT K. NADAMOTO  
Acting Prosecuting Attorney

Enclosure

Department of the Prosecuting Attorney  
**City and County of Honolulu**

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PROSECUTING ATTORNEY

December 3, 2020

**Audit Response by the Department of the Prosecuting Attorney to  
Audit of the Department of the Prosecuting Attorney's Policies, Procedures and Controls,  
Honolulu City Council Resolution 19-255**

*The Department of the Prosecuting Attorney (PAT) respectfully submits its response to the City Auditors Report of the Department of the Prosecuting Attorney. PAT appreciates the time, effort and opinions of the City Auditors, in its review of PAT's internal policies and procedures, the legal principals governing PAT and the Auditors responsibility to carry out Honolulu City Council's resolution in light of the allegations, and findings of misconduct of former deputy prosecuting attorney Katherine Kealoha.*

*PAT has reviewed the Audit report, and while not in complete agreement with its findings and recommendations, does recognize the Kealoha matter has affected the public's confidence and trust in the PAT and restoring public trust is paramount in moving forward. PAT holds its attorneys to the highest degree of competence, professionalism and ethics. Any recommendations to improve internal practices and procedures to maintain sound ethical professionalism are welcomed.*

**Chapter 1: Background**

On March 22, 2018 and February 9, 2019 respectively, Katherine Kealoha was indicted by a federal grand jury. The First and Second Indictment as referred to in the City Audit alleges misconduct, The details of that misconduct are described in the Audit Report as "fixing a speeding ticket" and her "alleged involvement to protect her brother from a drug dealing investigation" (Audit Report, pg. 18).

With respect to the First Indictment, the Audit report does not cite to specific instances of misconduct that Ms. Kealoha was convicted for in the federal trial, that directly relate to the course and scope of her employment as a deputy prosecuting attorney. Indeed, Ms. Kealoha was eventually convicted for Obstructing Justice and Conspiracy as set forth by in the First Indictment, tied to the alleged theft of the Kealoha mailbox and her dispute with her uncle, Gerard Puana. The First Indictment also charges Ms. Kealoha with multiple counts of bank fraud, which are unrelated to her duties as a deputy prosecutor.

At the time of both Indictments, Ms. Kealoha a licensed attorney in the State of Hawai'i, served as the Division Chief of the Career Criminal Division in PAT. As a licensed attorney, Ms. Kealoha met all the qualifications set forth by the Hawaii Supreme Court to practice law. Those qualifications include but are not limited to:

1. Obtaining a law degree from an accredited law school;
2. Be of good character and fitness; and
3. Pass the Hawaii Bar Examination and the Multistate Professional Responsibility Examination.

*See Hawaii Supreme Court Rules, Rule 1.3*

Attorneys, like Ms. Kealoha, are further required by the Hawaii Supreme Court to annually renew their bar membership. The Hawaii State Bar Association requires member attorneys, like Ms. Kealoha, to earn annually, 3 credits of Continuing Legal Education, and 1 credit of Continuing Legal Ethics, once every 3 years. *See Hawaii State Bar Association and Rules of the Hawaii Supreme Court, Rule 22.*

PAT provides annual trainings on both, to assure the deputies are meeting the Bar requirements. Although an ethic credit is required only once every 3 years, PAT makes the training available annually.

All attorneys, like Ms. Kealoha are, pursuant to the Rules of the Hawaii Supreme Court, required to adhere to the Hawai'i Rules of Professional Conduct, which includes compliance with rules on Conflicts of Interest (Rule 1.7), Misconduct (Rule 8.4), Duties of a Public Prosecutor (Rule 3.8) and other provisions.

With regard to prosecution, all deputy prosecutors, like Ms. Kealoha, upon taking office, must take an oath of office, which requires an affirmation by the deputy prosecutor, to uphold the laws of the US Constitution, State of Hawaii and City and County of Honolulu, among other affirmations.

With this background in mind, PAT stresses that it not only expects, but demands from each of its employed deputy prosecutors the highest level of competence, ethics and professionalism. PAT does not take lightly its duty to the public and the role in which it plays in the criminal justice system as both advocate for the people of Honolulu, and ministers of justice. It is the mission and duty of the Honolulu Prosecutor's Office to instill public trust and confidence in the office and the criminal justice system.

## **Chapter 2: Management Oversight of Professional Staff is Insufficient to Ensure Effective, Proactive Identification and Response to Allegations of Misconduct of Employees**

The City Audit takes issues with 1) limited supervision 2) conflicts of interest and 3) internal policies regarding plea bargains and case evaluations.

The Audit report acknowledges the high increase in case volume over the last several years, without the requisite funding to address the high volume of cases. Essentially, prosecutors are required to do more with less.

The Audit then turns to variances between supervisors on how they assess plea deals and handling of case evaluation forms.

First, the Audit while criticizing the differences between supervisors in evaluating plea negotiations does not provide any concrete example of how those differences affect the quality or fairness of the proposed plea deal or the constitutional rights of the accused. The Audit does not mention that a standard form is required for each felony proposed plea deal. The form requires deputy prosecutors to fill out the form, provide specific information regarding the facts and criminal histories of the accused and the reasons and recommendations of the proposed plea, including the defense position, if any, on plea discussions.

As outlined by the Audit, every felony plea deal requires 3 layers of approvals, from the team captain, division chief and finally the First Deputy. (See Audit Report, Exhibit 2.3) While it may be true, some supervisors review the police reports and/or talk directly with the trial deputy prosecutor or do both, the Audit gives no examples of how those specific variances relate to misconduct, as alleged in the Kealoha matter. At best, those variances are described as having a potential for “uneven decision making” or “key elements” being “missed” (See Audit report pg. 14). However, it is the job of all 3 reviewing “supervisors”, including the trial deputy prosecutor to assure that “key elements” are not missed. The multiple plea approval process assures that each proposed plea deal is carefully and thoroughly reviewed to guard against any potential conflict, discrepancy, misconduct, and/or potential unfairness. More important, the multi-level approval process by its very nature allows for identification of potential misconduct and/or error well before the case is concluded and more important, with sufficient time to take corrective measures if needed. It is more often than not, an opportunity for supervisors to provide guidance, feedback, suggestions and advice on how to proceed and handle pre-trial and trial issues. As for “uneven decision making”, each case is evaluated based on its own individual facts, involve individual Defendants with varying criminal histories, varying evidentiary and trial issues, varying judges and varying complaining witnesses and lay witnesses. These varying factors alone can affect the approval or disapproval of any potential plea deal. Any instance of “uneven decision making” is further remedied by the 1<sup>st</sup> Deputy Prosecuting Attorney conducting the final review and approval.

It is also important to point out that inherent in prosecution, is the criminal justice system and victims of crimes that serve as added checks and balance on prosecutors. The Constitution demands that the accused is entitled to a “public” trial. Similarly, prosecution cannot occur without tribunal and defense participation. In all aspects, the prosecution is under constant watchful eye of defense counsel, the courts and the public. The Kealoha matter a prime example of this. While this does not excuse PAT from doing its own due diligence in monitoring its deputy prosecutors, it does create yet another layer of independent monitoring of the conduct of any given prosecutor.

Notwithstanding this, additional requirements can be assessed to achieve added consistency, to the extent possible.

Second, the Audit takes particular issue throughout the report on conflicts of interest, citing PATs “conflict of interest practices are passive, reactive and rely on voluntary disclosure...”. (See Audit Report pg. 11) The report goes further to suggest that PAT should develop guidelines to assist attorneys on what is or is not a conflict and how to report those conflicts to management.



As it relates to the Kealoha matter, the Audit Report references Ms. Kealoha's conflict of interest when she allegedly assigned to herself, a criminal case that purportedly involves her brother, among other things. (Audit Report at pg. 18). Despite the Audit's finding, which PAT disputes, of not having "specific criteria to identify and respond to conflicts of interest", that does not and should not, excuse the failure of any attorney to disclose a conflict, much less handle the prosecution involving a family member or close personal friend. Ms. Kealoha's failure to disclose her conflict is not the result of a PAT's lack of clear criteria or uncertainty of what is or is not a conflict. Ms. Kealoha had a duty and responsibility as a licensed attorney to disclose her conflict and to refrain from interjecting, influencing or otherwise being involved in the case. Period.

No department affirmation, oath, policy or procedure would have changed that.

Developing a routine assessment procedure and signing an affirmation on conflict does little to ensure conflicts are identified and timely disclosed. The Auditors recommendation for a signed affirmation is contrary to its own criticism of PAT's reliance on "voluntary disclosure". As a practical matter, conflicts of interest are personal to the attorney, and requiring PAT to proactively ascertain whether a deputy prosecutor has a conflict with each case he/she handles is an unreasonable task and the Audit provides no reasonable recommendation beyond a self-declared affirmation.

PAT, like any other legal entity, law firm or government agency cannot completely guard against non-disclosures of conflicts of interest, with or without clear guidelines. While immediate disclosure is demanded of all PAT employees, it cannot police the moral character of its attorneys with any certainty, without relying to a large extent on introspection of individual attorneys to weigh the multitude of factors in making a moral decision to disclose a conflict.

While the City Auditors take issue with PAT's reliance on self-disclosure or reporting by others, the legal field in Hawaii, much like other states, is a self-governing body. It is not regulated, and relies heavily on self-reporting and members of the Bar Association are called upon to assure compliance by other attorneys. PAT is not suggesting that its obligation to monitor its own staff is obviated by the Rules of Professional Conduct, however, the Audit fails to point out that the Rules of Professional Conduct apply all attorneys in the State of Hawaii and does not carve out exceptions for deputy prosecutors, like Ms. Kealoha.

Yes, individual attorneys are obligated to self-disclose their conflicts of interest, and yes, the burden rests with them, as licensed attorneys. Attorneys should not be allowed to shift the burden to their employer, like PAT, as an excuse to engage in unethical conduct simply because there are no guidelines in place.

That said, PAT agrees it should provide guidance, where it can. To that end, PAT concedes that Administrative Police No. 2012-007 attached as Appendix A lacks detail on what is a conflict and does not outline PAT's procedures when a conflict is identified. PAT amended this policy in September 23, 2020 which reads in part:

All employees are reminded that any case involving yourself, a family member, close friend as an offender/arrestee or victim, shall be immediately brought to the attention of your supervisor....."

Conflict cases include those involving a family member, close friend, and/or any other case in which there could be an appearance of impropriety, real or perceived, with you to the office from further handling of the case.....”

*See attached, Amended Administrative Policy No. 2012-007(Effective date Sept 23, 2020). Note attached policy incorrectly refers to prior date of 3/16/19, true date of Admin Policy No. 2012-007, is 3/16/12 (see Appendix A).*

The policy now outlines what cases are deemed to be conflicts, and includes those cases where there is an appearance of impropriety. Once the conflict has been identified, employees are admonished from accessing the case through HPD record management system and PAT’s PBK system. It further outlines that where PAT is unable to continue handling the file, conflict cases shall be referred to the Attorney General’s office. The policy demands every employee to disclose their conflict of interest immediately. PAT had a conflict of interest policy when Kealoha was employed at PAT and has amended its policy following the Kealoha matter.

While it could be argued the policy does not provide specificity on what is a conflict, it is impossible to describe every situation that could raise a potential conflict of interest. In fact, the Hawaii Rules of Professional Conduct, promulgated by our Hawaii Supreme Court, does not identify what is or is not a conflict. The Rules are general for a reason, to allow an attorney to assess his or her ability to carry out his/her duties as counsel fairly and impartially as required under the law. A conflict can exist if there is significant risk that a lawyer’s ability to consider, recommend or carryout appropriate course of action will be materially limited as a result of the lawyer’s other responsibilities or interest. *See Hawaii Rules of Professional Conduct Rule 1.7 Conflict of Interests, General Rule, comment 8.*

When conflicts are disclosed and the PAT employee cannot be adequately screened off from the case, PAT conflicts the case to the Attorney General’s office for further handling. This process occurred well before and after the Kealoha matter. Due to the changes in administration personnel, additional conflict letters addressed to the Attorney General’s office were subsequently found, and not included in the materials provided to the Auditors for review.

PAT contends that voluntary disclosure of conflicts of interest occur routinely by employees, whether it be deputy prosecutors or other employees. PAT has no reason to believe its employees are not compliant with the older or newer version of the Conflict of Interest policy and the Audit report has not determined otherwise.

### **Chapter 3: Complaint Handling Needs More Improvement to Prevent Mismanagement and Inappropriate Behavior**

Chapter 3 of the Audit report pays particular attention to PAT’s internal policies of handling complaints of misconduct received and takes issue with the fact that PAT has no formal guidelines or procedures in handling complaints of misconduct.

PAT agrees there are currently no written processes on how to internally handle internal complaints.

However, the Audit did take a sampling of 22 complaints received internally by PAT (see Audit Report, Exhibit 3.2, pg. 26) and concluded that 1) there were no clear guidelines or defined processes to handle the complaints (which PAT does not dispute; 2) no guidelines for selecting internal investigators or assigned staff to conduct a review/investigation and 3) no assessment of independence to assure reviewers/investigators have no conflict of interest.

The Audit makes no mention of how many of the 22 complaints examined involved misconduct alleged against a deputy prosecuting attorney, if any. It also fails to point out, that disciplinary action was taken, when violations of workplace policies occurred. (See Audit Report, Exhibit 3.2, pg. 25).

Assignment of an internal investigation is left largely to the decision of the Prosecuting Attorney in consultation with other executive administrative staff, to include the Chief Executive Investigator. Assignments are made based on competency of the assigned investigator and only if the assigned investigator has no conflict with the parties or complaint itself (witness to the complaint etc.).

In fact, complaints were referred for external investigations when conflicts of interest were identified such that an internal investigation would be inappropriate.

Along those lines, PAT has and continues to identify conflicts internally to assure independence in the handling of internal complaints. Audit recommendations to formalize the internal complaint handling process is being reviewed by the current Administration should a complaint be received prior to the incoming Administration in January 2021. Thereafter, the new Administration can assess the viability and feasibility of instituting more formal policies as recommended by the Audit.

Further, PAT has taken action against employees for a multitude of reasons, to include misconduct of attorneys. Action has ranged from verbal counseling, denial of vacation, suspension and termination. Annual evaluations are not the only mechanism in which performance is measured and employees counseled. Supervisors have and continue, despite increasing caseloads, to monitor the performance of attorneys.

Finally, PAT agrees that a formal complaint process may be beneficial to provide complainants and respondents with clear guidelines on what to expect. A formal process may also increase transparency and public trust of the complaint handling process.

Notwithstanding this, the findings of the Audit Report encourages PAT to “evaluate the misconduct processing procedures” of other jurisdictions outlined in Exhibit 3.3 of the Audit Report. In earnest, PAT followed the Audit recommendation, and interestingly, could not find the processes described for formal “reporting methods for attorney misconduct”. See *Audit Report*, pg. 29; *Audit Report*, Exhibit 3.3, pg. 30.

For example, Wayne County Prosecuting Attorney website, comes up with “no results” when entering search terms such as “attorney complaint”, “employee complaint” “internal complaints” or “attorney misconduct”.

For Seattle City Attorney, their website, redirected PAT to the Seattle Public Defenders office when searching for attorney misconduct or internal complaints.

A similar search was conducted for all other prosecutor sites referenced in Audit Report, Exhibit 3.3 and PAT could not find the internal process described in Exhibit 3.3. If those offices have internal processes, it could not be found on their respective websites.

As far as we can tell, Audit Report, Exhibit 3.3 describes the handling of all attorney misconduct complaints by an outside agency in each state and is not the internal processes of each prosecuting office.

For example, the Colorado Supreme Court oversees the Office of the Attorney Regulation Counsel which manages and investigates complaints of misconduct by attorneys in the State of Colorado. The process outlined for the Denver District Attorney office, (Exhibit 3.3) appears to be the process governing attorney misconduct for all attorneys in the State of Colorado.

The same holds true for Wayne County Prosecuting Attorney's office. The Attorney Grievance Commission is the investigative and prosecutorial arm of the Michigan Supreme Court. Its function, and process for handling attorney misconduct governs all attorneys in the State of Michigan to include the Wayne County Prosecuting Attorney's office.

Although the Audit Report does not mention the Office of Disciplinary Counsel (ODC), Hawaii has a similar process of handling complaints of misconduct against attorneys. ODC was formed by the Hawai'i Supreme Court and its function is to investigate complaints of ethical misconduct against Hawai'i lawyers, prosecutors included. Below reflects the general process of attorney misconduct complaints filed with ODC, with the Hawai'i Supreme Court having the ultimate authority to render a final decision should the Board determine suspension, disbarment or public censure is warranted.



*See Rules of the Hawai'i Supreme Court, Rule 2.7*

Here it should be noted that ODC has the authority to open an investigation without a formal complaint being lodged. *Rules of the Hawai'i Supreme Court, Rule 2.6.* ODC's authority and the process in handling complaints of misconduct by attorneys, extends to all attorneys practicing law in Hawaii to include prosecutors. Like the prosecutor's offices, referred to in Exhibit 3.3, attorney misconduct in Hawaii, is handled by an outside agency and deputy prosecutors are subject to that process. PAT is no different, from those offices described in Exhibit 3.3.

#### **Chapter 4: Conclusions and Recommendations**

With regard to the Auditors conclusions, PAT submits:

1. The Audit did not conclude attorney misconduct is systemic or pervasive in PAT;
2. The Audit did not reveal widespread misconduct among its deputy prosecutors;
3. PAT has a process for handling complaints, although informal.
4. All complaints are addressed and subject to an internal or external investigation;
5. PAT takes disciplinary action, when violations of workplace policies occur;
6. PAT has a Conflict of Interest policy; that includes conflicting cases to the Attorney General's office when appropriate;
7. PAT has approximately 17 Team Captains and Division Chiefs overseeing approx. 100 deputy prosecutors;
8. Supervision occurs on a daily basis;
9. PAT has a performance evaluation process for all attorneys and takes corrective measures ranging from verbal counseling to termination;
10. PAT has a standard multi-layer approval process on plea deals;
11. PAT has a process for employees to come forward with complaints of misconduct;
12. PAT developed an anonymous complaint system as a direct result of the Kealoha matter, to encourage employees to report misconduct.

While PAT agrees that improvements can be made and perhaps should be made, it parts ways with the Audit findings that in light of the highly publicized misdeeds of one specific deputy, it was not motivated to do more. Policies were changed, anonymous reporting options were developed, training continues, complaints are investigated and conflict cases continue to be referred to the Attorney General's office, where appropriate.

Could more be done? Yes. Was nothing done? No.

The Kealoha matter has cast a long shadow on PAT and the many good, hard working deputy prosecutors who have endured relentless scrutiny, fairly or not. Characterizing PAT as needing motivation to prevent future misconduct is unfounded.

Department of the Prosecuting Attorney  
**City and County of Honolulu**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515



DWIGHT K. NADAMOTO  
ACTING PROSECUTING  
ATTORNEY

LYNN B.K. COSTALES  
ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY

**AMENDED  
ADMINISTRATIVE POLICY NO. 2012-007**

*Effective Date: (March 16, 2019) September 23, 2020*

**SUBJECT: CONFLICT CASES - AMENDED**

All employees are reminded that any case involving yourself, a family member, close friend, as an offender/arrestee or victim, shall be immediately brought to the attention of your supervisor. We will resolve whether we can build a "China Wall" around the case or whether we need to seek the assistance of another county prosecutor's office or Attorney General's office for further handling of the case.

Conflict cases include those cases involving a family member, close friend and/or any other case in which there could be an appearance of impropriety, real or perceived, with you or the office from further handling of the case.

For all conflict cases, whether referred outside the office or not, access shall be restricted to the case within PBK. Limited access may be granted within the office by approval of the First Deputy Prosecuting Attorney. Notification of the conflict will be made immediately to the PMO for lock down.

Conflict employee(s) are prohibited from accessing the case within PBK, CRS or any other database and shall not discuss or otherwise seek access or information on the case. Conflict employees are further prohibited from trying to affect the outcome of any case in this office.

All conflict cases referred to the Attorney General's office will be done by the First Deputy Prosecuting Attorney and made directly to the Attorney General, with a copy of the conflict letter sent to the Supervisor of the Criminal Justice Division of the Department of the Attorney General.

Violation of this policy is grounds for immediate disciplinary action, including possible termination.

**EFFECTIVE DATE:**

This policy will take effect on the date and after issuance of this policy.

  
\_\_\_\_\_  
DWIGHT K. NADAMOTO  
Acting Prosecuting Attorney

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# Appendix A

## Conflict Case Policy

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DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 768-7400 • FAX: (808) 768-7515

Keith M. Kaneshiro  
PROSECUTING ATTORNEY



Armina A. Ching  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**ADMINISTRATIVE POLICY: No. 2012 - 007**

*Effective Date: March 16, 2012*

**SUBJECT: CONFLICT CASES - AMENDED**

Effective immediately, please bring all new conflict cases to the First Deputy Prosecuting Attorney's attention. We will be able to resolve whether we can build a "China Wall" internally or whether we need to get the help of the Attorney General's office.

**AMENDMENT:** This policy supersedes Administrative Policy Numbers 91-019 and 97-006, first and second amendments.

  
\_\_\_\_\_  
KEITH M. KANESHIRO  
Prosecuting Attorney

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# Appendix B

## Resolution 19-255

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 19-255

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### RESOLUTION

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REQUESTING THAT THE CITY AUDITOR CONDUCT PERFORMANCE AUDITS OF THE HONOLULU POLICE DEPARTMENT AND DEPARTMENT OF THE PROSECUTING ATTORNEY.

WHEREAS, in the wake of the convictions of Louis and Katherine Kealoha (collectively, "Kealohas") for conspiracy to defraud the United States and four counts of attempted obstruction of an official proceeding in a highly-publicized public corruption case (the "mailbox case"), the City Council ("Council") has grave concerns as to how such abuses of power by the former chief of police and a high-ranking deputy prosecutor were allowed to go on, seemingly unchecked, within the Honolulu Police Department ("HPD") and the Department of the Prosecuting Attorney ("Prosecutor's Office"); and

WHEREAS, in the mailbox case, former Police Chief Louis Kealoha was alleged to have used City and County of Honolulu resources, including police officers from the elite Criminal Intelligence Unit, to investigate the theft of the Kealohas' mailbox, and homicide detectives and undercover officers to follow and arrest Gerard Puana, Katherine Kealoha's uncle, for the mailbox theft; and

WHEREAS, the underlying objective of former Chief Kealoha's criminal activities was apparently to frame Gerard Puana for the theft of the Kealohas' mailbox, a federal crime, in order to discredit him in an ongoing financial dispute involving Katherine Kealoha's grandmother, Florence Puana; and

WHEREAS, it was reported that Katherine Kealoha is alleged to have used her position as a high-ranking deputy prosecuting attorney in charge of the career criminal unit in the Prosecutor's Office to order a former deputy prosecutor, Kaina Awong, to wrongfully pursue a felony conviction against Gerard Puana; and

WHEREAS, in addition to her federal convictions in the mailbox case, it was reported that Katherine Kealoha is alleged to have pursued a pattern of corruption and prosecutorial misconduct by helping friends avoid criminal prosecution, including having a charge of driving under the influence removed and dismissed from the court's docket in May 2015; pressing a DUI and false reporting prosecution against an HPD officer who had previously arrested Katherine Kealoha's friend, a convicted felon who had refused to obey the officer's instructions; and appearing in traffic court to have an excessive speeding citation against her electrician dismissed in 2014; and

WHEREAS, the Council believes that such patterns of corruption, prosecutorial misconduct, retaliation, favoritism, and abuses of power should have been evident to



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 19-255

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## RESOLUTION

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management and personnel within the HPD and Prosecutor's Office long before they were brought to light through the mailbox case and other pending indictments against the Kealohas; and

WHEREAS, it is in the public interest for performance audits to be conducted of HPD and the Prosecutor's Office to review and assess the sufficiency of each department's existing policies, procedures, and controls to prevent similar misconduct, retaliation, favoritism, and abuses of power in the future; to determine whether each department complied with their existing policies, procedures, and controls; and to provide recommended improvements and corrective measures in each department's policies, procedures, and controls so as to minimize future managerial and operational breakdowns; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the City Auditor is requested to conduct performance audits of the Honolulu Police Department and the Department of the Prosecuting Attorney, which should address: 1) whether each department's existing policies, procedures, and controls are sufficient to prevent similar misconduct, retaliation, favoritism, and abuses of power by their respective employees; 2) whether each department complied with their existing policies, procedures, and controls in their internal operations during the time periods reflected in the First and Second Superseding Indictments of the alleged misconduct by Louis Kealoha and Katherine Kealoha; and 3) recommendations as to improvements and corrective measures in each department's policies, procedures, and controls so as to minimize future managerial and operational breakdowns; and

BE IT FURTHER RESOLVED that the audit of the Department of the Prosecuting Attorney should neither interfere with, nor hinder the prosecutorial functions of the department as set forth in the Revised Charter of the City and County of Honolulu 1973 (2017 Edition) ("Charter") Section 8-104.1, which includes prosecuting all offenses that violate the laws of the State and the ordinances and rules and regulations of the City, arresting persons charged with or reasonably suspected of public offenses, and drawing indictments and presenting cases for consideration by the grand jury; and

BE IT FURTHER RESOLVED that the City Auditor is requested to complete the performance audits of the Honolulu Police Department and the Department of the Prosecuting Attorney no later than one calendar year after the adoption of this resolution in accordance with Charter Section 3-114.2; and

BE IT FURTHER RESOLVED that copies of the completed audit reports be filed with the City Clerk as a public record; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 19-255

**RESOLUTION**

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor, the Managing Director, the Chief of Police, Acting Prosecuting Attorney, and the City Auditor.

INTRODUCED BY:

*[Handwritten Signature]*  
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DATE OF INTRODUCTION:

**OCT 3 2019**  
\_\_\_\_\_  
Honolulu, Hawaii

Councilmembers

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

RESOLUTION 19-255

Introduced: 10/03/19 By: RON MENOR Committee: EXECUTIVE MATTERS AND LEGAL AFFAIRS


Title: RESOLUTION REQUESTING THAT THE CITY AUDITOR CONDUCT PERFORMANCE AUDITS OF THE HONOLULU POLICE DEPARTMENT AND DEPARTMENT OF THE PROSECUTING ATTORNEY.

Voting Legend: \* = Aye w/Reservations

		CC-329 MANAHAN – RE-REFERRAL FROM COMMITTEE ON BUDGET TO COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS.
10/22/19	EXECUTIVE MATTERS AND LEGAL AFFAIRS	CR-318 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION. 7 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MENOR, TSUNEYOSHI, WATERS. 2 EXCUSED: MANAHAN, PINE.
11/06/19	COUNCIL	CR-318 AND RESOLUTION 19-255 WERE ADOPTED. 7 AYES: ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, WATERS. 2 ABSENT: ANDERSON, TSUNEYOSHI.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
GLEM TAKAHASHI, CITY CLERK

  
IKAIKA ANDERSON, CHAIR AND PRESIDING OFFICER

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# Appendix C

## Resolution 20-267

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 20-267

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### RESOLUTION

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GRANTING THE ACTING CITY AUDITOR'S REQUEST FOR AN EXTENSION OF TIME TO COMPLETE THE PERFORMANCE AUDITS OF THE HONOLULU POLICE DEPARTMENT AND DEPARTMENT OF THE PROSECUTING ATTORNEY REQUESTED BY RESOLUTION 19-255.

WHEREAS, by Resolution 19-255, adopted on November 6, 2019, the City Council ("Council") requested that the City Auditor conduct performance audits of the Honolulu Police Department and the Department of the Prosecuting Attorney, which should address: 1) whether each department's existing policies, procedures, and controls are sufficient to prevent misconduct, retaliation, favoritism, and abuses of power by their respective officers and employees; 2) whether each department complied with their existing policies, procedures, and controls in their internal operations during the time periods reflected in the First and Second Superseding Indictments of the alleged misconduct by Louis Kealoha and Katherine Kealoha; and 3) recommendations as to improvements and corrective measures in each department's policies, procedures, and controls so as to minimize future managerial and operational breakdowns; and

WHEREAS, Resolution 19-255 further directed that that the City Auditor complete the performance audits of the Honolulu Police Department and the Department of the Prosecuting Attorney no later than one calendar year after the adoption of the resolution authorizing the audit, and to file a copy of the completed audit reports with the City Clerk as a public record, in accordance with Section 3-114.2, Revised Charter of the City and County of Honolulu 1973 (2017 Edition); and

WHEREAS, by memorandum dated September 29, 2020, the Acting City Auditor requested an extension to submit the audit reports requested by Resolution 19-255, from November 6, 2020, to December 7, 2020, and

WHEREAS, the Acting City Auditor explains in the memorandum that due to extenuating circumstances caused by COVID-19 emergency orders, the Office of the City Auditor ("Office") was unable to complete certain audit tasks in a timely manner and, accordingly, will not be able to meet the November 6, 2020 deadline; however, the Office has completed the necessary audit fieldwork, and is requesting the extension of time in order to properly draft the report and coordinate administrative tasks with the audited departments; and

WHEREAS, the Council finds that given the extenuating circumstances necessitated by the restrictions and orders issued to address the health and public safety concerns related to COVID-19, the Acting City Auditor's request for an extension



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 20-267

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**RESOLUTION**

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of time in which to complete the performance audits requested by Resolution 19-255 appears reasonable; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Acting City Auditor's request for an extension of time in which to submit the audit reports requested by Resolution 19-255, from November 6, 2020, to December 7, 2020, is hereby granted; and

BE IT FURTHER RESOLVED that the Acting City Auditor shall comply with all other directives of Resolution 19-255, in accordance with Section 3-114.2, Revised Charter of the City and County of Honolulu 1973 (2017 Edition); and





**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 20-267

**RESOLUTION**

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Mayor, the Managing Director, the Chief of Police, Acting Prosecuting Attorney, and the Acting City Auditor.

INTRODUCED BY:

*[Handwritten Signature]*  
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DATE OF INTRODUCTION:

OCT 16 2020  
Honolulu, Hawaii

Councilmembers

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

RESOLUTION 20-267

Introduced: 10/16/20 By: RON MENOR Committee: COUNCIL

Title: RESOLUTION GRANTING THE ACTING CITY AUDITOR'S REQUEST FOR AN EXTENSION OF TIME TO COMPLETE THE PERFORMANCE AUDITS OF THE HONOLULU POLICE DEPARTMENT AND DEPARTMENT OF THE PROSECUTING ATTORNEY REQUESTED BY RESOLUTION 19-255.

Voting Legend: \* = Aye w/Reservations

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		CC-297 MENOR – REFERRAL FROM EXECUTIVE MATTERS AND LEGAL AFFAIRS DIRECT TO COUNCIL FLOOR.
11/05/20	COUNCIL	RESOLUTION 20-267 WAS ADOPTED. 9 AYES: ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MENOR, PINE, TEXEIRA, TSUNEYOSHI, WATERS.

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I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
\_\_\_\_\_  
GLEN I. TAKAHASHI, CITY CLERK

  
\_\_\_\_\_  
ANN KOBAYASHI, CHAIR AND PRESIDING OFFICER