

# HAWAII COUNTY BOARD OF ETHICS

## MINUTES – REGULAR SESSION

Wednesday, February 14, 2007 – 10:00 a.m.

333 Kilauea Avenue – 2<sup>nd</sup> Floor

Ben Franklin Building

Hilo, Hawai'i 96720

**Present:** Wayne Joseph, Chair (WJ)  
Ann Lum, Vice Chair (AL)  
Reeve Williams, Member (RW)  
Kendall Sharpless, Member (KS)

**Also Present:** Lincoln S. Ashida, Corporation Counsel (LSA)  
Bobby Jean Leithead-Todd, Deputy Corporation Counsel (BLT)  
Karen Delimont, Secretary (KD)

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### 1. CALL TO ORDER

The Chair called the meeting to order at 10:00 a.m.

### 2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

John Dill, nominated but unconfirmed member of the Board of Ethics, attended.

Chair requested a motion to amend the Agenda to include the following:

**Communication 2007-05:** Memorandum from Lincoln Ashida dated January 2, 2007 regarding HRS Chapter 487R.

**Motion and Vote:** Ms. Lum moved to amend the Agenda to include Communication 2007-05, Memorandum from Lincoln Ashida dated January 2, 2007 regarding HRS Chapter 487R; Ms. Sharpless seconded the motion; all members voted aye. Motion carried.

### 3. APPROVAL OF MINUTES.

**Minutes of the January 10, 2007, Regular Session:** Ms. Lum moved to accept and file the Regular Session minutes; Mr. Williams seconded the motion; all members voted aye. Motion carried.

**Minutes of the January 10, 2007, Executive Session:** Ms. Lum moved to accept and file the Executive Session minutes; Mr. Williams seconded the motion; all members voted aye. Motion carried.

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**4. COMMUNICATIONS**

- a. **Communication 2007-08:** Letter from Myles Miyasato dated 01/17/07 Re: Deletion of Financial Disclosure Requirement for Cost of Government Commission.

**Motion and Vote:** Mr. Williams moved to accept and file Communication No. 2207-08; Ms. Lum seconded the motion; all members voted aye. Motion carried.

- b. **Communication 2007-05:** Memorandum from Lincoln Ashida dated January 2, 2007 regarding HRS Chapter 487R.

**Motion and Vote:** Mr. Williams made a motion to accept and file Communication 2007-04; Ms. Lum seconded the motion; all members voted aye. Motion carried.

**Discussion:**

**LSA:** Good morning Chairman Joseph and members of the Board of Ethics. Before I begin I wanted to thank Mr. Williams for his service as a member and chair of the Board of Ethics. We have so many openings for other boards and commissions where we need dedicated people like you, especially from District 1. I'll talk to you later. Thank you for serving, you did a great service to the county. I didn't know that John Dill was going to be here today, but I was going to say that the legacy of fine membership on this board will continue with John. I didn't know John until I met him through this application process and the Mayor appointed him, but he is one of those guys where if you met him, you just know that he is one of those good guys. We just met once, personally, in Kona. We hung out when he got confirmed in Kona last week and he did so well that the Council said no need come back next week, you have been confirmed. But, John is a real common sense guy. He has a good moral compass inside and he will bring a good presence to this board.

Mr. Chairman, with respect to memorandum regarding HRS Chapter 487R, I am here at the request of the board to address or answer any specific questions you may have. This 487R was brought to the attention of our county a while back when the legislature had passed a law in the last session, 2006 Session, requiring governments to install certain safeguards and protocols in respect to the destruction of records that contain personal information. I sit as a member of the committee on destruction of records along with Bill Takaba, and Casey Jarman, County Clerk. We gathered information on the different processes that all the different departments out there utilize and just yesterday we met again. The department of Data Systems has come forth with a written policy with respect to destruction of electronic records, because that will be the hot issue. We can all shred and burn, but today so much of our information is transmitted in electronic form, luckily the folks at Data in our county were really on it and apparently there is a Department of Defense standard for the destruction of records, electronic records. They have researched it and know what it is. They tried to explain it to me but I am, you know, a nerd, but not a computer nerd unfortunately, so I was trying to

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understand it. But what I understand is they overwrite it three times and then they literally take the thing out back and whack it with the hammer. It is that involved. But with respect to you folks, you are all okay because our office, we have your records, so unless you feel differently we will just handle your records as we handle our office records. With respect to destruction the physical records, they will be shredded and the electronic stuff will be done through Data. Information from the hard drive will be given to Data to deal with. I would be more than happy to answer any questions you may have.

WJ:           So in regards to this memorandum?

LSA:           I've already responded on behalf of our office. Unless you feel that you have any special issues, concerns, or needs in respect to the financial disclosures or something, I can address that or I can work with Bobby to address that. I am here because you asked that I come and address this.

WJ:           So, for us there is no further action that is required?

LSA:           I think you can just file it. Bobby Jean do you have any suggestions?

BLT:           No, since our office is the repository for the information we can just defer to the same standard which it is designed to protect. Things like social security numbers and things that allow someone else to have information where they can steal someone's identity as well as things that someone might not want to have publicly disclosed. It is more financial for Board of Ethics, it is financial information. Most of our disclosures are on paper, we don't put them in electronic format, and they will get shredded.

WJ:           How many years after?

LSA:           Bobby Jean and Karen had come to talk to me. You know our office went paperless, we now do everything electronically. Everything gets digitized in our office except one thing and that is the financial disclosures. That is the only thing that does not get put into our system because of the concerns that Bobby Jean just raised. Those are retained in their printed form and are not put into our system. Bobby Jean what is the retention, do you know offhand?

BLT:           Well, because we file every year then you really do not need to keep them beyond three years, but I think the county has a set a six year standard on most documents.

LSA:           The committee came up with a retention destruction schedule. If Bobby Jean is right it is either three years or six years, and after that then Karen shreds it.

KD:           If I am not mistaken, I believe the retention of disclosures is permanent.

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LSA: It is permanent? Okay, then if it is permanent then they are locked away in a file cabinet somewhere, possibly in the basement of the old county building, probably some in our office.

BLT: I'll have to look at that, because maybe we need to change that. There really isn't a need to have it that long, not the financial disclosures. The opinions need to be kept permanently, but not the financial disclosures.

LSA: Changing it is easy. Just a written request to the committee I sit on with Casey Jarman, Bill Takaba, and myself. We meet once a month. We will put it on our agenda and then we are good to go.

WJ: Then it is something we can generate and request?

LSA: Yeah, whatever you feel is appropriate for retention.

WJ: Any further questions?

AL: What is the name of your committee?

LSA: The Committee on the Destruction of Records. The state law creates this committee. The Corporation Counsel, the County Clerk and the Financial Director sit on it. It is just like you folks, we are subject to Sunshine. We met in here yesterday, sitting like you folks did, no public testimony but it is all recorded and all that.

WJ: Further questions? Not? Okay, Mr. Ashida thank you very much. So at this point with Memorandum 2007-05 can we get a motion to accept and file?

**Motion and Vote:** Mr. Williams made a motion to accept and file Communication 2007-05; Ms. Sharpless seconded the motion, all members voted aye. Motion carried.

BLT: I took a quick look at our rules and our rules appear to be silent on our retention schedule. There are two different types of documents you deal with. One is your opinions, formal and informal, and all the evidence and documents that are submitted in those hearings. The others are the financial disclosures. On the opinions I guess there are two issues. One is the final written opinion itself should be kept as a record of the disposition of the case. If you need to keep all the documents and testimony that were a part of that case forever, is another question. I would think that, particularly after someone has left office or left employment with the county, there should definitely be some kind of period where so many years after they have left office or so many years after they have left employment that all of their financial disclosures should be destroyed. For those people who continue in office and in employment, there should be at most a six-year period of keeping those disclosures. That would be so that you could view one year's disclosure against previous years, if a question ever came up. I don't think we have ever done it. But if some question, that somebody had failed to disclose something in a prior year. The reason I am thinking six years, is because the IRS can only go after

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you for three years after you file. I don't think you should have something dangling over your head forever. Those are my thoughts and the board can make some kind of recommendation and we can formalize it and send it to the committee.

AL: Do you think that just in six years with continuing employees?

BLT: Yeah, the disclosure should be kept for six years. Once someone has left county government, I think three years after they have left their records should be destroyed. The purpose of the financial disclosure is to insure that in your actions as a county officer or employee you don't improperly approve something, do some action that benefits you or a family member. If you are no longer an officer or county employee, you are no longer in a position to do that. The post-employment restrictions only apply for 12 months after you have left county government. Other than keeping it in case some claim came up, there really isn't much of a purpose in keeping it. The reason you are keeping it, at least one year, is in case someone is saying "*Hey, they are doing something that they had knowledge of while they were a county employee, or they benefited somehow, from some transaction*" and you want that 12-month window. I thought three years is more than enough time to retain those records. Once you have filed, after three years the IRS doesn't go back to look at your stuff, unless you have had fraud or something.

WJ: Shall we look at this on our next agenda?

BLT: It would give people time to think about it.

WJ: This would give us an opportunity to think.

AL: Yeah, this should be for the next agenda, it makes a lot of sense.

WJ: Then we should discuss this more.

KS: Would that then be folded into our vision of our rules?

BLT: Yes.

KS: Okay.

**5. NEW BUSINESS**

There was no new business.

**6. UNFINISHED BUSINESS**

**a. Review draft of Hawai'i County Board of Ethics Handout for new employees, board and commission members, and elected officials.**

BLT: The primary difference between this one and the prior one is that I filled in and I numbered it to make it easier. Starting on page 4, all of this is new. We put in who has to file a financial disclosure, when they have to file it, penalties for failure, information on advisory opinions, and referrals to authorities for disciplinary action. I waffled on whether to add more or to keep it simple because we are going to attach the entire Code of Ethics on the back, so I opted to go shorter. Then, at the end of page 5, is the page break. That is so the Ethics Checklist, which is the same as it was before, becomes separate and doesn't get mingled with the first part. The only information that is not in here would be on page 4. Under Confidential Disclosures, under board and commission members, it says insert list. The list is subject to change because currently there is an amendment to the County Code. I didn't want to insert the names of the boards and commissions yet. If the council adopts Lincoln's proposed amendment, then that will change. I thought that once we see what the council does then I will insert it. I thought it was easier to specifically list the boards, even though we will have it on the financial disclosure. It is the same reason, under employees, that I listed the specific types of employees, instead of saying regulatory employees. I listed exactly who those employees are that are required to file. There is a little difference regarding those employees. Boards and commissions file every year and so do the elected officers and department heads. Regulatory employees, under the County Code, only have to file an even number of years, or within 30-working days of assuming a position. It started in 1984, and then it said bi-annually. That is why, as an example, I just said an even number years--2006, 2008--I thought if I put bi-annually, people would be wondering what that meant. Specifically stating even numbered years, because of the language in the Code, it would be easier for us as well as the employees to understand.

KS: Under the subheading, Confidential Disclosures, in that first sentence "Subject to change..."

BLT: I know, I am just saying that won't be part of this. Eventually it will just be a list. This is just note saying to insert a list. The council is considering an amendment which will take all the advisory boards and commissions out. Once they have acted I will put in all the ones that can make decisions.

KS: The format will look just as it does for employees, only it will be boards and commissions, semicolon.

BLT: Yes.

KS: Good, thank you.

AL: Unfortunately there is just no way to make a handbook simple.

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BLT: It has bothered me, but it was the battle between trying to make it short and sweet and then looking at it, especially for new employees, as the first opportunity to put something in front of them. I did not want to leave out information that might be important to them. I wondered if there is one section I should highlight a little more, and that is penalties. See page 4, penalties for failure to file. I guess you don't pay that much attention to those things when you are filing, but I thought the idea that candidates could end up with a year in jail was an attention getter. I don't think many people are aware of it, I doubt it would happen, but that it is in the County Code. Not only a \$1000.00 dollar fine, but also a year in jail.

AL: And imprisonment, not or?

BLT: Yeah, like wow.

KS: I like it the way it is. Taking off on what Ann just said, this is 2007 and things are not simple. Our world is not simple and I think anybody who has a job, regardless of what it is, has a responsibility beyond just showing up. This is serious business; we can't distill it and make it simple. We can't make it palatable. This is life.

AL: I do think the Ethics Checklist sort of addresses that, a quick read.

KS: Right, it is a checklist. That is true. I really like this cover letter, Bobby Jean, I really do. I like the whole document, as is. As people are hired, the people doing the hiring need to tell them that this is not something that you just put in a drawer. This is the real thing.

AL: This is probably good that the penalties are listed.

BW: I would like to weigh in on this too. How long is our term of office here? Five years? I can't believe I came in five years ago. Anyway, I came in here five years ago and Bobby Jean was not a councilperson, and said what we need to pay attention to is this, all this. And we have been hacking at it for five years. Looking at it in a very holistic way this is a great final, finished product. We had nothing to begin with, we now have this. Once the council takes action you can fill in the missing pieces. Put the attachment on the back and we are good to go for the next five or ten years. If there is a motion in order I would move to accept and file this?

AL: We still have some revisions.

WJ: I think we need to put it on the next agenda.

BW: I move to accept this and defer this to the following agenda for continuation.

AL: Second.

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WJ: Thank you. Is there any discussion?

AL: I think this will give us a chance to really look at it. There will be another set of eyes proofing it.

BLT: The only thing that I really didn't put in here was an explanation of how hearings are conducted, what kinds of evidence and stuff. I thought that the more detailed information is available in the code and only an issue if someone actually wants to file.

AL: If you have gone that far....

BLT: If you have gone that far. This is more of a "*You are a new employee, or you just got elected to office, heads up, there are some things that you cannot do.*" The only thing that is not in here is the nepotism issue. It is in the charter, and it just hit me just now, this would apply to people like the mayor and council members. It is not strictly in the Ethics Code. You cannot hire, that might be something that we want to reference even though it is not strictly in the Ethics Code. Just a thought, because it is something has come before the board. I am trying to remember, it was Keiko Bonk.

BW: And Dante Carpenter before her.

BLT: The question was whether hiring your boyfriend violated the code. The question was posed incorrectly. The questions should have been whether hiring a boyfriend who lives with you and therefore is benefiting the household income is a violation. The real issue was that she hired someone who was living with her and doubled her household income by hiring him. He was actually making more money than she was. That was where the real conflict of interest came in. The issue came under the conflict of interest provisions. You should not do things that benefit you financially. It wasn't posed that way, but that was how it came up. That is why there is a nepotism provision in the charter. We don't want people to use their position to benefit themselves financially. If your kid is living with you and doesn't have a job, then you benefited. You no longer have to support your child. You hire your husband.

WJ: But is that to say that if your child is not living with you, and doesn't have a job, is it okay to hire him?

BLT: No, you cannot. You can be hired during civil service, but the theory is that if he is living with you and doesn't have a job then you are probably giving him money anyway, or helping him. It is designed to avoid financial benefit. The other reason is to avoid situations in which you supervise a family member. If you hire a family member and they do something wrong, you are less inclined to reprimand them. That is because they are a family member. That's the reason it is there.

JW: I, for one, would be a lot harsher on my own family member.

BW: Do we have a motion on the floor or not? Nepotism duly noted. I call for the question on the motion.

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JW: Thank you.

**Motion and Vote:** Mr. Williams made a motion to accept and defer this matter to the next agenda; Ms. Lum seconded the motion; all members voted aye. Motion carried.

**b. Review Rules of Practice and Procedure of the Board of Ethics.**

WJ: Review Rules of Practice and Procedures. I think Kendall this is yours.

KS: I don't have anything to report, because as I said the last time, the only other document on the county website is the Planning Department. It is very large, and I didn't download and xerox it for everyone. I was thinking along the lines of the HRS 487R issue that we talked about, standardization and practices. I was going to ask if Corporation Counsel would consider having a format for all boards and commissions to use. Certain boards and commissions have more definitions in their definition section. I don't know if they need that or if it could be standardized so that every board and commission has their needs meet. If there was a standardized format to work from then we would at least have a skeleton of all the points we have to cover. What else? I also had gone on the internet and I had downloaded some.... No that is not correct, I rescind that. I haven't done any actual word-for-word comparison, because having to get the different documents from the different boards is too cumbersome. You are sitting with hundreds of pages.

BLT: If I understand you correctly, what you would like me to do is review them then do a report on what types of provisions are carried in them and provide a basic skeleton to be addressed by the Board of Ethics.

KS: I think the last time I talked to you or Lincoln about it he said that they should be written in the format of common sense so the average person or citizen is able to work with them and understand them. Some of this language is not clear to me. Because some of them, like Rules of Evidence -1.7, it says something and I don't know why it says that. There is a lot of legalize, in my brain I don't know what to do.

AL: I don't think we have determined what needs to be revised. I mean some of it may be just fine, it just looks weird.

KS: Right. It needs to be digitized, and Karen did that. She has done that and has sent that to me.

AL: I don't think we have all looked at it. What parts are not understandable, like the rules of evidence, and what parts are good the way it is. I'm kind of stirring around here without knowing where to go.

WJ: Well, maybe it is something we can table and look at intermittently, piece-by-piece.

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AL: Like we are just doing one thing on that 487.

KS: The other thing is if the county or state has a set of rules of practice and procedures that is exemplary, but I don't know that. If there is a gold standard somewhere, but I couldn't find one.

AL: Are you saying we have to make our own gold standard?

KS: Well, if someone has already done it and it is a good document, recognized by the authorities or whoever....

WJ: I don't see any reason why we should be tackling this with any urgency.

BLT: I'll come up with some kind of report. I'll do a little research and come up with a report for the next meeting for you to look at. We will do it in pieces and we will look at this as a long-term project.

**Motion and Vote:** Mr. Williams made a motion to table this and address this no later than three months hence; Ms. Lum seconded, all members voted aye. Motion carried.

**Motion and Vote:** Mr. Williams made a motion to move into Executive Session; Ms. Lum seconded, all members voted aye. Motion carried.

## 7. EXECUTIVE SESSION

The Board re-entered Regular Session at 11:20 a.m.

**Motion and Vote:** Mr. Williams moved to accept and file the financial disclosures for Stephen Bowles, James Browne, Debra Ching-Maiava, Joel Cohen, Robert Cooper, David Drury, Gary Fujihara, Joel Gimpel, Thomas Goya, William Graham, Blayne Hanagami, George Harai, Loren Beck, Paula Helfrich, Peter Hendricks, Newton Inouye, Wayne Joseph, Clifford Kaminaka, Louis Kaouiwi, Millicent Kim, Bernard Konanui, Carla Kurokawa, Alison Lee, Ann Lum, Diana Miller, Melvin Morimoto, Dwayne Mukai, Anita Politano Steckel, June Rabago, Alvin Rho, George Robinson, Grace Searle, Kendall Sharpless, Rodney Watanabe, Hugh Willocks, Thomas Whittemore and return the financial disclosures to Jo Anne Balberde-Kamali'i, Bertram Hashimoto, Ernest Matsumura, Harold Murata, Rene Siracusa, and Riley Smith for clarification; Ms. Lum seconded the motion; all members voted aye. Motion carried.

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**8. ANNOUNCEMENT**

The next regular monthly meeting is scheduled for Wednesday, March 14, 2007, at 10:00 a.m. at Hilo Lagoon Centre, Liquor Control Conference Room #230, 101 Aupuni Street, Hilo, Hawai'i 96720.

**9. ADJOURNMENT**

**Motion and Vote:** Mr. Williams moved to adjourn; Ms. Lum seconded the motion; and all members voted aye. Motion carried.

*The meeting adjourned at 11:25 a.m.*

Respectfully submitted:

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Karen Delimont, Secretary