

BEFORE THE BOARD OF ETHICS

COUNTY OF HAWAI'I

In the Matter of the Petition by

MILLICENT CUMMINGS,

Petitioner.

PETITION NO. 2022-07

INFORMAL ADVISORY OPINION

Initial Review: May 11, 2022

INFORMAL ADVISORY OPINION

By Petition dated April 8, 2022 filed with the Hawai'i County Board of Ethics (hereinafter "Board"), Petitioner Millicent Cummings (hereinafter referred to as "Petitioner") alleged that Prosecuting Attorney Kelden B.A. Waltjen (hereinafter referred to as "Respondent") violated Section 2-83, (a) (3) Fair treatment and Section 2-84, (c), Conflicts of interests, of the Hawai'i County Code. Petitioner requested an open hearing and Respondent agreed to have an open hearing on this matter.

At its duly noticed meeting of May 11, 2022, 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 appeared at the meeting and provided their testimony to the Board. The Board, having deliberated and considered and giving appropriate weight to the testimony and evidence submitted by the Petitioner and Respondent, 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.

A. The Petition.

2. Petitioner is a resident of the County of Hawai'i.
3. Petitioner filed her Petition dated April 8, 2022 with the Board that included as an exhibit an affidavit by Petitioner, a statement of whistleblower via an LTA, the Universal Declaration of Bioethics and Human Rights, and the Fauci/COVID-19 Dossier, alleging that the Respondent violated Section 2-83 (a) (3) Fair Treatment and 2-84 (c) Conflicts of Interest.
4. The Petition indicated in pertinent part, "The reason of my interest regarding Prosecuting Attorney Kelden B.A. Waltjen's apparent dereliction of duty and possible criminal involvement is to prevent further harm from occurring to those affected by it!"
Furthermore, the Petition indicated "My position is that said dereliction of duty regarding criminal evidence I provided to Mr. Waltjen could be costing people their lives and livelihoods."

B. The Hawai'i County Code.

5. Hawai'i County Code Section 2-83, Fair treatment, (a) states:

Officers and employees of the County, while discharging their duties and dealing with the public, shall adhere to the following precepts:

- (1) All public property and equipment are to be treated as a public trust and are not to be used in a proprietary manner or for personal purposes without proper consent.
- (2) No person in a supervisory capacity shall engage in personal or business relationships with subordinates, which might intimidate said subordinates in the discharge of their official duties.
- (3) All persons shall be treated in a courteous, fair, and impartial manner.

6. Hawai'i County Code Section 2-84, (c) Conflicts of interests, states:

No officer or employee shall represent private interests in any legal action or proceeding against the County or appear on behalf of private interests before any agency, except as otherwise provided by law; provided:

- (1) This prohibition shall not apply to a County employee or officer who is an architect, landscape architect, surveyor, or engineer registered as such under the provisions of

chapter 464, Hawai'i Revised Statutes, with respect to the affixing by such registered professional of such person's registered stamp to any plans, specifications, drawings, etc., to be submitted to the County for permits for such person's principal residence or that of members of such person's immediate family; provided, that the stamp is accompanied by a signed statement that the work was prepared by the person stamping the document or under such person's supervision; and provided further, that the registered professional may not, in the capacity of a County employee or officer, review, approve or otherwise act upon the plans, specifications, drawings, etc., such person has stamped; and

(2) No officer or employee shall be denied the right to appear before any agency to petition for redress of grievances caused by any official act or action affecting such person's personal rights, privileges, or property, including real property.
C.

D. May 11, 2022 Meeting.

7. Petitioner appeared at the meeting with Roger Christie, identified as Petitioner's private counsel.
8. Respondent provided a written response to the Petition to the Board and Petitioner.
9. The Board offered Petitioner additional time to review Respondent's written response by continuing the hearing until the next meeting but the Petitioner decided to proceed with the hearing. Respondent also agreed to proceed with the hearing.
10. Respondent appeared at the meeting with Deputy Corporation Counsel Cody Frenz.
11. Petitioner and Respondent agreed to an open hearing on this matter.
12. Petitioner provided her testimony and gave a copy of her written statement to the Board and Respondent.
13. Petitioner stated that she provided Respondent with documents regarding unlawful COVID-19 protocols that required further investigation by Respondent and that Respondent has not provided a response to Petitioner in almost three months. Therefore, Respondent violated Hawai'i County Code Section 2-83, Fair treatment, by not treating Petitioner in a courteous, fair and impartial manner.

14. Respondent provided his testimony to Board and denied any violation of the Hawai'i County code of ethics.
15. Respondent said that Petitioner is seeking criminal action and prosecution of violations of federal law and that Respondent's office does not have the authority or jurisdiction to initiate criminal actions in federal court.
16. Respondent testified that the proper local authority to address violations of criminal actions in federal court is the United States Attorney's Office for the District of Hawai'i.
17. Respondent said that his office received documents from Petitioner on February 14, 2022, and the Petition was filed on April 8, 2022 and that given the large number of cases his office handles, it is not unusual that Petitioner's claim was not yet addressed.
18. Respondent denies any violation of Hawai'i County Code Section 2-84 (c) as Respondent does not have any private interest associated with the individuals and/or organizations with whom the Petitioner seeks to initiate criminal proceedings against.
19. Respondent has implemented changes to their internal procedures regarding acknowledgement of inquiries by members of the public that will be done in a timely manner. As an example, Respondent said his office will provide a written response or a phone call to a member of the public if they submit a complaint for review.
20. Respondent confirmed that Investigator Daniel Pang of his office received the documents from Petitioner.

E. The Board's Ruling.

21. Based on the evidence and testimony presented, the Board finds that Respondent has not violated the Hawai'i County Code of Ethics, Section 2-83, (a) (3) Fair treatment and Section 2-84 (c) Conflicts of interest.

22. Board Chair Lawrence Heintz made a motion to reject the Petition and find no unfairness by the Respondent and no evidence of a conflict of interest. Board member Erick Allende seconded the motion. Board members Lawrence Heintz, Amy Self, Denise Nakanishi, Kelly Valenzuela and Erick Allende voted in favor of the motion and the motion passed 5-0.

CONCLUSION OF LAW

23. Based upon the evidence presented and the Board's review of the Hawai'i County Charter, the Hawai'i County Code, and the Board's Rules of Practice and Procedure, the Board finds and concludes that Respondent has not violated Hawai'i County Code Sections 2-83 (a) (3) Fair Treatment and 2-84 (c) Conflict of Interest.

ORDER

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

Dated: Hilo, Hawai'i, DEC 12 2022

BOARD OF ETHICS, COUNTY OF HAWAI'I

By 
LAWRENCE HEINTZ
Chair

APPROVED AS TO FORM
AND LEGALITY:



J YOSHIMOTO
Assistant Corporation Counsel