

BEFORE THE BOARD OF ETHICS

COUNTY OF HAWAI'I

In the Matter of the Petition by
JOHN C. CROSS,
Petitioner.

PETITION NO. 2023-09

INFORMAL ADVISORY OPINION

Initial Review: June 14, 2023

INFORMAL ADVISORY OPINION

By Petition dated April 23, 2023, with the Hawai'i County Board of Ethics (hereinafter "the Board"), Petitioner John C. Cross (hereinafter referred to as "Petitioner") who is an appointed member of the County of Hawai'i Windward Planning Commission (hereinafter "Windward Planning Commission"), requested an Informal Advisory Opinion from the Board. Petitioner sought guidance as to whether Petitioner could participate as a member of Windward Planning Commission and work for clients that may present an application before the Windward Planning Commission, without a conflict of interest arising in violation of Hawai'i County Code Section 2-84 (Conflicts of Interests).

At its duly noticed meeting on June 14, 2023, the Board reviewed and considered the above-captioned Petition pursuant to Rule 4 of the *Rules and Practice and Procedure of the Board of Ethics*. Petitioner attended the meeting, provided testimony, and further expounded on the conflicts of interest and his remedy of recusing himself from the Windward Planning Commission when the Windward Planning Commission considered applicants to which he provided consulting serves. Petitioner identified himself as self-employed as a land management and land planning consultant for developers, as clients. Petitioner is aware that there is conflict

regarding work that he may do in preparing a client to present an application before the Windward Planning Commission. Petitioner stated that in the instances where he provided advice and assistance for a client in preparation of an application before the Windward Planning Commission, Petitioner recuses himself from his role as Commissioner for the hearing of that application before the Windward Planning Commission. Petitioner noted that he does not represent his clients when they present their application before the Windward Planning Commission.

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.
 - A. The Petition
2. Petitioner is a commission member of the Windward Planning Commission, which considers land use applications.
3. Petitioner is employed land management and land planning consultant for land developers, for which Petitioner may advise his clients in regards to application presented before the Windward Planning Commission.
4. Petitioner presently recuses himself from the Windward Planning Commission when the Windward Planning Commission hears an application from the Petitioner's client, in which Petitioner provided guidance and advise on the application.

B. Board's Ruling

5. Based on the evidence and testimony presented, the Board finds that there is a conflict for Petitioner to participate as a commissioner on the Windward Planning Commission, in regard to applications in which Petitioner assisted his client in the preparation and/or advice of said application.
6. Based on the evidence and testimony presented, the Board finds that there is conflict of interest with the Petitioner representing his clients before the Windward Planning Commission and remaining in the role as Commissioner during the consideration of applications from Petitioner's clients.
7. Board Member Eric Allende moved that the Board find that that there is a conflict of interest with the Petitioner representing his clients before the Windward Planning Commission, and that conflict can be resolved by the Petitioner recuses himself from the applications that come before the Windward Planning Commission that are applications from the Petitioner's clients.
8. Board Member Denise Nakanishi seconded the motion. The motion passed 5-0.

CONCLUSION OF LAW

Based upon the evidence presented and the Board's review of the Hawai'i County Code of Ethics and the *Rules and Practice and Procedure of the Board of Ethics*, the Board finds and concludes that Petitioner can participate as a member of the Salary Commission in the salary review process provided the above provisions are adhered to.

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, October 19, 2023.

BOARD OF ETHICS, COUNTY OF HAWAI'I

By 
RACHEL SHORT
Chair

APPROVED AS TO FORM
AND LEGALITY:


SYLVIA WAN
Deputy Corporation Counsel