

BEFORE THE BOARD OF ETHICS

COUNTY OF HAWAI'I

In the Matter of the Petition by

MILLICENT CUMMINGS,

Petitioner.

PETITION NO. 2022-09

INFORMAL ADVISORY OPINION

Initial Review: June 8, 2022

INFORMAL ADVISORY OPINION

By Petition dated May 19, 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. Petitioner requested an open hearing and Respondent agreed to have an open hearing on this matter.

At its duly noticed meeting of June 8, 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 May 19, 2022 with the Board alleging that the Respondent violated Section 2-83 (a)(3) Fair Treatment.
4. The Petition indicated in pertinent part, "My interest remains the same as my first petition regarding Prosecuting Attorney Kelden B.A. Waltjen's continued and well documented dereliction of duty as he has yet to acknowledge myself or others who provided verifiable evidence of criminal activity in our County. Furthermore, the Petition indicated "He has failed to act in a courteous, fair or impartial manner as his duty in the County Charter to this day. My interest remains centered on Ethics, particularly after the skewing of certain facts at the hearing."

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.

C. June 8, 2022 Meeting.

6. Petitioner appeared at the meeting with Roger Christie, identified as Petitioner's "personal counsel".
7. Respondent provided a written response to the Petition to the Board and Petitioner was also provided a hard copy to review.
8. The Board provided Petitioner time to review Respondent's written response before continuing the hearing on the Petition.

9. Respondent appeared at the meeting via zoom.
10. Petitioner and Respondent agreed to an open hearing on this matter.
11. Petitioner provided her testimony and gave a copy of her written statement to the Board and Respondent.
12. Petitioner stated that Respondent still had not provided a response to Petitioner in almost five months. Therefore, Respondents failure to respond is a violation Hawai'i County Code Section 2-83, Fair treatment, because a lack of response is not treating Petitioner in a courteous, fair and impartial manner.
13. Respondent provided his testimony to Board and denied any violation of the Hawai'i County code of ethics.
14. Respondent explained that he treated Petitioner the same as he would treat any person that filed a complaint for the Hawai'i County Prosecutor's office to review and provided an overview procedure for receiving and reviewing complaints.

D. The Board's Ruling.

15. 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.
16. Board member Allende made a motion to dismiss the Petition. Board member Valenzuela seconded the motion. Board members Amy Self, Denise Nakanishi, Kelly Valenzuela and Erick Allende voted in favor of the motion and the motion passed 4-0.
17. Board member Allende motioned for reconsideration of his motion to dismiss. Board members Amy Self, Denise Nakanishi, Kelly Valenzuela and Erick Allende voted in favor of reconsideration 4-0.
18. Board member Allende changed his motion to a finding the Respondent did not violate the Hawai'i County Code of Ethics, Section 2-83, (a)(3) Fair treatment. Board member

Nakanishi seconded the motion. Board members Amy Self, Denise Nakanishi, Kelly Valenzuela and Erick Allende voted in favor of the motion and the motion passed 4-0

CONCLUSION OF LAW

19. 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.

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, November 1, 2022

BOARD OF ETHICS, COUNTY OF HAWAI'I

Lawrence L. HEINTZ

By Lawrence L. Heintz
for AMY SELF
Vice Chair

APPROVED AS TO FORM
AND LEGALITY:

M. A. Kekai
Malia A. Kekai
Assistant Corporation Counsel