

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

Wednesday, October 12, 2022

10:06 a.m. to 12:15 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

**Members and Staff Present:**

Larry Heintz, Chair

Denise Nakanishi, Member

Erick Allende, Member

Dakota Frenz, Deputy Corporation Counsel

Sylvia Wan, Deputy Corporation Counsel

Kelsie Chang, Secretary

Liza Osorio, Staff

**1. CALL TO ORDER (10:06 a.m.)**

Mr. Heintz called the meeting to order at 10:06 a.m. Present was Denise Nakanishi, Dakota Frenz and Sylvia Wan. Erick Allende was in attendance via Zoom.

**2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:08 a.m.)**

Due to technical issues, a portion of the meeting was not recorded. Members from the public who gave testimony are as follows:

Daniel Zewinski – 10:08 a.m. – 10:08 a.m.

John Erickson – 10:09 a.m. – 10:11 a.m.

Claudia Shimmer-Keawe – 10:11 a.m. – 10:14 a.m.

Kalei Kailikini – 10:14 a.m. – 10:19 a.m.

Michelle Melendez – 10:19 a.m. – 10:22 a.m.

John Stern – 10:24 a.m. – 10:26 a.m.

Millicent Cummings – 10:27 a.m. – 10:31 a.m.

Frederick Torres-Pestana – 10:32 a.m. – 10:34 a.m.

Gene Tamashiro – 10:35 a.m. – 10:38 a.m.

Leslee Cook – 10:39 a.m. – 10:43 a.m.

Hiermonk Bartholomew – 10:44 a.m. – 10:45 a.m.

The foregoing list of testifiers spoke in support of Mr. Christie’s petition.

**3. COMMUNICATIONS (10:46 a.m.)**

- a. Comm 2022-01: Communication from Karsten Oliva was noted into the record as being received by the Board of Ethics.**

**4. APPROVAL OF THE REGULAR SESSION MINUTES OF JUNE 8, 2022 (10:46 a.m.)**

**Motion and Vote: Ms. Nakanishi moved to approve the minutes; Mr. Allende seconded. All members voted aye. (10:47 a.m.)**

**5. NEW BUSINESS (10:48 a.m.)**

- a. Nomination of the new Vice Chair of the Board of Ethics**

**Motion and Vote: Ms. Nakanishi moved to continue the nomination to the next meeting. Mr. Allende seconded. All members voted aye. (10:48 a.m.)**

- b. Petition 2022-10: Anonymous complaint regarding a Council member alleging violation of Section 2-84 of the Ethics code.**

**Motion and Vote: Ms. Nakanishi moved dismiss the petition Mr. Allende seconded. All members voted aye. (10:51 a.m.)**

- c. Petition 2022-11: Complaint alleging suspicious activity and violations of professional ethics by County employees, specifically Section 14-4(c) of the Ethics Code regarding the Conduct of Employees, stating that all persons shall be treated in a courteous, fair and impartial manner.**

Due to technical issues, Council member Holeka Inaba's testimony and a portion of Aaron Chung's testimony was not recorded.

Mr. Chung: ...email, but there are, but then if the board is willing to take that position, then you're gonna also have to grapple with several other issues. What is gonna constitute a communication that requires a response? Is it a mere conversation, telephone call, letter, that's something you guys are gonna have to resolve. It's up to you folks, we'll respect whatever you guys come up with. But now from a factual standpoint. I'm gonna explain why, I chose not to respond to Roger's email. First of all I have a practice which I've implemented for the past 5 years, at least, I wouldn't say the whole 8 years that I've been on the Council, but at least the past 5 years, that if I'm a part of a group text involving Council members where all the Council members are listed, I'm not gonna be responding to that. Maybe I'm being overly cautious, but I always believe that it might be possibly a violation of the sunshine law. Even if I

responded back to the person who was sending, individually and not on mass, I still think, it was generated from something that involved all of the council members and I just have to be careful on that. Second as I stated earlier, I just don't subscribe to what was being advanced by Roger. You know, I'm not saying he's wrong, you know Roger, he's reasonable but I just don't, I'm too emotionally invested in the other side of the equation, I hope he respects that as well. And it was too so many people that, hey perhaps someone was gonna take him up on it and it looks like incoming Chair Heather Kimball is gonna be doing that, so great. I guess finally though, Roger and I, it's not on a large number of occasions but, he's got my personal cell phone number, this is not something paid for by the County. My personal cell phone, we've exchanged text messages. Could he not have just called me and said 'Eh Aaron, you know, I'm waiting for a response.' That would've been a courteous thing to do, right? And I certainly would've had a discussion. And the last thing is, he did leave a message or talk to staff about possibly reducing the complaint, if we called him back. Mine was if I called back before the hearing. Roger gotta know, there's no way I'm gonna do that, right? Not under the circumstances, it's almost like I'm, for lack of a better term, like kinda blackmailing me right, if I don't do this then he's gonna continue. So I figured, I'm gonna be here anyway so I just wanted to share my thoughts with all of you. Thank you.

Mr. Heintz: Thank you Councilman Chung. Is there any other, I see there are other council people present, is there any others that would like to speak?

Ms. David: Chair, Maile David, Kona Council. Aloha everyone and Mahalo for this opportunity, I did, I wanna thank Vice Chair Chung for his position. I support and I have the same position that he takes. I believe, freedom of choice is a two way street, as much as Mr. Christie feels that he has these rights, and so does everyone else and I think it's a matter of your personal preference on what you believe, what you believe in. I personally have been vaccinated and my family has, and so I think when I saw this complaint, I don't recall receiving any mail, email directed to me requesting that I put something on the agenda. And if there was one, I searched my records, I searched my emails. What do I recall receiving from Mr. Christie, on many occasions, especially during COVID, is his blanket emails to all of us, council members and others, that provides information on what he is passionate about, the vaccinations and what's been going on and what he has been talking about. And had he asked for an opportunity to bring something before the council, I would've advised him that he

needs to contact his council person. I'm not sure where Mr. Christie resides, I don't believe he's in my district, but that would've been my advice to him. And hearing that he has actually reached out to Council member Kimball, if that's his Council member, then appropriately so, if she's agreed to it, then that's the process that we follow internally on getting things on the agenda. It has to be sponsored by a Council member. And so, I'm not sure, I believe what Mr., Vice Chair Chung has said on what's before you folks, I totally agree with that, and it's your decision as this body to determine whether we as individual Council members have actually treated him disrespectfully as he claims. So other than that, that's all I have to say and I just thank you folks for hearing us. Mahalo.

Mr. Heintz: Thank you Council member David. Council member Lee Loy?

Ms. Lee Loy: Thank you Chair, members of the board. Aloha, Sue Lee Loy, respondent to Petition 2022-11. You have my written reply and you have a lot on your agenda today –

Mr. Heintz: Just one second, is your mic on I can't tell...it is?

Ms. Lee Loy: It's okay?

Mr. Heintz: Okay thank you, yes.

Ms. Lee Loy: Okay perfect. You guys have a lot on the agenda today so I'm just gonna stand on my written response but I know you guys also have a lot to read, as do we so I just wanted to elevate a couple of things that's contained in my written response, which my colleagues have already touched upon. In addition to Council Chair Maile David & Vice Chair Chung, we got blanket emails and just kind of confirming the exact same thing. But I did in my reply is provide to you, Exhibit A, five different times that the Council actually took up COVID conversations, so just to help elevate that, through all of the paper work that you have. I also did get a voicemail message from Mr. Christie about a week ago, and as Mr. Chung mentioned, it was challenging actually to call back. In light of him providing this petition in July, I just felt that it was rather improper to actually discuss the merits of his petition considering it had been filed and we had been given notice. So, no disrespect to the petitioner, but there is a process that we as the legislative body has to engage in and that would be my reply to why I did not reply. Just for the impropriety of it, but it wasn't done in a disrespectful or disingenuous way. Thank you members of the board.

Mr. Heintz: Thank you. Are there any other?

Ms. Frenz: Yes, chair I believe Director Adams.

Mr. Heintz: Director Adams, is he online?

Mr. Adams: I am Chair, thank you. I appreciate the opportunity to testify on this petition as a respondent to you Chair and members of the board. You have testimony from me, written testimony that refers to the opportunity to meet with Mr. Christie when he asked to meet. We met and I was grateful for his mana'o concerning the items that he wanted to talk about particularly having to do with our islands economy. I did receive as well the variety of emails that have been referred to before and has been stated by others, we receive a lot of emails, they are drafted individually to me, absolutely I will respond to those, that's the way that we do this is making sure that we are connecting when they are. And we received quite a few of these as well when they are designed to be sent to some type of collective, unless there is something specific in there where there is being asked that there be some response directly back to the provider, that doesn't necessarily mean that I'm going to then answer every single one with some type of comment. Not when they're coming in that way. My way of moving forward is exactly the way that I did when I met with Mr. Christie. So I would ask that the portion of the petition that refers to me be denied, thank you.

Mr. Heintz: Thank you Mr. Adams, any other respondents to this petition who were...the petition was filed against?

Ms. Frenz: I would just note for the record Chair, that Chief Bugado, has submitted a response, he is available for questions if any board member has a question for him. Thank you.

Mr. Heintz: Do either of the board members have a question for Acting Chief Bugado?

Ms. Nakanishi: No.

Mr. Allende: Not at this time, I don't.

Mr. Heintz: Thank you, any other respondents? Ms. Kierkiewicz are you...did you wanna respond?

Ms. Kierkiewicz: Aloha Chair, thank you for the opportunity, members of the board. I did receive numerous communications over time from Mr. Christie related to cannabis and coronavirus although, I don't know

I've responded to any of them, maybe some of the cannabis ones, that's something I think we can agree upon. Just wanna say for the record that during the Harry Kim administration and even in the Roth administration I have submitted a number of communications regarding the coronavirus issue and I've stayed on the forefront just from the notion of not necessarily taking a side, but making sure the community had the best available information because in a time like this when we're navigating something that is so dynamic we wanted to make sure that community members were equipped with everything that we knew as government officials so that they could be making decisions for themselves. So no disrespect was meant by not returning his phone call, our office was busy planning a community activation, and I knew that we would be here in this space today and just appreciate your time and deliberation. Thank you.

Mr. Heintz: Thank you...Does that complete all the responses? It does, okay thank you. Are there any questions, or discussions or comments by either board member? Mr. Allende or Denise?

Mr. Allende: I don't have any.

Ms. Nakanishi: I don't have any.

Mr. Heintz: Do either board member have a motion to make with regards to Mr. Christie's petition?

Mr. Allende: I'd make a motion to dismiss it with prejudice with finding that we had all the respondents here to convey that either reason why there was no communication or what communication was asserted when that attempt was made.

Mr. Heintz: Okay, and there is a second to that motion? Erick, your motion seems to be...okay, so you wanna dismiss with prejudice, that's the motion, and then the additional remarks were kind of explaining why you were taking that position. Is that right?

Mr. Allende: Yes.

Mr. Heintz: Okay so, do we have a second to that motion?

Ms. Nakanishi: I will second it.

Mr. Heintz: Okay we have a motion and a second to dismiss this petition with prejudice. Is there any further discussion?

Ms. Nakanishi: The only reason that I would second would be because there is another option and it sounds like the respondents have made reasonable responses based on what they've presented. It's such a big issue it's hard to know where to go with it if you're in any local administration or office, that's the only reason I would second it. It does sound like you could go to your council person and readdress it. To your credit you've gotten some attention so, good.

Mr. Heintz: I would just add that in the respondents, there are a couple of things that I just want to point out, Mayor Roth's response, also Chief Ferreira's response, both of them talked about that they don't respond to emails, informational discussion, explaining their position for instance on COVID or on these issues that are basically informational or advocating their position. I think that they both pointed this out, it's interesting, the other thing that it seems that many of the respondents are indicating is that the communications that they did receive were of a group nature or that nature as opposed to an individual request, that just might be something to be noted. Any further or final discussion? Then I'm gonna call the question, all those in favor of the motion please say Aye?

Ms. Nakanishi: Aye.

Mr. Allende: Aye.

**Motion and Vote: Mr. Allende moved dismiss the petition with prejudice. Ms. Nakanishi seconded. All members voted aye. (11:31 a.m.)**

Mr. Heintz: I think it might be advisable, at least in my own case, to take a brief recess. Thank you.

**\* The board took at 10 minute recess. (10:31 a.m.) \***

Mr. Heintz: The meeting is reconvening, the Board of Ethics for October 12<sup>th</sup>...

Ms. Frenz: Chair before you move into the next matter, this is Deputy Corporation Counsel Cody Frenz, as to Petition 2022-12 and 2022-13, both matters I'm going to recuse from assisting the Board as to both of those, given my other involvement, so I do have my colleague Deputy Corporation Counsel Sylvia Wan present to run the meeting as to those particular matters and then I will rejoin as the Board's attorney. Thank you, Ms. Wan & Chair.

Mr. Heintz: Thank you very much...

Ms. Wan: I'm sorry I would like to just address at the top, this is Deputy Corporation Counsel Sylvia Wan, as to Petition 2022-12, I do wanna just inform the Board that the respondent, the Deputy Prosecutor was a previous colleague of mine, I have been previously a Deputy Prosecutor for a little over 10 years and had worked side by side with that particular respondent. I am now with Corporation Counsel. I just wanna make the Board aware of that particular connection that he is a previous colleague, however I do not believe that that should shade or otherwise conflict with my duties today.

Ms. Nakanishi: I have a similar disclosure; I do know Jessica Gauthier and she is the president of my professional organization, she's a colleague but I do not believe that that would interfere with anything, my decisions and she did ask for a private hearing.

Mr. Heintz: Thank you. My wife tells me I'm a mumbler and with a mask it probably becomes impossible to understand me. So I'm gonna take my mask off again. We're now dealing Petition 2022-12.

**d. Petition 2022-12: Complaint regarding a Deputy Prosecutor, alleging a violation of Section 2-83 (Fair treatment) of the Ethics Code. (11:42 a.m.)**

Mr. Heintz: It is my understanding that the respondent has...

Mr. Nakanishi: Mr. Chair, I do believe on her complaint that she has a non-public hearing.

Ms. Wan: Unfortunately, it's the employee, officer or official that would be able to ask for a confidential hearing and not the petitioner in this particular matter, since the petitioner is not an office, official or employee.

Ms. Nakanishi: I just wanted to make that point.

Ms. Wan: My understanding is that the respondent has provided a communication to the board requesting a closed hearing.

Mr. Heintz: The respondent also has, I believe indicated that there are on-going matters that are up in the air right now, and so they're asking for a continuance until they have availability of I believe legal counsel, who's conflicted at the present time with another matter. And so, if the board then would agree, I need a motion to continue this matter til the next meeting for the first available date that the respondent is available. Can I have such a motion?

Ms. Nakanishi: So moved

Mr. Heintz: Is there a second.

Mr. Allende: I second.

Mr. Heintz: Is there any discussion of this continuance of this motion?...

Mr. Allende: Not at this time from my end.

Mr. Heintz: Okay. Hearing none I call the question, all those in favor of the motion, please say Aye.

**Motion and Vote: Ms. Nakanishi moved to continue the petition to the next meeting. Mr. Allende seconded. All members voted aye. (11:46 a.m.)**

e. **Petition 2022-13: Complaint regarding a Planning Department employee, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code. (11:47 a.m.)**

Mr. Heintz: I just wanna say from the outset that...

Ms. Wan: I'm sorry Chair, I believe you need to allow for public testimony at this time...before we get into the matter

Mr. Heintz: Are you talking about statements from the public in general?

Ms. Wan: Statements from the public regarding specifically Petition 2022-13. If there are any testifiers.

Mr. Heintz: So members of the general public can now testify regarding Petition 2022-13 even though the complaint isn't being presented and the respondent will be responding. But you have any opportunity to speak to this matter.

Ms. Wan: Can you please speak into the mic, state your name and I will start your three minutes as soon as you start.

Mr. Kern: Excellent. Good morning, my name is Zendo Kern, Planning Director for Hawai'i County. Good morning Chair, members of the Board, it's good to be here...I wanted to speak on this petition. Two different ways. One I wanted to speak to our Planner that the petition was filed against. Mr. Roy is an excellent planner. We are fortunate and grateful to have him in the County. His background and his education and his experience at the DLNR Office of Conservation and Coastal Lands has been huge for our County.

He's one of our SMA Planners. One of our lead planners and I get the opportunity to work directly with him, we get to work through challenge. I've seen him in meetings, I've seen him work with me, and he's always held himself in a very high regard, always conducted himself in the very most appropriate ethical manner. Generally just again a really great guy and I want to attest to that. From somebody that was on the other side of the desk as well, somebody that worked with him as a member of the public, but also somebody that gets to work with him in the current role that I have. So we're grateful for him. What I want to add on to this conversation is being a public service, servant, being a civil servant is challenging on a good day. There's a lot that we have to deal with. As a director, I expect to deal with the gamut on whatever comes my way, but as a civil servant within the department, it gets tricky when I guess situations like this can be weaponized. And that's what my concern is. You folks, obviously you're very smart, you're very good at what you do, I know, I understand you guys will make the proper call, proper judgement here. Which in my opinion would be to dismiss. What I'm seeing though is a series of other complaints coming in, in this manner. I don't believe we have a mechanism to stop that to weaponizing this process but what I'm seeing is the impact that has on our team members. The level of stress that that has and creates within their being, is paramount. It's a really, really big deal. Again as a director it's something that we deal with but as a team member it's tough. We're already dealing with, we're operating at 25% under capacity for staffing since I've started. We've responded and are doing our very best to keep up with everything and we're doing a good job that way. But when I see the stress coming to the gentleman that's here, other team members of mine, when there are threats, criminal prosecution, ethics, the gamut, it's hard to see them in that concern that they have. And when I see that come I go and do my best to support it and say that I will stand there and I'll stand in front, I'll be there to help, thus I'm here right now. So I ask for you help in this process...I'm done. I appreciate the time and consideration and listening. I'm happy to answer any questions.

Mr. Heintz: Do any of the members of the Board have questions for Mr. Kern?

Ms. Nakanishi: Not at this time.

Mr. Allende: I don't at this time.

Ms. Wan: I believe Mr. Kern was just testifying as a public testifier.

Mr. Heintz: Thank you Mr. Kern... With regard to this petition, I as chairman just received a pack of information in the last day that I have been able to look at. And so I am not prepared as a member of this board to deal with this matter today and so I am going to ask if another member of the board would be willing to make a motion to continue this matter til the next meeting.

Ms. Rohr: I would like to have some input before you make a motion... You're going to make a motion and do something and I won't have a chance to do any testimony, say anything, I would like to say something.

Mr. Heintz: We're going to make our motion, the motion is, is the board is not prepared to discuss this matter or deal with the petition at this time and so I am asking if a board member will make a motion to continue this, the whole issue will get aired next time after we've read your materials and the respondents materials. Do I have a motion?

Ms. Rohr: I would like to make a public testimony then. Public testimony, I would like to a right to a public testimony.

Mr. Heintz: You will have that when this issue becomes before the board...

Ms. Rohr: Okay, look, I just sent back the email dated...

Mr. Heintz: I'm sorry I recognize Denise. She's made the motion, is there a second?

Mr. Allende: I second it.

Mr. Heintz: Is there any discussion of the motion by the members of the Board?

Mr. Allende: No.

Ms. Nakanishi: No.

Mr. Heintz: I call the question, all those in favor of continuing this til the next meeting, please say Aye.

**Motion and Vote: Ms. Nakanishi moved to continue the petition to the next meeting. Mr. Allende seconded. All members voted aye. (11:55 a.m.)**

Mr. Heintz: This matter will be matter will be dealt with at our next meeting and thank you Ms. Rohr, you'll have an opportunity to deal with that next time when the rest of us have read the material. Thank

you.

**6. UNFINISHED BUSINESS**

- a. **Petition 2022-09**: Review draft Informal Advisory Opinion finding Prosecuting Attorney did not violate Section 2-83(3) Fair Treatment of the Ethics Code.

**Motion and Vote**: Ms. Nakanishi moved to approve the draft Informal Advisory Opinion as amended. Mr. Allende seconded the motion. All members voted aye (11:56 a.m.)

**7. 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 (11:58 a.m.)**

- a. Continued Review of amendments to add Appearance of Impropriety to Hawai'i County Code Section 2-83.
- b. Continued review of the recommended changes from the Legislative Review Board regarding the Hawai'i County Code February 2022 Amendments.

**Motion and Vote**: Mr. Allende moved to table item 7 to next month's meeting. Ms. Nakanishi seconded the motion. All members voted aye. (12:00 p.m.)

**Motion and Vote**: Mr. Allende moved to go into executive session. Ms. Nakanishi seconded the motion. All members voted aye. (12:01 p.m.)

**8. EXECUTIVE SESSION (12:03 a.m.)**

- a. Review of the Executive Session minutes of June 8, 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 (12:03 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.

**9. ANNOUNCEMENTS (12:14 p.m.)**

Mr. Heintz announced that the next meeting will be held on Wednesday, November 9, 2022, at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

**10. ADJOURNMENT (12:15 p.m.)**

**Motion and Vote: Ms. Nakanishi moved to approve adjourn the meeting. Mr. Allende seconded the motion. All members voted aye (12:15 p.m.).**

Mr. Heintz adjourned the meeting at 12:15 p.m.

Respectfully submitted:

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Liza Osorio, Staff