

BEFORE THE BOARD OF ETHICS
COUNTY OF HAWAI'I

In the Matter of the Petition by

Karsten Oliva,

Petitioner,

and

Maurice Messina,

Respondent.

PETITION NO. 2021-14

INFORMAL ADVISORY OPINION

Initial Review Hearing: November 10, 2021

Hearing: December 6, 2021

INFORMAL ADVISORY OPINION

By Petition filed on October 2, 2021 (hereinafter referred to as "Petition") with the Hawai'i County Board of Ethics (hereinafter referred to as "Board"), Karsten Oliva (hereinafter referred to as "Petitioner"), requested a finding from the Board that Maurice Messina, the Director of Parks and Recreation (hereinafter referred to as "Respondent") violated Hawai'i County Code Section 2-83 (Fair Treatment) based on (1) failure to provide leadership with integrity; (2) dereliction of duty to ensure fairness; and (3) obstruction of justice. Petitioner requested an open hearing.

At its duly noticed meeting on November 10, 2021, the Board initially reviewed and considered the above-captioned Petition pursuant to Rule 4 of the *Rules of Practice and Procedure of the Board of Ethics*. Petitioner and Respondent both appeared by in person and provided testimony to the Board. Respondent noted that he did not file a response as he was unclear which Hawai'i County Code Section Petitioner was alleging, he violated. The Board determined that Section to be 2-83 (Fair Treatment). Following discussion with both Petitioner and Respondent, the Board continued the hearing to its next duly scheduled meeting of

December 6, 2021 and provided a deadline for each party to file either a response or supplemental pleadings and exhibits for the Board's consideration.

At its next duly noticed meeting of December 6, 2021, the Board further reviewed and considered the above-captioned Petition pursuant to Rule 4 of the *Rules and Practice and Procedure of the Board of Ethics*. Petitioner and Respondent both attended the meeting in person and provided testimony and answered questions from the Board. The Board, having deliberated and considered and giving appropriate weight to the testimony and evidence submitted by the Petitioner, and having considered the arguments presented, hereby renders the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. To the extent that any of these Findings of Fact are Conclusions of Law, they are to be so construed.

The Petition

2. Petitioner is a County of Hawai'i resident that was regularly utilizing the Kona Aquatic Center (hereinafter "KAC") until August 4, 2021.
3. On August 4, 2021, the Hawai'i County Police Department served Petitioner with a Trespass Notice that prohibited Petitioner from entering onto the KAC property for one (1) year from the date of service. Petitioner was removed from the KAC property and forced to leave the area by the police officers.
4. Petitioner claims that false allegations were made against Petitioner. The false allegations were that Petitioner was harassing staff, pool patrons, and not following Covid protocols.

5. Petitioner alleges that this Trespass notice is a violation of his “constitutionally protected liberty interest not to be banned from a County of Hawai’i recreational property without procedural due process.”
6. Petitioner alleged that Respondent’s duties as the Director of Parks & Recreation is “to ensure that a formal appeals process exists for any and all trespass notices served at County of Hawai’i recreational properties.” Petitioner alleges that “neither the Notice of Trespass nor the Parks & Recreation website outline any such right or process.”
7. Petitioner alleges that Respondent’s “choice to stand idly while my constitutionally protected procedural due process rights are being trampled upon, Messina continues to be egregiously derelict in his duties as Director of Parks & Recreation.”
8. Prior to the December 6, 2021, hearing, Petitioner submitted additional eighteen (18) exhibits for the Boards consideration. These exhibits included twelve (12) emails to either Mayor Roth or Director Messina (Respondent) on various dates in 2020 and 2021, as well as photos of signage at the KAC, a 911 audio recording, and audit documents involving Bonnie Nims.
9. Petitioner testified that the next closest aquatic center (pool) is a couple miles away at Konawaena. Petitioner testified this location is burdensome to him for the following reasons: (1) that having to drive there is time consuming; (2) the cost of gasoline is over \$4.00 a gallon; (3) that by driving to the Konawaena pool, he has to pass the hospital where his father passed away some time ago; (4) given the hospital’s proximity to the pool, he has had to pull over for ambulances quite often; and finally (5) that there is a lot of back and forth traffic which is time consuming.

Respondent's Filings

10. Prior to the December 6, 2021, hearing, Respondent submitted a letter to the Board dated November 24, 2021, which included attached exhibits for the Board's consideration.
11. Respondent's letter detailed a long history of Petitioner harassing County of Hawai'i staff members (lifeguards) of the KAC following Petitioner not being hired as a County of Hawai'i lifeguard at the KAC.
12. Respondent's letter further details the email sent by Petitioner that resulted in Respondent deciding to cease further communication with Petitioner. This email included Petitioner photo shopping the face of a County of Hawai'i employee that is African American onto the head of Michelangelo's David, which was sent in an email to Respondent mocking the appearance of a specific employee. Respondent noted the targeted employee was distraught and felt this was a targeted racist attack. Respondent informed Petitioner that further communication with Petitioner would be immediately ceased based on his continued harassing and inappropriate emails.
13. Respondent's exhibits illustrate Respondent's repeated communications/responses to Petitioner's recurring displeased emails, until the incident with the email referenced above occurred.
14. Nevertheless, regardless of the above information/occurrences of harassment, Respondent made arrangements for Petitioner to continue using the KAC facilities. Respondent's letter also indicated the delicate thought process and consideration that went into determining how to best handle Petitioner's angst toward the County and KAC lifeguards. Petitioner was assigned his own swimming lane at KAC to keep Petitioner away from other patrons of the KAC while still affording Petitioner an opportunity to continue using the KAC facilities.

15. Respondent's letter indicated that on July 30, 2021, Respondent became aware of a Complaint Form submitted by a KAC patron indicating that Petitioner was harassing community members and their children while they were patrons of the KAC pool. This continued harassment of KAC lifeguards that was now also being inflicted on community members (and children) of the pool, prompted Respondent to request the issuance of the Trespass Notice to ensure the safety of both County of Hawai'i employees and community members enjoying the KAC facilities.

Board's Ruling

16. Hawai'i County Code Section 2-83(a)(3), Fair Treatment, states, "All persons shall be treated in a courteous, fair and impartial manner."

17. Chair David Wiseman moved that the Board find that based on the substantial submissions before the Board, Respondent is not in violation of any Section within the Code of Ethics

18. Board Member Amy Self seconded the motion. The motion passed 4-0.

CONCLUSION OF LAW

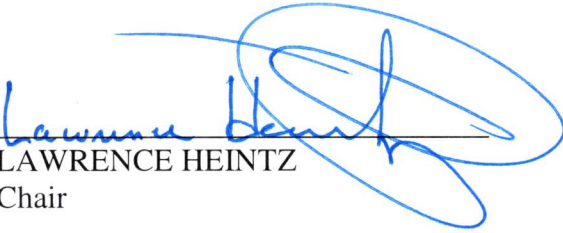
Based upon the substantial evidence presented and the Board's review of the Hawai'i County Code of Ethics, and the Board's Rules of Practice and Procedure, the Board finds and concludes that Respondent did not violate any Section of the Hawai'i County Code of Ethics, nor was Respondent derelict in his duties, nor did Respondent fail to provide leadership with integrity, nor did Respondent obstruct justice at any time.

ORDER

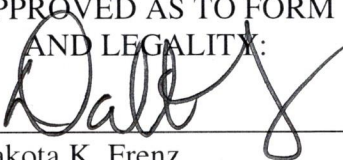
Pursuant to Board Rule 4.9, this Informal Advisory Opinion shall be filed and a copy shall be sent to the Petitioner.

Dated: Hilo, Hawai'i, February 16, 2022.

BOARD OF ETHICS, COUNTY OF HAWAI'I

By 
LAWRENCE HEINTZ
Chair

APPROVED AS TO FORM
AND LEGALITY:



Dakota K. Frenz
Deputy Corporation Counsel