

**HAWAI‘I COUNTY BOARD OF ETHICS
MINUTES – REGULAR SESSION**

Wednesday, June 08, 2022
10:00 a.m. to 11:38 a.m.
Hawai‘i County Building
25 Aupuni Street
County Council Chambers
Hilo, Hawai‘i 96720

Members and Staff Present:

Amy Self, Vice Chair
Denise Nakanishi, Member
Kelly Valenzuela, Member
Erick Allende, Member
Dakota Frenz, Deputy Corporation Counsel
Malia Kekai, Deputy Corporation Counsel
Kelsey Watanabe

1. CALL TO ORDER (10:00 a.m.)

Ms. Self called the meeting to order at 10:00 a.m. Present was Amy Self, Erick Allende, Dakota Frenz and Malia Kekai. Kelly Valenzuela was in attendance via Zoom.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:01 a.m.)

There was no public testimony.

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF MAY 11, 2022
(10:10 a.m.)**

Motion and Vote: Ms. Self moved to approve the minutes, subject to corrections. Ms. Self, Mr. Allende & Ms. Valenzuela voted aye. (10:07 a.m.)

4. NEW BUSINESS (10:03 a.m.)

a. Petition 2022-07: Petition alleging that the Prosecuting Attorney violated Section 2-83(3) Fair Treatment of the Ethics Code.

Ms. Frenz: Chair, just before we get started, this is Deputy Corporation Counsel Cody Frenz, on behalf of Kelden Waltjen for this particular hearing. I’m conflicted out of hearing Ms. Cummings’ matter given my unrelated representation of the Prosecutors Office so I have Substitute Counsel for the Board, Deputy Corporation Counsel Malia Kekai who will be representing the board for this particular petition. Thank you.

Ms. Self: Okay would the petitioner like to come forward?
Ms. Frenz: Ms. Cummings, we'll have you grab that mic, just make sure it's turned on okay? Thank you.

Ms. Self: And we have our other member here, Denise Nakanishi. Okay could you state your name for the record please?

Ms. Cummings: Millicent Cummings.

Ms. Self: And...

Mr. Christie: Aloha and good morning I'm Roger Christie, personal counsel to the petitioner.

Ms. Self: Okay, thank you.

Ms. Cummings: I've also brought another witness, Mr. Christie and Kalei.

Ms. Self: Okay. Okay you can proceed anytime you're comfortable.

Ms. Cummings: Thank you...Aloha kakou, I would like to commend the Board of Ethics for taking a second look at this critical and time sensitive case. I come with clear and factual evidence to illustrate why the Board's decision to reject my first petition was biased. As a result of false and misleading information presented by Mr. Waltjen on May 11th. The conduct of employees in the Code of Ethics, Section 2-83(a)(3) states: that the prosecuting attorney must treat the public in a courteous, fair and impartial manner. Mr. Waltjen however has failed to respond to any of my numerous attempts to speak with him via phone calls, personal visits, formal letter, sworn affidavit, and now 2 hearings over the past four months. At the first hearing Mr. Waltjen stated, I'll start off by reading our response to the petitioner which was a later dated May 9th, just two dates prior to the hearing, addressed specifically to the board chair and the board members, not to the petitioner. In his rebuttal he claimed:
a)...quote "it is not unusual that the petitioners claim has not yet been addressed by our office", b) he did assign his chief investigator Daniel Pang to the case and c) it's also my understanding that Mr. Pang did indicate to one more of the individuals that proper authority to refer the proposed indictment to would have been the U.S. District attorney's office in Honolulu, and U.S. attorney Claire Connors. For the record, Hawai'i's attorney general is actually Holly T. Shikada and one should not have to go to Honolulu regarding crimes happening here in Hilo. Meanwhile Mr. Waltjen continues to ignore the Petitioner, there is no evidence of a case and Mr. Pang never directed me, re-directed

me to any other agency nor would it have ever been relevant if he did. I have video footage that verifies no such redirection ever took place. No one who submitted the evidence on February 14th has ever received a response from Mr. Waltjen or Mr. Pang to my knowledge. The only redirection I was ever personally given came from Mr. Waltjen's secretary who told me that I should have brought the evidence to the Police Chief which I promptly did, to no avail. Upon reading the tribune herald's coverage of the hearing, stating that there was in fact a case, I called Mr. Pang to get the case number. He could not provide me with the Case number, he could not provide that information and said he'd get back to me. I have yet to hear from Mr. Pang, Mr. Waltjen or Mr. Ferreira at any time since presenting Dr. David Martin's dossier in the proposed indictment from the Constitutional Law Group. Regarding Section 2-83(a)(3) I can see why the lack of common courtesy, fairness, and impartiality was overlooked by the Board. When asserting its final decision, in quotes "we see no unfairness by the prosecutor's office in their dealing with your issue.", because of the false and misleading information presented to the board that day...So to further compromise his credibility, Mr. Waltjen declared "As a result of one of the things" this is a direct quote, "As a result of one of the things that was brought to our attention was the necessary action that our office provide a written response, or phone call to the public if they submit a complaint for our review." He further claims to have made, past tense "changes to our internal procedures regarding acknowledgment of inquiries by members of the public". This remains an empty promise that likely influenced the board's decision to reject my petition. In both my letter to Mr. Waltjen in February and my sworn affidavit in April I spoke of his duty to bring the evidence before a judge, not a federal judge, but one right across the street in accord with, County Charter Section 9-a(2) and 9-3(a)(4). Excuses for not addressing the evidence of criminal by saying "Our office does not have the authority and jurisdiction to initiate criminal actions in federal court" or "Staffing shortages, crime trends, sheer volume of the evidence, finite resources" are all irrelevant. As president of the Emergency Child Protective Coalition and Representative for our rights, I bring the same sense of urgency with which I presented the evidence to Mr. Waltjen last February, my first petition to the board last March and now again here in June. Justice delayed is justice denied. Again, on the homeland security website it states, if you see something, say something. Unfortunately no one seems to be listening. Vaccine injuries, deaths, miscarriages, financial ruin, depression, domestic abuse, kidnapping, theft, rape and other crimes are all on the rise as we deliberate and postpone a well warranted investigation. Children are being used as guinea pigs for

experimental drugs that aren't even FDA approved with no long term safety date and forced to wear masks that lower their immune systems and cognitive skills for a virus they have a 99.98% survival rate, chance of surviving. This is child abuse. The prosecuting attorney's ethical misconduct, in failing to observe code of ethic's section 2-83a(3) is reason enough to accept the validity of this petition and act accordingly. Those who refuse to honor their oaths to uphold the (?) within the County charter and the constitution for the United States, need to be replaced by those who will. In the Hawai'i County Charter Code of Ethics Section 14-1b, "elected and appointed officers and employees shall demonstrate the highest standard of ethical conduct so that the public may have trust. And confidence in the integrity of the government. Mahalo to the board of ethics for addressing this broken trust. Aloha.

- Ms. Self: Is there a respondent? Is he on zoom? Okay...Mr. Waltjen?
- Mr. Waltjen: Good morning Chair, can you hear me okay?
- Ms. Self: Yes. Could you please state your name for the record and you may proceed after that.
- Mr. Waltjen: Aloha Chair, Prosecuting Attorney Kelden Waltjen. I did submit a response to the petition dated June 3rd, did the board get a copy to review? I'm not sure if a copy was also provided to the petitioner as well? It's a six page, single spaced response and it also includes attached exhibits A through F. I believe the exhibits encompass approximately 215 pages.
- Ms. Self: Yes the board got your response.
- Ms. Cummings: Could I inquire why the petitioner was not provided with the response, 4 months later now? I still haven't received anything from this gentleman, who has a duty to respond as he says he will to me, specifically, not to the board, not to anyone else.
- Ms. Self: I'm told that you received, or at least it was sent to you by the Corp Counsel office, his letter in response to your petition.
- Ms. Cummings: Yes that was before the last petition, we're in that response, it wasn't a response to me, it was addressed to the chair and the members of this board. There still has been to this date no response to any of my inquiries to the Prosecuting Attorney's office or him personally as I said in this testimony, not even responding to an affidavit, letters, phone calls nothing. So this to me is continued

dereliction of duty, which is unacceptable.

Ms. Self: Well wait a minute, his response went to the Board and where's it should have gone, because this is a petition that's before the board. So he's responding to your petition to the board -

Ms. Cummings: Exactly, to the board.

Ms. Self: The board's secretary sent you what he sent, correct?

Ms. Cumming: Right, and I have pointed out in this testimony that it's irrelevant. Everything that was stated in his response still doesn't change the fact of the matter. He's not even here today

Ms. Self: Yes he is, he's on zoom.

Ms. Cummings: He's on zoom but he hasn't even responded to me at any time.

Ms. Self: Okay, let's hold off, you've had your opportunity, let's give an opportunity to respond to it.

Ms. Cummings: I'm looking forward to it.

Ms. Self: Okay thank you. You may proceed.

Mr. Waltjen: Chair, I could through and read my response if Ms. Cummings and Mr. Christie haven't had a chance to review it. It is very, rather voluminous. I don't have a problem reading, I submitted a response to the board because this petition was initiated before this board. This petition was initiated 10 days after the board's last hearing and that's why I provided a response to the board. My response is very thorough; I believe and I believe it addressed a lot of the things that Ms. Cummings mentioned this morning. How would the board like me to proceed? I don't have a problem reading it in its entirety but it may take a while.

Ms. Self: Okay, how would the board like him to respond? Would you want him to read it. I'm sure we all have read it all already, is that correct, am I saying this correctly? Okay so, unless you want to highlight certain aspects, I'm satisfied with the response we received. I've already read and it -

Ms. Cummings: E kala mai, but for clarity's sake, which letter, is there two letters now, for clarity's sake?

Ms. Self: It's dated June 3rd.

Ms. Cummings: So it's the 2nd response, and specifically this is the response that he's referring to, to this petition, correct?

Ms. Self: Correct.

Ms. Cummings: I have not received it. So I would like to it to be read, it's obviously necessary if I don't even know how he's responding.

Ms. Self: I'm sorry but the board's secretary sent it to you, I don't know whether you received it but it was sent to you.

Ms. Cummings: How was it sent?

Ms. Self: Probably in the mail.

Ms. Cummings: Let's find out exactly because there was nothing in the mail the day before yesterday and if it wasn't in the mail...

Ms. Self: Excuse me, it was e-mail.

Ms. Cummings: I did not receive anything, so he doesn't have any verification that he sent anything to me. And I look in my junk file every day.

Mr. Waltjen: Aloha Chair, just for clarification, this petition is before the Board of Ethics, in accordance with, I provided a response to the Board of Ethics. I will note that this wasn't something that, that wasn't a lot of time, energy, and effort put in to write this response and I tried to get out as quick as possible and I got it out last week Friday, despite, as it was noted earlier by the petitioner, staff shortages, crime trends, everything that's occurring in this administration. This is an island wide office that I manage, but I set all that aside to make sure things were addressed and I did get it out on a timely manner, on June 3rd. And I'll note that this petition was filed 10 days after board's previous denial and dismissal of the previous petition. It appears that we're here again, and what appears to be the issue at hand is that the petitioner that I have not directed a response directly to her. I had a member of my staff receive all the documentation in person, majority of these things were received in person by a member of our staff. It was in taken into our office, a case number was generated. The matter was referred to our felony screening unit. Normal course of action with our felony screening unit is we review criminal matters of criminal violations of County and State law according to the prescribed statute of limitations. For felony matters, it could be, in my response I go over this, they could be anywhere from 3-6 years depending on the seriousness of the offense. If it's an offense such as sexual assault or murder,

there are possibly no statute of limitations for a murder investigation. So, the fact of the matter is these cases were referred to our office, they were in-taken. I made it very clear at the last hearing that these are violations of federal law, which our office does not have the authority or jurisdiction to initiate criminal proceedings in state court –

Ms. Cummings: What about the state laws?

Ms. Self: Excuse me.

Mr. Waltjen: I was very clear with that. I took it one step further, I actually had the matters that were referred to our office were then cross referenced to see if there were any violations of Hawai'i County, State or County criminal law that mirrored the offenses alleged under the proposed federal indictment. There are no Hawai'i State County laws that mirror those offense with the same elements that are alleged to have been committed under the proposed indictment. I took it one step further, I reached out to the United States Attorney's office for clarification as to whether or not they would be willing to receive the matter, they referred me to the F.B.I. I reached out to the F.B.I, the F.B.I. recently responded and they're willing to possibly look and received these documentations. So, I feel like I have gone above and beyond the call of what my office and what my authority to address this matter in a timely manner and to treat you fairly and courteously. I take my job very seriously. I was born and raised in this community, this community is always gonna be my home. I love this community and I'll whatever it is within my power and authority to make it a safer place.

Ms. Self: Okay, thank you. Do you have anything else?

Ms. Cummings: This meeting certainly can't be adjourned before the petitioner has access to what the respondent said about the petition -

Ms. Kekai: We have a record that it was sent to your email, Monday morning at 7:58 a.m. But I have a copy here if you would like.

Ms. Cummings: It's that big?

Ms. Kekai: The substantive part is just the first 6 pages, but there's supporting things, so if you guys would like to look at it.

Ms. Cummings: So yes, I would like a copy and I'd like a 5 minute, it looks like at least 5 minute break so that I can recess to read this response

which is my first knowledge of it.

Ms. Self: I would like to say is the bottom line here, the prosecutor does not have the authority to do what you're asking him to do.

Ms. Cummings: I disagree.

Mr. Allende: You can disagree but it doesn't make a situation change.

Ms. Cummings: The issue is 83-a(3), this is not fair. This is simply and absolutely unfair and not courteous.

Ms. Self: Excuse me.

Ms. Cummings: I'm excusing you.

Ms. Self: You were treated exactly the same way they treat anybody from the public.

Ms. Cummings: So are you saying Mr. Waltjen that you do the same thing to everyone? You don't respond to their affidavits, you don't respond to their letters?

Mr. Allende: Excuse me.

Ms. Self: Order, excuse me.

Ms. Cummings: That's what he's saying if he's treating everyone the same, I have had no response.

Ms. Self: Listen, I know how a prosecutor's office works, I'm an attorney as well.

Ms. Cummings: Is that a conflict of interest?

Ms. Self: I'm on the board, I'm retired now. But let me tell you what, those guys are so busy over there that's why I would never work for the prosecutors office -

Ms. Cummings: I'm a single parent, I'm very busy as well -

Mr. Allende: Decorum when she's speaking.

Ms. Self: He's telling you that your letter or whatever it was you reported to him, was taken through a process like they do with everything that comes from the public, they take it to a process. Normally their

cases come from the police because anybody who has been murdered or raped or whatever, that is reported to the police. The police go out and investigate and then they send it the prosecutors office and they consult with the prosecutor to see if there's enough evidence?

Ms. Cummings: So why isn't the Chief Investigator giving me the case number?

Ms. Self: Because they already told you –

Ms. Cummings: Nobody told me anything.

Ms. Self: They cannot do anything...

Ms. Cummings: Is there a case number or is there not.

Ms. Self: No.

Ms. Cummings: Okay if there's not a case number I demand a case number.

Ms. Self: Hey, excuse me.

Ms. Cummings: I'm accusing you again but this a valid point that you do need to address. He needs to address. Whether there's a case or not.

Mr. Allende: Ma'am, you need to understand, you brought this petition before the Board of Ethics, it's not a moment for you to try to have a inter-changing communication with the Prosecuting –

Ms. Cummings: So I have no...

Mr. Allende: Am I speaking or are you?

Ms. Cummings: I'm sorry?

Mr. Allende: So then stop talking until I'm done please.

Ms. Cummings: Okay, I guess you're not done.

Mr. Allende: So, when Ms. Self is communicating something to you, you need to hold the remarks, the comments until she is done. She is actually-

Ms. Cummings: I will do my best.

Mr. Allende: You're doing it now.

Ms. Cummings: I'm sorry I just said I'll do my best.

Mr. Allende: Your best is to stop. It makes it a lot harder to have a productive communication with you when you are doing things that isn't co-productive to this, alright, so this needs to stop.

Ms. Self: Mr. Christie, you were an attorney at one point.

Mr. Christie: No I was not, never.

Ms. Self: You never were?

Mr. Christie: I have never been an attorney no.

Ms. Self: Okay, well, anyway –

Mr. Christie: I am a witness to the introduction of the evidence to the Prosecutor's Office. Also my signature was on a proposed indictment. I've never heard back from the Prosecutors Office as well. Our other witness, Kalei is in the same situation, she has never heard back. Our dear friend Millicent has never heard back. Maybe the board has heard back but that's not treating the petitioner courteous and fairly.

Ms. Self: When she files petition, the petition goes to the board and then it goes whoever you're complaining about, which now it's the Prosecutor and the Prosecutor has an opportunity to send in this response and then the board secretary to you his response. So they told you that they sent it out to you by email on Monday

Ms. Cummings: It wasn't in my junk file, it's not in my inbox. I have no record so they're gonna have to prove that they sent it to me.

Ms. Self: No they don't have to prove anything.

Ms. Cummings: As far I know, no case number has been given to me, no response to my second. On two days prior to the last hearing is when he thought that was timely. He mentioned the term "timely" that's not timely to present a response only two days before. I never got a copy of that, as you know. So we had to do the first petitioner, with the petitioner not even knowing what the respondent said. Now here we are again, he says he sent it on the 3rd, today is still the 8th. So if he sent something in the mail on the 3rd I don't get til the 4th or 5th, I might not have checked my mail, if it was snail mail ...they're gonna have to verify that, otherwise as it stands, this is two petitions now, that the respondent has not responded to the

petitioner. The petitioner doesn't have the information for everyone to have everything out on the table which I would believe to me, that would be the ethical thing to do. So I'm going to ask for a 5 minute recess so that I can address the respondents rebuttal to my petition so that we can have an intelligent conversation.

Ms. Self: I'm gonna ask the board for a motion if someone would like to make a motion?

Ms. Nakanishi: I move that we allow for a 5 minute recess and go on to Unfinished business, 2022-08 and then reconvene.

Ms. Cummings: So when will I -

Ms. Self: Hold on we haven't finished yet. Do I hear a second?

Mr. Allende: Seconded.

Ms. Self: All those in favor say Aye.

Motion and Vote: Ms. Nakanishi made a motion to allow a 5 minute recess to allow the petitioner to review the respondent's response and to go onto Unfinished Business. Mr. Allende seconded the motion. All members voted aye. (10:28 a.m.)

Ms. Self: Okay you have 5 minutes.

Ms. Cummings: And then when we return just to be clear, we're going into some other petition, not mine?

Ms. Self: We're gonna keep moving, and when you come back we can take yours up again.

Ms. Cummings: So I have more than 5 minutes?

Ms. Self: Well, we just gave you 5 minutes.

Ms. Nakanishi: You're using your time.

*** The board allowed for Ms. Cummings to take a 5 minute recess. ***

*** The board returned from Executive Session (10:59 a.m.)**

Ms. Self: Okay so we've heard from the Petitioner and we've heard from the Respondent. Do I have – could I hear a motion from anyone regarding Petition 2022-09? Would anybody like to make a motion?

Ms. Nakanishi: Are we ready for a motion? I thought –

Ms. Cummings: Forgive me, I seem to be confused. How can a movement be made when the petitioner hasn't read until this moment. By the way I did check my email and I can show you that there is no such email in my inbox or my anywhere. So I still haven't received it. I just read it and I can certainly respond to it now before a motion is made. That seems to be the appropriate way to go.

Ms. Self: Okay but I can't give you more than 5 minutes.

Ms. Cummings: This will take 3.

Ms. Self: Okay.

Ms. Cummings: So what we're looking at here is a lot of information and thank you Mr. Waltjen for responding to the board, still not to me. But it's still addressed to the board, it's still doesn't address me, this response, and it still doesn't take into account the reason why I wrote the petition, the bottom line, the essence of the petition is, in reference to Section 2-83(a)(3) stating that the Prosecuting attorney must treat the public in a way that he's not treating me. In a courteous, fair and impartial manner. At no time has he been fair. At no time has he been impartial. At no time has he been courteous in any way. I wanna commend the board who has treated me fairly. Thank you for addressing this and e kala mai for interrupting, I've never done this before. You guys do this all the time, I'm learning and I'm very, I've spent 2 ½ years on this very, very life and death time sensitive information that goes from February, March, April, May and here we are in June and I'm only now given 3 minutes to respond to this document which I never received. And the last petition he did the same thing, giving you his response, not me, only 2 days before. So in neither time has he been fair with me, in neither petition has he been – I'm just dealing with Section 2-83(a)(3). That's what we're here to address, and how can anyone say, how can Mr. Waltjen say he has been courteous, how can you say he's been courteous, how can anyone say this gentleman has observed that code and you guys address violations of the County Charter, correct?

Mr. Allende: So to answer that question in my opinion, it's that as such once you make a petition to come before this board, you're creating us to become as a mediator between you and Mr. Waltjen. He's producing everything that you're saying he hasn't.

Ms. Cummings: No, not to me.

Mr. Allende: It's not to you anymore because now we are the mediators and we have now then produced that such information that you have requested, to you. You may not have received it in an email that you say you've not received it. but I'm sure that with what you have before you and we took the recess to (?) for you to actually look, have now seen that he has spent that time to reply to you. And it's nothing that's not courteous, there's nothing there that –

Ms. Cummings: Yes there is –

Mr. Allende: Well remember what we talked about please. So when he's there and has actually given this, there's nothing that's uncourteous about the time that it takes to deliver this type of material just as you wouldn't wanna be looked at as somebody who's doing something uncourteous with what you spent time and delivering us with.

Ms. Kekai: Sorry, point order chair. I just kinda wanna bring us back to the board process. So, the petitioner should have a chance to respond, are you finish responding to his -?

Ms. Cummings: No,

Ms. Kekai: Okay. And then once she's done, the respondent can then respond. And then the board can ask either of them questions but we don't have to do this back and forth explaining. Let's just let them present their case, let him present their case and then the board can deliberate.

Ms. Cummings: So the other point is that in my petition I'm very articulate in my testimony, I'm very articulate. Somebody needs to show me, where, as a result of quote unquote, this is what Mr. Waltjen said at the last hearing, okay, verbatim "As a result of, one of the things that was brought to our attention was the necessary action that our office provide a written response on the phone or a phone call...sorry. To the public if they submit a complaint for our review and he further states, and you guys will have to help me out, there's been no policy change from my experience. There's been no phone call, there's been no response, no written response, no email. Also he'd made changes to our internal procedures regarding acknowledgement of inquiries by members of the public. Now I am a member of the public who has not received so much courtesy as a phone call, ever. And if this, the only response, if

he's doing his job just to receive this, the proposed indictment, if he thinks that's doing his job, he's not correct. His job is to observe these County Charter Codes that your responsibility is to see if there's a violation. How you could not see that there's been a violation and there continues to be since February 14, is beyond me. There's been no policy change. Is he lying? Or has there been a policy change. In which case, where's the phone call Mr. Waltjen, and where is he? Could I ask him for that copy of the policy or could he state why he is not honoring any policy change in regard to me, a member of the public?

Mr. Kekai: No we're not doing questions right now, but if you'd like to make a public records request to him, you're free to do so.

Ms. Cummings: So the bottom line still remains let's just stick to the petition, which is very, very articulate. There's no wiggle room here. Just to receive life and death information. Information about people dying in this County every day. Again, February, March, April, May, and now we're in June, these crimes are still occurring on his watch in his County. These are crimes against humanity.. There's a very special clause a prosecuting attorney to not address a crime happening in his County, is dereliction of duty. It is not up for debate. But all we're here to do is to address the Code of Ethics Section 2-83(a)(3) that's what the petition is about, that's what your duty is, is to say has he violated that or not. And if you reject this second petition, then what is the purpose of a Board of Ethics? If there is no courteousness, no impartiality, and no fairness, which is his duty to uphold along with the constitution for the United States, if he's not doing that, how can we reject this petition. How can you reject this petition? And I'll close with that.

Ms. Self: Okay I'll give you an opportunity to respond if you would like, Mr. Waltjen. 5 minutes

Mr. Waltjen: Thank you Chair. Are we all going to set aside the fact that this is the 2nd hearing that I've attended and I've stated very clearly that I do not have the authority to prosecute any violations in federal court. I stated in my response that reviewed it, we looked at all the offenses. I cross-referenced there are no weird allegations that we can bring forth under Hawaii revised statutes or State or County Law violations. I do not have the authority to prosecute these matters in federal court. So I'm communicating that every was (?) that is very clear. That was confirmed by the United States Attorney's Office. I guess one other thing I just want to clarify earlier, there was a comment about Holly T. Shikada, correct, she

is the attorney general. That's the State Attorney General, Claire Connors is the U.S. Attorney. That's why I made reference to Claire Connors at the last hearing. I confirmed with the Attorney General's Office for the State of Hawai'i Criminal Justice division, Supervisor Lance Goto, he confirmed that they have not received any type of petition or dossier regarding these matters. He also reached out to others and to my knowledge this hasn't been brought forth to any of the other counties as well. The U.S. Attorney's office has not received a petition. I'm not sure why I'm the only Prosecuting Attorney authority in the State of Hawai'i that has been singled out and brought forth with a petition before a County Board of Ethics to my knowledge. I'm not sure. With respect to a policy change, I believe that by having this hearing I have put the petitioner and those members who are present in the room today, Mr. Christie, Kalei Kaleikini, I believe that that would be sufficient notice that I've received, they understand they've received it, all of these things were received by Mr. Pang in person. I just wanna make it really clear that to receive matters that were brought to our office from members of the public, it is very unusual and not common. We receive the cases that are referred to our office through criminal investigation, a majority of which is conducted by the Hawai'i Police Department. We also work with other state law enforcement agencies, State Narcotics Enforcement Division, State Sheriff's Department, the Department of Conservation, DOCARE, DLNR, that's where we get our cases from. We don't normally get cases generated straight from the public. This is not a criminal in which a victim of crime or complainant has provide a case for us to initiate. It's a situation where we have concerned members of the public bringing concern to our attention. Our office intakes the matter, we brought it in, and we even assigned a Prosecuting Attorney number to it because normally when we get a case from the Police Department or Law Enforcement Agency, it comes with the corresponding number. We took one step further, we put one, attached one to this matter. So, as far as the time frame, I explained it in our response that, I'll make this really clear, the Hawai'i County Prosecuting Attorney's office, we handle anywhere between 18-21,000 criminal law violations and cases each year. This is one of those cases. The fact of the matter is we're here to address whether or not this was done in a timely manner, I apologize if I can't respond any quicker than, with respect to the petition, this instant petition I believe was filed on May 19. That was 10 days after the board's decision. On May 23rd I was made aware of the petition via email that I received. This was set on that date, on May 23rd, that's when this June 8th hearing was set. And I was told to respond in a timely manner. I was able to produce a response which I think is very detailed by

June 3rd. And then that June 3rd response was provide to the board. I apologize that I didn't send you a copy, but that's not, as stated earlier, that's not the proper protocol because of the way these proceedings have been initiated, the board acts in a sense like a mediator. So, I provided everything to the board. The other thing is, because we've entered into this type of proceedings, it's almost created a division in a sense that I need to work through the board to provide you the response. But that being said, regardless of the board's decision today, I have no problem in mailing to you, or making available to you, certified copies of, or copies of my responses, dated from the first hearing as well as this hearing and I will make sure to mail that out via certified mail as soon as possible. I think I hit all of the concerns that were mentioned earlier. I apologize if you feel that, you believe that you wanted to get a response earlier than what was generated but as I stated at the last hearing, unfortunately I do not have the authority to address these matters in state court. The property authority would be the United States Attorney's office and the United States Attorney's office made it clear to me that the property investigation could be handled by the FBI. I've reached out to them. I'm gonna try to get them a copy of everything that was provided. So I'm really trying to go above and beyond to make sure that the community's concerns are addressed. I'm not here to determine whether or not a Federal investigation cannot be conducted. That's not within my scope or my authority. That's something for the FBI, you mentioned earlier, you quoted the Homeland Security. Homeland Security is a federal agency. It's not within my purview. We work alongside sometimes with federal law enforcement agents and cases get adopted federally, through joint efforts on our island. We do that, a lot of times that happens with child sex exploitation cases, narcotics cases in dealing with drug narcotics distributors, interstate (?), that kind of stuff. That's where there's overlap with our County cases but in this situation where you're alleging bioterrorism, terrorism, acts of terrorism and utilizing the COVID vaccination as a bio-weapon? Those are grounds that would fall until the purview of the Department of Justice and with the U.S. Attorney's office would then make a determination whether or not it would rise to the level of a case that they could initiate in federal court. I simply don't have that authority

Ms. Self: Ok, thanks Mr. Waltjen. Your time is up.

Ms. Cummings: Did he address 2-83(a)(3)? I don't think so.

Ms. Kekai: He provided his testimony and now you have your time to rebut. And then the board will deliberate.

Ms. Cummings: Every so quickly, I didn't hear at any time him specifically referencing what the petition is actually about. Which is 2-83(a)(3) the courteous, impartial, if he has still not honored what he said in the last hearing, which was he would by phone call, he would by email, some form of communication to acknowledge the public in some way. He has never done that with me, he has never one that with Mr. Christie, or any of the other people who brought the proposed indictment. Again, when a prosecuting attorney, when there's crimes in the state, it's his duty to address, regardless of if it's an FBI matter, if it's a this matter, if it's a that matter. He still has kuleana at least to treat me in a courteous, again back to what this petition is about, 2-83(a)(3), that's what we should be talking about, everything is secondary to that. And the bottom line is he has not been fair. I would certainly thank you very much for a hard copy of any information because it could save lives. People are dying as we deliberate. Again, he's not beholden now all of a sudden to the board to have a conversation with me that I have initiated back in February. He's had 5 months coming on now, February, March, April, May, now June to honor that code to uphold that code. That is a violation of this code for the board to discuss and vote on. Thank you.

Ms. Self: Okay do I hear a motion from anyone?

Ms. Valenzuela: I'd like to say something.

Ms. Kekai: You can ask questions first and then you guys can do the motion and then deliberate. So you just can't deliberate. But if you guys have any questions for either, you can do that now.

Ms. Valenzuela: If we don't have questions are we able to make a statement?

Ms. Kekai: A statement should be made after a motion.

Ms. Self: That would be in our discussion part after the motion is made we'll have a discussion.

Ms. Nakanishi: So, Mr. Waltjen, if somebody, a member of the public, walked in and said their child was raped or whatever, some pretty intense matter, you would refer them to the police to make a police report or to another investigative agency or what would be the process?

Mr. Waltjen: The first thing that we would do is we'd make sure the child is safe. The second thing that we would do is we would ask them if they had reported the matter to the Police Department or to what

agency it was reported to. And then from there we would address the matter. Because if it hadn't been reported at all, we do have investigators on scene that could possibly take a statement if needed. Normally a situation like that where there's a minor involved with child sex assault allegations, we would contact the Hawai'i Police Departments Juvenile Aid section and have the matter referred to them. They have detectives assigned to that unit who are specially trained to deal with those types of cases in the best way to make sure that number 1 we treat the victim in the utmost care to make sure that that victim is safe and in a stable home and not endangered and then go to lengths to make sure the investigation is handled. But that's what our office would do. But those situations are very, very rare. And this situation that we have is even more uncommon.

Ms. Nakanishi: So basically you're saying it would be referred out for investigation initially, just like you're suggesting that the U.S. Attorney would have the FBI which is their criminal investigation arm do the investigation. So if this alleged person, child's family came in, once it's referred out, do you keep calling em, how long, my point is, would you have treated that differently then you would have treated this petition or this complaint?

Mr. Waltjen: Once the police department is completed with their investigation they would then refer the matter to our office. That would be in the situation where a case was referred over. We also have other situations. Now let's say we have a situation where we had someone in custody pending investigation for a murder. That's a situation where if someone is arrested on a murder charge, what we have to do is there needs to be a charging decision gave within 48 hours of that arrest. A prosecutor would then be assigned to the case prior to that 48 hours elapsing and then we'd take a conferral call from the detective handling the case, a charging decision would then be made. If the prosecutors would authorize charging, the person would be charged, the case would be handed over to the prosecutors and then we would be responsible for filing a criminal complaint, initiating proceedings in district court and we would be involved in the case sooner. So where there's an arrest involved and we have someone in custody, the prosecutor's office gets involved sooner if there is no arrest and it's a matter where the person is question, the suspect, hasn't been arrested or is being held for detainment purposes, it might be elected by the police department to refer the matter over for prosecutors review. In that case it will be in taken when it was referred over, sent over to our screening unit and then reviewed for a charging decision. Our office uses a charging decision standard of whether or not we can

prove the case beyond a reasonable doubt, which is the standard that we're held to in court. So that's the normal course of how a case gets referred to the Hawai'i County Prosecutor's office, very similarly referred in other counties throughout the state as well as the attorney general's office.

Ms. Nakanishi: Thank you.

Ms. Valenzuela: Mr. Waltjen, just to clarify some stuff and I think that maybe as we go on, people will understand, there's different branches of government. And this is what I believe is going on right here that everybody is missing. The question that my fellow commissioner just asked you, when something comes to you guys, I don't think people realize that in that case, a sexual assault for a child, Juvenile Justice Center gets involved, are they in foster care, would the state get involved as far as that goes, catholic charities, there's different branches of professionals that get involved and many people don't know those different branches. In this case, the issue with which some may call a conspiracy theory, in regards to vaccinations, I think we're missing the whole objective. Correct me if I'm wrong, you've gone above and beyond it sounds to make sure and make very clear your branch is not the branch to come to in regards to the situation like this. You, I believe we all got the emails, we all got the packets, and to also make very clear, correct me if I'm wrong Mr. Waltjen, is that you explained that your office is not the accepting office for complaints such as these and so who would be that? It would be maybe the Federal Government, maybe the Department of Health with the State of Hawai'i, maybe a pharmaceutical company and I believe your hands are tied and it's limited, with response to you answering to us, you did that and then correct me also if I'm wrong because the petition was brought to us as commissioners for the Board of Ethics, in front of us. The protocol is, you would not respond to the petitioner, you would respond to the board. If it was not brought before us, that would be a different outcome, correct?

Mr. Waltjen: That's correct.

Ms. Valenzuela: That's all I have to say. Thank you.

Mr. Waltjen: The reason I keep on bringing up about the fact that it's unusual circumstances, if we were posed with a situation where I had victims, complainants, in a criminal investigation and a case referred to our office, when our office declines a case or prosecution, that victim receives a letter indicated the case was declined. When we have a victim witness assistance unit in our

office, that corresponds with victims in cases, every step of the way letting them know, updating them, they're almost like the liaison between our office and the victim to explain to them the process, update them about upcoming court dates.

Ms. Kekai: Sorry Mr. Waltjen, point of order. I don't think there was a questions asked, or if he can clarify which question he's answering at this point.

Mr. Waltjen: I was just providing further clarification as to processes and for Ms. Valenzuela. That's it.

Ms. Valenzuela: Thank you.

Ms. Nakanishi: I guess I do have a question to kind of circle back, is that victim that's getting that letter from your office, how does that normally happen? Cause that's the complaint is that she was not acknowledged.

Mr. Waltjen: It also depends, our office prosecutes cases everything from violations to petty misdemeanor offenses, petty misdemeanor offenses is offenses punishable by up to a 1,000 fine or 30 days in jail, all the way up to Class A felonies punishable by a maximum penalty of up to 20 years, or if it's a murder charge, life in prison, if it's a murder in the first degree, life in prison without the possibility of parole, other extended circumstances and sentencing provisions would play into those factors. We address those matters within the statute of limitations. That will be controlling factor. Here we have a situation where members of the public provided a concern regarding alleged violations of federal law. I do not have the authority to prosecute these matters, if we looked at them, I believe Ms. Cummings and Mr. Christie would agree with me, these are very serious allegations under a state statute, under a state review, we would determine that the statute of limitations would be anywhere between 3 to 6 years, if it was a felony offense. Given that purview, we would respond accordingly to a victim within that time period. Here we have a situation where this was first brought to our attention February 14th, today is June 8th, I've already appeared before the Board of Ethics, last month, the petition was filed prior to that. The allegations here by the petitioner is that she hasn't been timely addressed, after the board's decision last time, within 10 days she filed another petition. I didn't even have the chance to review everything. Another thing to just point out is that like I said earlier, very unusual circumstances. Ms. Cummings, Mr. Christie, they are not complainants, victims, under the purview, they are concerned members of the community bringing forth a

concern. Are we going to require the Prosecutor's Office now to establish a new type of time period to respond to people in a certain time period regarding we're gonna review all these cases? Everything comes in at different times and we try balance, we try to treat everyone fairly. I feel like I have treated Ms. Cummings very fairly here, this is the 2nd time I've appeared before the board of ethics. I've provided two written response is very detailed. I've reached out to federal agencies to assist in trying to provide this material documentation to them so that they are brought aware and made aware of the public's concerns because Ms. Cummings, Mr. Christie, Ms. Kaleikini are all members of the public and their concerns should be heard by someone. Unfortunately I'm not the right person to hear their concerns. That's the federal government.

Ms. Nakanishi: Thank you.

Ms. Self: Anybody else? Okay now, would anybody like to make a motion?

Ms. Allende: I'll make a motion to dismiss the petition regarding, Ms. Cummings against District Attorney Waltjen, Kelden Waltjen, in regards to Section 2-83(3)(a), in regards to all persons shall be treated in a courteous and fair and impartial manner.

Ms. Self: Okay, any discussion? I'm sorry I need a second.

Ms. Valenzuela: I second it.

Ms. Self: Okay, I second, by Kelly. Any discussion? Hearing none, all those in favor say Aye.

Motion and Vote: Mr. Allende moved to dismiss the petition. Ms. Valenzuela seconded the motion. All members voted aye (11:29 a.m.)

Ms. Cummings: Policies made to address the public within the Prosecuting Attorney's office should not be put forward if they're not gonna be honored. He still has not, as the policy change –

Mr. Allende: Ma'am, we made a ruling on your petition, so at the moment –

Ms. Cummings: Have a wonderful day thank you. Aloha.

Mr. Waltjen: Thank you Chair.

*** The board returned to item 5a (11:31 a.m.) ***

*** The board returned from item 5a (11:33 a.m.) ***

Ms. Self: Now we'll have discussion.

Ms. Kekai: Restate your motion please, for the record.

Ms. Self: Okay so what's going on is it's a reconsideration of the motion he just made and he wants to restate it.

Mr. Allende: And the motion is to change the verbiage from dismissal to Mr. Waltjen has no wrong doings in fair and courteous and impartial Manner in regards to Section 2-83, section 3.

Ms. Kekai: Okay so just for my own clarification, you guys are finding that there's no violation of 2-83(a)(3). Okay, thank you.

Ms. Self: Do I have a second?

Ms. Nakanishi: I second.

Ms. Self: All those in favor say Aye.

Motion and Vote: Mr. Allende moved to change the verbiage of Petition 2022-09 from dismissal to stating that Mr. Waltjen had no wrong doings in a fair and courteous and impartial manner in regards to Section 2-83(a)(3). Ms. Nakanishi seconded the motion. All members voted aye (11:35 a.m.)

*** The board moved to item 8 (11:36 am.) ***

5. UNFINISHED BUSINESS (10:29 a.m.)

a. Petition No. 2022-07: Review draft order dismissing a Petition alleging that the Prosecuting Attorney violated section 2-83(3) Fair Treatment and Section 2-84(c) of the Ethics Code.

Ms. Kekai: Sorry Chair, is this the previous one that she filed?

Ms. Self: Yes.

Ms. Kekai: I would say we just hold off on that one til she's back in the room.

Ms. Self: But this is the petition...this is the draft order for her petition, her first petition, we dismissed it.

Ms. Kekai: Oh okay. Yeah, I always just think it's better to have her in the room listening for this, just for fairness.

Ms. Self: Okay, we'll skip that one for now.

*** The board skipped item 5a and moved to item 5b. (10:29 a.m.) ***

*** The board returned to item 5a. (11:31 a.m.) ***

Ms. Self: Do I hear a motion?

Ms. Nakanishi: So moved.

Ms. Self: Motion to approve?

Ms. Nakanishi: I have one correction, sorry.

Ms. Self: Okay, you're making a motion to approve and do we have a second?

Mr. Allende: Seconded.

Ms. Self: Okay now we have discussion, go ahead.

Ms. Nakanishi: Page 3 -

Ms. Kekai: One second..

Ms. Nakanishi: Page 3, number 9, on the last sentence, it says responded, it should say respondent.

Ms. Self: Anybody else have corrections? Okay so...there's a motion to...okay let's take a vote, all those in favor of approving the opinion with the noted amendment, say Aye.

Motion and Vote: Ms. Nakanishi moved to approve the petition. Mr. Allende seconded the motion. All members voted aye (11:31 a.m.)

Mr. Allende: How would I amend the last motion in order to, the verbiage why instead of saying dismissal to say that he didn't have any wrong doings or anything like that.

Ms. Kekai: We could re-open the petition and then you could restate, I guess withdraw your previous motion and then restate your motion and then a new vote would be taken - yeah. I guess you could do a motion for reconsideration if you feel like you've made the inappropriate motion. We can motion for consideration.

Mr. Allende: I'd like to make a motion to reconsider the motion that was previously said in regards to Petition 2022-09.

Ms. Self: Okay do I have a second?

Ms. Nakanishi: Second.

Ms. Self: All those in favor say Aye.

Motion and Vote: Mr. Allende moved to reconsider the motion for Petition 2022-09. Ms. Nakanishi seconded the motion. All members voted aye (11:33 a.m.)

*** The board returned to item 4a (11:33 a.m.) ***

- b. Petition No. 2022-08: Review a draft informal advisory opinion regarding a Petition from a Department of Environmental Management employee seeking approval and assurance that there is no conflict of interest with a contract for services under County IFB No. 421 (Septage Hauling) made with E. Watanabe and Sons Services, LLC, in which he also has a controlling interest. (10:30 a.m.)**

Ms. Self: Do I hear a motion?

Ms. Nakanishi: I move that we accept it as prepared, accept the response as prepared.

Mr. Allende: I second it.

Ms. Self: Any discussion? All in favor please say aye.

Motion and Vote: Ms. Nakanishi moved to approve the draft Informal Advisory Opinion as amended. Mr. Allende seconded the motion. All members voted aye (10:32 a.m.)

6. CONTINUED DISCUSSION REGARDING AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF ETHICS AND THE HAWAI'I COUNTY CHARTER AND COUNTY CODE (10:32 a.m.)

- a. Continued Review recommended changes from the LRB regarding Code Amendments passed by the Board of Ethics in February 2022.**

Ms. Self: I don't know about anybody else, but I would prefer to defer this to the next meeting.

Mr. Allende: Agreed.

Ms. Nakanishi: I agree.

Ms. Self: Yeah, this is something Larry is really interested in so, I prefer that we discuss it when he's here. Are you okay with that Kelly?

Ms. Valenzuela: Yes.

Ms. Self: Okay. Alright...Do I hear a motion to continue?

Ms. Frenz: One moment Chair. We have two different things going on. I believe Ms. Valenzuela wanted to make a motion.

Ms. Valenzuela: Yeah to reconsider, but should I, I was thinking to do that at the next meeting.

Ms. Frenz: Actually you would need to do that today, Member Valenzuela, yes.

Ms. Valenzuela: Okay so if I can reconsider, cause my vote, I had misunderstood and after, really want to do a no. And I'd like to make a motion to reconsider with our vote.

Ms. Frenz: So If I understand correctly Ms. Valenzuela, from our communication, you're making a, this is as to the appearance of fairness or appearance of impropriety motion that this board made and carried at last month's hearing. My understanding is you misunderstood the way in which you were voting, based on the way the question was raised. So you're making a motion to reconsider the board passing the motion that was passed last month to approve the addition of the appearance of impropriety in section 5 of 2-83, the added language. So assuming that motion were to pass this month, we would actually have to re-hear that next month. So you would just be making a motion for reconsideration today.

Ms. Valenzuela: Yes.

Ms. Frenz: Is that your motion?

Ms. Valenzuela: Yes, that is my motion.

Ms. Self: Is that one of these agenda items?

Ms. Valenzuela: The added language in that Section 5, 2-83.

Ms. Self: Oh, okay. Okay we have a second?

Ms. Allende: Seconded.

Ms. Self: Any discussion? Hearing none. All those in favor say Aye.

Motion and Vote: Ms. Valenzuela moved to reconsider the board passing the motion to approve the addition of the appearance of impropriety in section 5 of 2-83. Mr. Allende seconded the motion. All members voted aye. (10:35 a.m.)

Ms. Frenz: So next month's meeting, we'll make sure to properly agendize again the appearance of impropriety language that was covered at our May meeting and we will recall the motion at that time.

Ms. Valenzuela: Yes, thank you.

Ms. Frenz: And as to 6a specifically Chair, the information communication from LRB, you're asking to continue that for further review by the board is that correct?

Ms. Self: Yes. We don't need a motion for that do we? Continue to the next Agenda?

Ms. Frenz: It's cleaner if you just have a motion for our minutes.

Ms. Self: Okay could I have a motion to continue item #6 to next month's meeting?

Ms. Valenzuela: I make a motion to continue Item 6a to the next meeting.

Ms. Self: Do I have a second?

Ms. Nakanishi: Second

Ms. Self: Any discussion? All those in favor say Aye.

Motion and Vote: Ms. Valenzuela moved to continue item 6a to next month's meeting. Ms. Nakanishi seconded the motion. All members voted aye. (10:35 a.m.)

Motion and Vote: Ms. Valenzuela moved to go into executive session. Ms. Nakanishi seconded the motion. All members voted aye. (10:36 a.m.)

7. EXECUTIVE SESSION (10:42 a.m.)

- a. Review of the Executive Session minutes of May 11, 2022

Motion and Vote: Ms. Valenzuela moved to approve the executive session minutes of May 11, 2022. Mr. Allende seconded the motion. All members voted aye (10:49 p.m.)

- b. 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.

8. ANNOUNCEMENTS (11:36 a.m.)

Mr. Heintz announced that the next meeting will be held on Wednesday, July 13, 2022, at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

9. ADJOURNMENT (11:38 a.m.)

Motion and Vote: Ms. Valenzuela moved to approve adjourn the meeting. Mr. Allende seconded the motion. All members voted aye (11:38 a.m.).

Mr. Heintz adjourned the meeting at 11:38 a.m.

Respectfully submitted:

Liza Osorio, Secretary