

# HAWAI'I COUNTY BOARD OF ETHICS

## MINUTES – REGULAR SESSION<sup>1</sup>

Wednesday, April 8, 2009  
10:05 a.m. to 10:57 a.m.  
101 Aupuni Street, Suite 325  
Hilo, Hawai'i 96720

**Present:** Ann Lum, Acting Chair  
Marilyn Nicholson, Member  
Diane Gentry, Member  
Arthur Martin, Member  
Katherine A. Garson, Assistant Corporation Counsel  
Joseph K. Kamelamela, Deputy Corporation Counsel  
Mary E. Crosson, Secretary for the Board

**Also present:** Dan A. Cole

### 1. CALL TO ORDER

**10:05 a.m.** Ms. Lum called the meeting to order and invited Mr. Cole to make a three-minute public statement.

### 2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

Mr. Cole stated he was present to speak on agenda item 4, Communications, regarding the letter the Board sent him about his petition.

*LUM: You could remain seated, if you'd care to.*

*COLE: That's quite all right, I'll come up to the table.*

*LUM: Bring your chair.*

*COLE: Thank you very much. I'm a little slow this morning.*

*LUM: So was I. Okay. Good morning.*

*COLE: Good morning. I'm here to speak on the agenda item, Communications, 2009 letter to Dan Cole.*

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<sup>1</sup> Minutes in italics are verbatim.

LUM: Yes.

COLE: I wish to point out that my purpose of filing the petition of the ethics department here was to bring forth evidence of organized government corruption that extorts and threatens Emily Naeole and has resulted in her selling her vote. I also wish to point out in caveat this time that as this body has the authority of law, I am bringing forth this information in accordance with Criminal Title 18, United States Code, Part I, Chapter 1, misprision of felony. The documentation contained in this petition constitutes a citizen's obligation under the United States Code. It is noted that the counsel for the Ethics Board is in conflict of interest, as the stipulations in the petition state that agents of the County and State of Hawai'i have threatened and intimidated me in order to prevent my bringing forth evidence of organized government corruption. This stipulation is not contested or protested by the County of Hawai'i in the federal court. Therefore, in accordance with the oath of your office, you are obligated to take action as duly required by law in this matter, irregardless of anything else in this committee. I would also like to point out that my appearance here is to prevent the probable damage, death and injury of citizens of the people of Hawai'i resulting from the corruption of organized government individuals here in an enterprise or racketeering activity that altered the stream beds and elevations in the streams of Hawai'i resulting in the flooding of February 2008. In addition, I'd also like to point out that currently the Corporation Counsel of the County of Hawai'i has filed criminal charges against me for bringing forth evidence of organized corruption, of which apparently he is a member. The documents placed in this statement, and the documents (indecipherable) before you will show organized government corruption. Emily Naeole's refusal to represent me was based on the fact that I came to her because I have been threatened and intimidated, and my family was threatened by the County Police Department and the Prosecuting Attorney. This is a court document of the impeachment proceedings against Emily Naeole, and the documents is the evidence that in retaliation for my bringing forth evidence of corruption in the federal court, Chief Mahuna, Prosecuting Attorney Kimura, and others did conspire to threaten and intimidate me and retaliate against me by issuing my father a ticket for an accident he did not participate in, and corruptly persuaded and led perjury before the court. Judges Metcalf, Smith, are complacent and participating in retaliation in violation of federal code, in specific Title 18, United States Code, 1512, retali—and 1513, retaliation against a witness, victim, or informant, and threatening or intimidating a victim, witness, or informant.

LUM: Mr. Cole—

COLE: Yes?

LUM: Time is about up.

COLE: I wish to request extension of this council due to the mitigating circumstances here.

LUM: Let me just say we're a County Board of Ethics.

COLE: Yes.

LUM: And we're very, very limited in the petitions that we can hear, and so many of these things that you're mentioning are way, way beyond our citizen's purview—

COLE: --Unfortunately they are not, Chair.

LUM: We're bound by our County Code of Ethics and our rules of procedure.

COLE: Yes.

LUM: And we're a volunteer, community citizen's—

COLE: --Yes—

LUM: --group, and we can hear petitions for informal advisory opinions or formal. There is a procedure for that. We can hear and act on—we're not lawyers, we're not—we're just citizens and we're all different kinds of people. We need to have—we need to have our petitions limited in—this is very broad and way—I mean, there may be parts of it, that's what we were trying to get at—

COLE: --Maybe I can simplify it in a couple of statements here.

LUM: And we're not agendized to really discuss—

COLE: --Yes—

LUM: --It has to be from the Sunshine Law. It has to be—we try very hard to be with that. So—

COLE: --Well, perhaps—

LUM: --We need to have a petition before us so that it can be on the agenda so that then we can discuss it so public could come to it. What we're able to have from you this morning is just a statement, which you have made, and you have a lot of concerns. But if it's—the petition that we looked at, the letter when we get to it, was regarding—we did limit that petition.

COLE: Yes, I received the letter.

LUM: Ah huh.

COLE: Yes.

LUM: And you are free to file any further—this does not say that—this is not an opinion. It does not say that we made any decision except that we couldn't act on the petition because we didn't feel we had clear information--

COLE: --Yes—

LUM: --We needed to have pertinent—and so you are free to develop other petitions, another petition or other petitions. We only ask that they be—the scope be something we can handle that has that—

COLE: --The basis, and again I understand that I'm a—like yourself, I'm a citizen. The basis of this complaint is to bring forth and allow Emily Naeole exoneration. In other words, she made statements against me. They obviously were unclear.

LUM: Okay.

COLE: The Corporation Counsel is in conflict of interest representing the Council, because—

LUM: --Well, that's past us.

COLE: Well the thing is, right, is that your decision not to accept it is based on John Dill's communication with Renee Schoen, I believe.

LUM: No, it was a Board decision.

COLE: It was in his—

LUM: --It was a Board decision. John was--is the chairman.

COLE: Yes, yes.

'GARSON: Madame Chair, you're still on the statements from—

LUM: --Statements from the public, so yes—so we can't discuss that. We're not, it's not—so what we can do is, we could accept this—when we get to this letter, we can make some decisions about that letter, when we get to that on the agenda. But at this point it's still just a statement, and we can't take any action—

COLE: --Okay—

LUM: --We can just advise you, which we can do when we get to the letter.

COLE: As I say, this would allow Emily Naeole to bring forth and expose the extortion that she is under.

LUM: Well, we'll—at this point we're limited—

COLE: --Yes, yes—

LUM: --I mean, we--it's easy to fly it outside of the Sunshine Law—

COLE: --I understand--

LUM: --but we don't want to do that.

COLE: In order for the legality of this thing, I would like to caveat this whole situation here—

LUM: --Okay—

COLE: --by the Title 18, Criminal Code of the United States Code, as to—

LUM: --Excuse me—

COLE: --your responsibilities, yes.

LUM: Wait, wait, wait. I need a definition of caveat. He would like to caveat—what does that mean?

COLE: Make a statement, a general informational statement—

LUM: --Okay—

COLE: --as to purpose—

LUM: --Except that we're way, way over the three minutes, so I will have to close out the statements from the public.

COLE: Okay, very well. Please be advised as a result of this meeting, I will be filing criminal charges against this Board, jointly and separately, in accordance with accessory after the fact, Title 18, United States Code. Thank you very much for your time.

LUM: I'm sorry to hear that. Okay. We'll continue with the agenda. Thank you, there's no more public statements.

### 3. APPROVAL OF MINUTES

Motion and vote: Ms. Nicholson moved to approve the Regular Session minutes of March 11, 2009, Mr. Martin seconded the motion, and all members present voted aye.

Motion and vote: Mr. Martin moved to approve the Executive Session minutes of March 11, 2009, Ms. Gentry seconded the motion, and all members present voted aye.

#### 4. COMMUNICATIONS

- Communication No. 2009-21: Letter to Dan A. Cole from the Board regarding his petition (No. 2008-11).

*LUM: Okay, Communications, the letter to Mr. Cole. This letter has already been sent out. Do we have any comments on the letter itself? At this point, we can discuss the letter, we can—we do have Mr. Cole here, and at this point this is when I should be able to ask if anybody has any—we could do several—we can accept and file, we could reconsider this actual petition again if you wanted to make a motion to do that. We would not be able to hear it now, we would have to agendaize it. Or, we could just advise Mr.—if he—Mr. Cole seems to be still wanting to deal with this part, the Emily Naeole part, so we could advise him to perhaps submit another petition for this. That would be the response we could have to the letter.*

*NICHOLSON: I move that we accept and file the letter and perhaps if we want to discuss something, it would be clarifying with Mr. Cole what we would need in a petition if he chooses to submit another one.*

*GENTRY: Second.*

*LUM: Okay. All in favor?*

*NICHOLSON, GENTRY, MARTIN (simultaneously): Aye.*

*LUM: Okay. So we'll accept and file, but we would like to tell Mr. Cole the kinds of things we would like to have in order to make a petition workable for us. Is that what you mean, Marilyn? The kinds of things—*

*NICHOLSON: --Something that we could actually consider and take some action on.*

*LUM: Do you have any suggestions that he might—we do have him here.*

*NICHOLSON: Well, I think that we sort of honed in in the petition he filed on the--as something we could take action against or at least consider--was his allegation of Ms. Naeole, her comment he made about him at a public meeting—*

*LUM: --I didn't understand whether it was a public meeting—*

*NICHOLSON: --no, no, it was in a newspaper article—*

*LUM: -- or an actual article.*

*COLE: May I answer that?*

*LUM: Yes.*

COLE: *Oh, yes. Emily Naeole, in response to the impeachment action before her in the court, made a statement to the West Hawai'i Reporter James Quirk, stating that I was, quote, whacky—*

LUM: *--So it was—*

COLE: *--for bringing it forth.*

LUM: *It was in an article or—*

COLE: *--It was in a published article, yes. It's in the petition.*

LUM: *But I think we did not have the article in the petition.*

COLE: *Yes, it's in the petition.*

LUM: *Anyway, we can't act on it now because it's not on the agenda. But that would be something we would need in the petition.*

COLE: *It was stated publicly and in addition, in the petition, I also—there's a letter to Emily Naeole, stamped by the County Council, and stamped by the judge of the court, Ibarra, where Emily Naeole was presented some information and had ample opportunity to clarify her statements before the newspaper, which she, in assenting in silence, denied doing, therefore admitting her guilt. In addition—*

LUM: *--Well—*

COLE: *--So that's where it came from.*

LUM: *Yeah, okay.*

COLE: *So basically she made public statements and quoted in public statements, which is malicious slander.*

LUM: *Well, that's what—*

COLE: *--That's why we're here—*

LUM: *--What we would be looking at is a petition that claims she—I think did not treat you fairly or whatever we have—respect. It's Rule number eighty -*

GENTRY: *--two dash eighty-three—*

LUM: *Eighty-two dash—*

COLE: *--I believe that was clearly stated in the petition so that people could--*

LUM: --Well I think maybe there was—I think, to be frank, I think there's too much. We're not legally trained, you know. We need things—you know, a citizen's a citizen.

COLE: I'm a citizen also, yes.

LUM: But you're very much more—maybe educated than I am. But if it could be maybe separated out from some of the other issues that you have—that you are dealing with, and if we could just act on—if we could just have a petition clear, with pertinent facts, pertinent information that separates it from all of the other things that you're dealing with that we cannot deal with.

COLE: Okay.

LUM: And if you would do that, we would then—it would be like a new petition, and we could act on that.

COLE: I believe it's in the petition—I could clarify the existing petition. However, if it is the requirement of the requestor, I will file an additional petition, a new petition, but the petition will be predeceased by a petition against Lincoln Ashida.

LUM: Well—

COLE: --I'm saying that's—because this is a Board and transcripts are taken, this Board has the authority of law. The documents and information I presented to you, you are obligated under federal and state law to take action, which would entail basically contacting the United States Justice Department, Public Integrity Section, for your obligation and responsibility.

LUM: I don't know—

COLE: --You will be surprised at exactly—

LUM: --Well—

COLE: --the litigation that you are about to embark on yourselves on. I mean, they have prosecutors that are more than willing to set aside to talk to boards like this. The Public Integrity Section of the Justice—Department of Justice, they act—they're set up to do this. They prosecute judges, mayors, etcetera, and boards. For your information, you just might want to contact them and see your responsibilities.

LUM: So, Mr. Cole, at this point, the petition never—as far as our Board is concerned, this letter has been accepted and filed by us. So our Board is suggesting that if you—you are certainly free as a citizen of this County to file other petitions with us, and other petitions with the Board of Ethics. We would just advise you that simplicity and clarity is really helpful to us. So does that satisfy everyone?

GENTRY: I have one question.

LUM: Um hmm?

GENTRY: Mr. Cole, do you reside—I see that your address is Kea'au.

COLE: Yes, Paradise Park.

GENTRY: Do you reside in District 5?

COLE: Yes, I do. In Naeole's district, yes. She has disfranchised me and refuses to answer my correspondence or represent--

GENTRY: --If I may ask, what subdivision do you live in?

COLE: Paradise Park.

GENTRY: Oh, okay. Okay.

LUM: Okay? Okay, thank you Mr. Cole. So we will now move on to Communications—Roy Takemoto.

COLE: And I can request a copy of the transcripts at this time?

LUM: Um hmm, yeah. Yeah, certainly.

(Mr. Cole requested a copy of the transcript of the meeting and left, and the Board proceeded to the next communication.)

- **Communication No. 2009-22: Draft Informal Advisory Opinion for Petition No. 2009-1 from Roy Takemoto.**

The Board spent a few minutes reviewing the draft. Ms. Nicholson said that because the issue of the petition is date-based, the exact date Mr. Takemoto left County employment should be specified. Rather than stating December 2008, it should state December 1, 2008. The date occurred on pages 3 and 4.

Motion and vote: Ms. Nicholson moved to accept the draft, with the only change to be the specification of the date, as discussed, on pages 3 and 4. Ms. Gentry seconded the motion, and all members present voted aye.

- **Communication No. 2009-017: The High Road publication, Issue No. 2009-1, of the Hawai'i State Ethics Commission.**

Motion and vote: Ms. Nicholson moved to accept and file the communication, Ms. Gentry seconded the motion, and all members present voted aye.

**5. NEW BUSINESS**

There was no new business discussed.

**6. UNFINISHED BUSINESS**

**a. Ongoing discussion on the Sunshine Law.**

Ms. Lum suggested that Ms. Garson review with them why they could not discuss Mr. Cole's petition at this meeting.

Ms. Garson explained that the Sunshine Law is fairly straightforward and that all discussions must be agendaized in order to be discussed in a public forum. Because today's agenda only listed the Board's letter to Mr. Cole regarding his petition, only that letter could be discussed. If a Board member wanted to discuss reconsidering the Board's decision on the petition, a motion could be made to do so, but the actual reconsideration discussion would need to be placed on the following agenda. The reconsideration discussion would need to be agendaized so that any member of the public who wanted to attend could do so. Every matter the Board discusses needs to be placed on a public agenda beforehand so that members of the public are given fair notice of what is coming up and can attend or submit testimony.

**Motion and vote:** Ms. Lum asked for a motion to enter Executive Session. Mr. Martin so moved, Ms. Gentry seconded the motion, and all members present voted aye.

**10:30 a.m.:** The Board left Regular Session.

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**10:50 a.m.:** The Board returned to Regular Session.

**7. EXECUTIVE SESSION (VOTING)**

**a. Review of Confidential Financial Disclosure Forms filed pursuant to Section 2-91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.**

**Motion and vote:** The Chair asked for a motion to accept all the financial disclosures reviewed, with the exception of Joel Gimpel's and Maija Cottle's, which needed additional information. Ms. Nicholson so moved, Ms. Gentry seconded the motion, and all members present voted aye.

**8. ANNOUNCEMENTS**

Ms. Lum announced that the next monthly meeting of the Board was scheduled for May

13, 2009, at 10:00 a.m. at the Department of Liquor Control's conference room at 101 Aupuni Street, Suite 230, in Hilo.

**9. ADJOURNMENT**

**Motion and vote:** Ms. Nicholson moved to adjourn, Ms. Gentry seconded the motion, and all members present voted aye.

The meeting adjourned at 10:57 a.m.

Respectfully submitted:

*Mary E Crosson*  
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Mary E. Crosson, Secretary