

# HAWAI'I COUNTY BOARD OF ETHICS

## MINUTES – REGULAR SESSION

Wednesday, August 8, 2007 – 10:02 a.m.

Ben Franklin Building  
333 Kilauea Avenue, 2<sup>nd</sup> Floor  
Hilo, Hawai'i 96720

**Present:** Wayne Joseph, Chair  
Ann Lum, Vice Chair  
Tricia Malanka, Member  
Lincoln S. T. Ashida, Corporation Counsel (counsel for the Board)  
Mary E. Crosson (secretary for the Board)

**Others Present:** Jason Armstrong, *Hawai'i Tribune-Herald* (arrived at 10:08 a.m.)

### 1. CALL TO ORDER

The Chair called the meeting to order at 10:02 a.m.

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

No members of the public were present.

### 3. APPROVAL OF MINUTES

#### **Minutes of the July 11, 2007, Regular Session.**

**Motion:** Ms. Lum moved to approve the Regular Session minutes of July 11, 2007, and Ms. Malanka seconded the motion.

**Discussion:** Ms. Lum said the minutes of July 11, 2007, needed a few friendly corrections, as follows:

- page 7, third line from bottom, change *na'ua* to *na'au*.
- page 32, change *Senator Akana*, near the middle of the page, to *Senator Akaka*
- page 43, second line from the bottom, change *'eha maha* to *'eha paha*
- page 51, a third of the way down, change *the locks four our office door* to *the locks for our office door*

The Chair wanted to commend Karen Delimont for preparing the minutes of the July 11, 2007, hearing, but questioned why she had emailed them a couple of weeks ago to the members

for review. He felt that if they had any comments or corrections to be made to minutes, it should be brought up at a Board meeting.

Ms. Lum said she believed the minutes were emailed to them so they could review the various Hawaiian language terms in them and let Ms. Delimont know if she had typed them correctly.

Mr. Ashida said he did not know why the minutes had been emailed, but it may have been out of concern that they be available to the public for inspection within 30 days, a requirement of the Sunshine Law. It does not matter whether minutes are approved by a board or not, as approval is not a legal requirement. Ms. Delimont may have wanted those in authority to look at them.

The Chair said that in emailing minutes to members, someone could change the content before having everyone agree and vote upon the changes.

Mr. Ashida directed the secretary not to email minutes in the future and to have available for the public those that are at the 30-day mark, whether or not approved by the Board. A caveat could be placed on such minutes, indicating that they have not been approved by the Board and are subject to changes.

**Vote:** The Chair called for a vote of all those in favor of approving the July 11, 2007, minutes with the changes as noted by Ms. Lum. All members present voted aye.

#### **Minutes of the July 11, 2007, Executive Session.**

**Motion and vote:** Ms. Lum moved to accept and file the Executive Session minutes of July 11, 2007. Ms. Malanka seconded the motion, and all members present voted aye.

#### **4. COMMUNICATIONS**

##### **Communication No. 2007-79: Letter from Nancy Burns regarding her petition against Councilmember Bob Jacobson.**

**Motion:** Ms. Lum moved to accept and file the communication, and Ms. Malanka seconded the motion.

**Discussion:** The Chair stated that Ms. Burns letter had been emailed to him and asked whether it had been emailed to the other Board members. Ms. Lum said yes.

The Chair asked what the Corporation Counsel's policy is when a letter is mailed to them and whether it is given a communication number. Mr. Ashida said that if a letter is addressed to the Board of Ethics through his office, he would assume it is assigned a communication number and placed on the agenda for the Board to review. If a Board member should receive an email concerning a Board matter, as in Ms. Burns' case, he would recommend forwarding it to the Board's secretary, who would give it a communication number and place it on the agenda to

make sure everyone sees it. Mr. Ashida said that he believed all matters addressed to the Board of Ethics had been placed on the Board's agendas.

Mr. Ashida stated that the resignation letter of Board member Kendall Sharpless was addressed to him personally. The Board's secretary did ask him whether it should be agendized, but he told her no, that it was not a matter of Board business and the Board would not get to vote on it. He said that reporter Jason Armstrong had asked him why Ms. Sharpless' letter was not agendized as were those of prior Board members, such as Kerry Inouye.

Ms. Lum said she believed Mr. Inouye's letter was addressed to the Board, and the Chair said it was addressed to the Mayor, with copies to the Board.

Mr. Ashida said that henceforth, if he receives a letter concerning a Board matter, and as long as it is a matter of public record, he will ask the secretary to assign a communication number and place it on the agenda for review. This will include issues not requiring a vote by the Board.

The Chair said that as the Board members' names and email addresses appear on the County's website, it should be their policy that if a member receives any email on Board business, he/she should not reply and should forward it to the secretary. Mr. Ashida agreed, but said it would be acceptable to reply with a thank you and statement that the email would be forwarded to the Board's secretary.

The Chair asked if there was any further discussion regarding Communication No. 2007-79; and there being none, he called for a vote.

**Vote:** All members voted aye on the motion to accept and file Communication No. 2007-79.

## **5. NEW BUSINESS**

Mr. Ashida explained what gift disclosures are to new Board member Tricia Malanka. In a nutshell, the golden rule is that no County employee or officer should be accepting gifts from anyone under circumstances in which it could be inferred that the gift was meant to influence the officer's or employee's official decision-making. However, the law does allow the receipt of certain gifts, as long as there is no conflict and it is given under appropriate circumstances. But if a gift is given under circumstances in which someone could reasonably infer that it might be a reward, and it is worth over \$100, the law requires the disclosure of the gift. All County employees, who total about 2,300, are required to file the disclosures. However, only about a dozen disclosures are received each year. If someone is filing a gift disclosure, it is because he or she has received a gift under circumstances where it could be inferred the gift was intended to affect that person's official decision-making.

The Chair stated that the gift disclosures had been reviewed.

**Motion and vote:** Ms. Lum moved to accept and file the gift disclosures, and Ms. Malanka seconded the motion. All members present voted aye.

## 6. UNFINISHED BUSINESS

### a. Further review and discussion of draft *Ethics Guide for Hawaii County Officers and Employees* booklet.

The Chair said he was told by the Corporation Counsel that under this agenda item, he could bring up the resignation of Kendall Sharpless and her failure to disclose her campaign contributions. At next month's meeting, he would like to spend time addressing what proper conduct and inappropriate conduct is for members of the Board of Ethics, and what should be disclosed. He said he did not know whether Ms. Sharpless intentionally or unintentionally did not disclose her campaign contributions to Councilmember Bob Jacobson, but he felt this was a serious taint on the Board. Members of the BOE need to know what is ethical and what is not. He said it was also brought to his attention that when Ms. Sharpless contributed to Mr. Jacobson's campaign in August 2006, her residence was listed as being on Maui. However, she became a BOE member in February or March of 2006.

Mr. Ashida said the media brought this discrepancy on her residence to his attention, and he corresponded with Ms. Sharpless via email yesterday on this matter. His concern was to ensure the integrity of prior BOE actions in which she voted. She explained to Mr. Ashida's satisfaction that she has been a resident of the Big Island for a significant period of time. Confusion arose because the particular checking account she used was at a Maui credit union and perhaps that address was used in her contribution to Mr. Jacobson's campaign. She asked Mr. Ashida to pass on the correction to Mr. Jacobson, and Mr. Ashida forwarded the series of emails to Mr. Jacobson along with Ms. Sharpless' request to make the record clear. He said he accepted her explanation as being reasonable and had no reason to doubt that this is what had occurred.

The Chair asked whether there were any other ways to cross-reference Ms. Sharpless' residency, such as with voter registration information. Mr. Ashida said he could verify her voter registration information with the County's Elections Division and explained that it is standard practice, since his office works on filling all board and commission vacancies, to do a district verification check on each application that comes in. All applications are cross-checked with the Elections Division to ensure applicants are registered and live in the council district in which they vote.

The Chair said that would satisfy him, and he was glad these checks and balances were in place. He felt the situation was serious, because if Ms. Sharpless were not a resident, a repercussion would be that they would have to go back and look at everything the Board had voted on since she became a member.

The Chair stated he was also concerned about agenda items. He had wanted Ms. Sharpless' resignation placed on the agenda under New Business so that the public would know the Board was discussing the issue and making efforts to resolve it. He asked what the policy is for Board members to place issues on the agenda.

Mr. Ashida said there was no policy in place, so it was a good time to talk about it. He said he had instructed the Board's secretary not to put Ms. Sharpless' resignation letter on the

agenda but that in hindsight, and for the future, anything which affects or would interest the Board should appear on the agenda, regardless of whether it is an issue the Board needs to vote on. He described how the Police Commission has nine members and deals with controversial issues. The members would call the secretary to place items on the agenda, and the chair felt she was losing control of the agenda. The chair controls the agenda. With the Police Commission, the issue was resolved by having an item near the end of each agenda for the members to say what they want placed on the next agenda. He said he would leave it to the Chair's good sense as to how to handle the BOE agenda.

The Chair said that for the record, if he makes a recommendation to have something agendized, it should be placed on the agenda. If someone wants something on the agenda, they should email him and make a request. If the request is made two weeks before the meeting, he felt it should be placed on the agenda.

Ms. Lum said they could also make suggestions near the end of each meeting, and the Chair said anyone could do that.

The secretary asked whether the Chair wanted her to add to each agenda a discussion of items for the next agenda. The Chair said to send him the proposed agenda two weeks before the meeting, and he will review it to make sure nothing is missing.

The Chair asked Mr. Ashida whether the Chair has the authority to agendize items, and Mr. Ashida said that normally, it is provided by rule. The Council has a resolution that the chair alone dictates what makes it on the agenda.

The Chair said he received an email from a Board member regarding Ms. Sharpless, and that all the members were copied on it. He said it may have been harmless, but he did not believe Board members should be emailing all the other members in one email or discussing sentiment towards anything involving the Board. Mr. Ashida said the Chair was correct, as long as the email dealt with matters of Board business. The Chair said he understood this, but felt it was a gray area, and he wants to get out of all gray areas. He did not want any public impression that the Board of Ethics, which is supposed to be telling everyone what is right and what is wrong, engaged in possible gray areas. He did not feel it was in the Board's best interest for a member to email other members regarding any type of business before them.

Mr. Ashida said that setting a policy with respect to what should or should not go on would be the Chair's call. A suggestion that came before the Police Commission was to set out a Police Commissioner's code of behavior and conduct. He was not suggesting that needed to be done with the Board of Ethics, but the police commissioners shared similar concerns.

The Chair said that for next month's agenda, under New Business, he wanted a discussion on what is appropriate and inappropriate so that members would have a clear understanding of what is expected and appropriate for them.

Ms. Lum said that with emails, there is an option to reply to just one person, and the Chair agreed. Mr. Ashida said that when an email comes to his office on a Board matter, he always instructs members not to reply to everyone listed on the email, just to him. When he and a Board member interact individually, the Sunshine Law is not violated. In addition, the Board

members enjoy the attorney-client privilege with him as long as it is about privileged legal matters.

The Chair again stated that he does not want Board members forwarding their personal perceptions on specific situations to the rest of the Board members.

The Chair said he had exhausted his questions and moved toward discussion of the *Ethics Guide*.

Ms. Lum said she did not have time to go over the whole guide again, but she kept finding little things to be corrected. She asked Mr. Ashida about the “Applicability” section on page 2 and whether he had communicated with the Council about making the Charter consistent with the Code in terms of who needs to complete financial disclosure forms. Mr. Ashida said yes, that Pete Hoffmann had introduced a bill per the Board’s request to amend that portion of the Code of Ethics so that members of boards or commissions with only advisory powers and functions would be exempt from filing financial disclosures.

Mr. Ashida further explained that members of an advisory board or commission which was created by the County Code did not have to file financial disclosures. However, members of an advisory board or commission which was created by the County Charter *would* have to file financial disclosures. This was inconsistent and did not make sense, so the Council was asked to introduce legislation to change this. The bill went through its first reading a couple of weeks ago and is scheduled for a full Council meeting next Wednesday in Kona. Some of the Council members, however, expressed the sentiment that the proposed bill is not a good idea. They felt that everyone should file financial disclosures, including members of advisory boards and commissions. Mr. Ashida expressed concern that as a part of the government, there was a need to balance the need to collect personal information about people versus the need for that information. He had told the Council that as government, they should not collect personal information just because they can. There needs to be a reason to collect the information. There are board members who make substantial decisions and therefore should file financial disclosures. This is not necessarily true with advisory commissions. However, since some Council members seem to want all board and commission members to file financial disclosures, it is possible the bill may morph into one requiring that.

Ms. Lum said that the wording in the “Applicability” section of the guide, then, should remain the way it is. Mr. Ashida said the bill would probably get resolved in a month or so.

Ms. Lum asked that on page 2 of the guide, under “Gifts,” the word “circumstances” be changed to “circumstance” and the words “be reasonably” changed to “reasonably be.” She said that was as far as she got in her review.

The Chair asked whether the content of the guide was what they wanted. Ms. Lum said she wished it could be in simpler language but did not see a way to do so. She said that if the guide is to have respect, the language needs to be as well done as they could do it. The Chair said he wanted to get moving on the guide and felt the content is excellent and that it would serve as a great guide. He would support a motion to accept the guide and proceed to getting the Mayor’s approval.

**Motion and vote:** Ms. Lum moved to accept the *Ethics Guide* and forward it to the Mayor for approval. Ms. Malanka seconded the motion, and all members present voted aye.

Mr. Ashida clarified that the Board wanted him to send the *Ethics Guide* to the Mayor for approval. The Chair said yes and also to ask for publication.

Mr. Ashida said an additional signature line for the Council Chair to approve the guide may be a good idea, as the policy is intended to cover all County officers and employees in both the legislative and executive branches.

**Motion modified and vote:** Ms. Lum moved to modify her motion to include the Council Chair in the approval of the *Ethics Guide* booklet. Ms. Malanka seconded the modified motion, and all members present voted aye.

The Chair thanked Mr. Ashida for the suggestion.

**b. Further review and discussion of the *Confidential Financial Disclosure Form*.**

Ms. Lum said they had been waiting to see if the dollar amounts on the instruction sheet for the financial disclosure form could be changed, and they had previously sent a letter to the Council asking for the amendment. As the current amounts were in the County Code, they were not allowed to just change them but had to get Council approval.

Mr. Ashida said that a letter had been sent by former BOE Chair Bob Williams, but in checking the Council agendas and minutes, it did not appear the Council followed up on the recommendation. He said he could pursue the matter by drafting the bill himself and sending it to the Council Chair, saying it is being requested by the Board of Ethics. Once it gets agendized, the BOE members could appear before the Council to lobby for it.

The Chair said he would like to proceed that way. However, late last year the Board had become proactive in trying to establish changes to become more current. In September he had submitted a letter to the BOE, proposing they request of the Council the authority to fine officials and employees who violate the Code of Ethics. The Board voted on his letter and recommended that it go to the Council. They also had acted on an issue which came up as a result of a petition involving Gary Safarik, in which the Board wanted incumbents who were seeking reelection in an election year to be given a time cap on sending campaign literature using County funds. The Chair said these issues seem to have been lost, although he had asked about their status at several meetings earlier this year. Only now, through an email from Mr. Ashida, did he learn of their status. He would like those items agendized so they can be readdressed.

Mr. Ashida asked the Chair if he would like him to draft the proposed legislation for these issues. The Chair said the letters they sent out already exist. Mr. Ashida pointed out that the Council, however, never acted upon them. The Chair said they could be redrafted and resubmitted.

Mr. Ashida suggested that he put together draft legislation for all three of these items and follow up with the Council Chair, so as to get the ball rolling.

The Chair asked whether the items could still be agendaized, and Mr. Ashida said yes, and that he will update the Board on the progress at next month's meeting.

The Chair directed the meeting back to the financial disclosure form, saying that it appeared they could approve the form, but the instruction sheet still needed modifications which the Council would need to approve.

**Motion:** Ms. Lum moved to accept the June 4, 2007, draft of the *Confidential Financial Disclosure Form*, and Ms. Malanka seconded the motion.

**Discussion:** Ms. Lum asked the secretary to change the justified margin on page 1 of the form, where it quoted Section 2-91.1(c) of the Hawai'i County Code, to a ragged right margin, as she felt that would be easier to read.

**Motion amended and vote:** The Chair clarified that the motion was being amended to make the change in formatting by the quote, so the motion would be to accept and use the form for all future employees and officers who need to file it. Ms. Malanka said she would second the amended motion, and all members present voted aye.

The Chair instructed that the draft changes in the instruction sheet be continued as Unfinished Business on the September agenda.

**c. Further review and discussion on the *Rules of Practice and Procedure of the Board of Ethics*.**

Ms. Lum suggested they start on the first few rules so as not to be overwhelmed. Corrections were needed in references to the County Charter, which had undergone changes.

The Chair asked what the motivation was to put this item on the agenda, and Ms. Lum explained that the Board's prior counsel, Bobby Jean Leithead-Todd, felt they needed to review and update their rules.

Mr. Ashida said the Corporation Counsel recommends that all boards and commissions periodically review their rules. He did not see anything wrong with the Board's rules as they now exist, although citations could be updated. He suggested obtaining copies of the rules of the other counties' ethics boards and the State's Ethics Commission so they could compare them. The Chair said he did not want to be overwhelmed and asked that they just try to parallel the State Ethics Commission rather than the other counties. He would like to narrow their vision and make the task easier by being focused on what the State is doing. He asked if everyone was okay with continuing this item on the next agenda as Unfinished Business.

**Motion and Vote:** Ms. Lum moved to continue this agenda item to the September agenda. Ms. Malanka seconded the motion, and all members present voted aye.

The Chair said he would like to welcome Tricia Malanka to the Board of Ethics and thanked her for driving in from the west side of the island.

7. ANNOUNCEMENT

The Chair announced that the next regular monthly meeting of the Board of Ethics was scheduled for Wednesday, September 12, 2007, at 10:00 a.m. at the Department of Liquor Control's conference room at 101 Aupuni Street in Hilo.

Mr. Ashida said this would be a good time for Board members to suggest to the Chair items for the next agenda. He said that since Ms. Malanka is a new member, and they could possibly get another new member by the next meeting, he would be willing to provide a PowerPoint ethics presentation, which he also gives to all County employees in training sessions. It would take one-half to one hour and would be a good refresher. The Chair said that when they get their fifth member, he would strongly be in favor of that.


The Chair said he wants a discussion of the Sunshine Law placed on the next agenda. He said they need to reeducate themselves to become more aware and that training should occur regularly with the Board of Ethics.

8. ADJOURNMENT

**Motion and Vote:** Ms. Lum moved to adjourn the meeting, Ms. Malanka seconded the motion, and all members present voted aye.

The meeting adjourned at 11:11 a.m.

Respectfully submitted:

  
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Mary E. Crosson  
Secretary to the Board of Ethics