

# HAWAI'I COUNTY BOARD OF ETHICS

## MINUTES – REGULAR SESSION

Wednesday, October 11, 2006 – 10:00 a.m.  
Corporation Counsel, Hilo Lagoon Centre  
101 Aupuni Street, Suite 325  
Hilo, Hawai'i 96720

**Present:** Reeve Williams, Chair  
Wayne Joseph, Vice Chair  
Kerry Inouye, Member  
Ann Lum, Member  
Kendall Sharpless, Member

**Also present:** Bobby Jean Leithead-Todd, Deputy Corporation Counsel  
Karen Delimont, Secretary

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### 1. CALL TO ORDER

The Chair called the meeting to order at 10:05 a.m.

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

There were no members of the public present.

### 3. APPROVAL OF MINUTES

**September 12, 2006, Regular Session:** Mr. Joseph moved to accept and file the minutes; Mr. Inouye seconded the motion; chair abstained, all other members voted aye, motion carried.

**September 12, 2006, Executive Session:** Mr. Joseph moved to accept and file the minutes; Mr. Inouye seconded the motion; chair abstained, all other members voted aye, motion carried.

### 4. COMMUNICATIONS

a. **Communication No. 2006-97:** Letter dated September 21, 2006 from Wayne Joseph re: Proposed revisions to the County Board of Ethics

#### **Discussion: Fines.**

Mr. Joseph stated that he became aware that the State Board of Ethics asked the Legislature for an opportunity to fine people who violate State Ethics \$500.00.

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He thought it might be a good idea if we had the same opportunities, when warranted, for people who might violate the Hawaii County Code of Ethics.

Ms. Lum felt that the Ethics Board is making judgments, and this is a different area. The Board finds people in violation, prepares an opinion, and the decision goes back to that person's employer for remediation. As the Board of Ethics do we now want to impose a judgment remediation like fining?

Ms. Sharpless said she liked the idea of being in step, not compliant, but following the lead of the State commission. She believes that the main responsibility of this committee is to teach and not be punitive. The concept of ethical behavior is sometimes the last thing that anybody ever thinks of and if the Board concentrated on public education, teaching, and coaching--that kind of thing--the game would be better. Over history we haven't seen a lot of prevention because of stiff punitive measures. She would rather go at it through education, teaching, and coaching--that kind of stuff.

Mr. Inouye said that a punitive fine is an option. Even though the Board would have the power to fine people, it wouldn't have to do it, but it is still an option, a tool. He agreed with Mr. Joseph that the Ethics Board should follow the State lead. If the State has done this, then this is something good.

Mr. Joseph said that it is an option to give the Board some teeth. Each case would be different. In the rare situation where someone blatantly violates the Code of Ethics which ends up costing the taxpayers money, or costing the Board money, because of having to hold special meetings, we would have the opportunity to fine them. It doesn't mean that we would have to fine them, but it does give us the option.

Ms. Sharpless felt that there has to be some standard to go by. If you say it is a blatant situation, how do we decide what is blatant? One man's idea of blatant may be another man's idea of business as usual. She said that she is uncomfortable with saying "That's really bad and it is going to cost you more" or "It's sort of bad and it is not going to cost you as much." Perhaps the criteria could be the higher the position, or the higher the number of events, or the number of documents, the higher the fine.

Mr. Williams said that enabling legislation would be needed to do this. We would need a county ordinance and the details would have to be worked out. We would have plenty of input into drafting such an ordinance. He felt that if we went for an ordinance the chances of it passing are very good since the State has already passed a similar ordinance. We have that precedent and we are consistent with shadowing them (the State) and he would guess that other county governments would do likewise. It would prevent the appearance of the Board of Ethics as being just a paper tiger. He supported Mr. Inouye and Mr. Joseph and said he feels that we need to explore this again with the Corporation Counsel.

Ms. Leithead-Todd agreed to draft something. She always thought that one of the problems with Ethics Commission and the hearing is that there wasn't any teeth to the

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commission. There are constraints which limit what can be done and a written reprimand carries no financial impact. She feels that even small fines, like \$25.00, may provide an incentive. She gave an example where Judge Gaddis would fine the attorneys \$25.00 if they showed up late for court. It was a small fine but it was an incentive for the attorneys to be on time. Even though it wasn't a \$500.00 fine, it had the impact of getting the word out to people that there was a consequence.

Another point she made is that the Board members donate their time to the commission, but there is still a cost to running the hearings. There is the cost of publication, the cost of Xeroxing, the cost employee time, and salary expenses. In cases when someone has violated the code she thinks it is appropriate that there is a fine as it would help to underwrite the expenses of having an Ethics Commission. The fine would also have a deterrent effect. People pay attention when there is fine, even if it is a small one. She feels that if people are asked to serve on a board in a semi-judicial fashion that they ought to have some teeth and they should have some authority. This was the big issue that the State Ethics Commission had. She felt that \$500.00 is not a huge fine when you look at some of the kinds of cases that they (the State) have had. There have been State cases where someone has used a computer, or used government Xeroxing machines, or physically moved government equipment to a campaign headquarters. These were blatant violations.

**Motion and Vote:** Mr. Joseph made a motion that Corporation Counsel drafts a letter to the County Council recommending that the Board of Ethics have the authority to fine employees or officials up to \$500.00 for violation of the County Ethics Code. Mr. Inouye seconded the motion. Mr. Williams, Mr. Inouye, and Ms. Lum voted aye, Ms. Kendall voted nay. Motion carried.

**Discussion: No bulk mailings by the incumbency prior to an election.**

Mr. Joseph questioned why politicians can use taxpayers' dollars to send out bulk mail emphasizing all the great things that they did, just prior to an election. He sees it as an unfair advantage, by using their incumbency, and by putting a letterhead on the mailings. He knows that it is legal, but does not feel it is appropriate. He would like it if the incumbents are unable to do mailings six months prior to the primary election.

Ms. Leithead-Todd stated that currently there is no rule regarding this issue. She indicated that perhaps it could be imposed when they file for re-election. Another option would be when they pull their nomination papers. Many times incumbents will pull papers in March, but not file until June. Pulling early informs others that the incumbent is running for office. It is intended to discourage other people from pulling papers because they know that the incumbent is running. This would be an amendment to the Council rules. The rules govern how the incumbents may spend their discretionary funds. The rules are decided by resolution.

**Motion and Vote:** Mr. Joseph made a motion to have Corporation Counsel draft a letter to the County Council recommending that the Council adopt a rule setting a time limit on

the use of their discretionary funds to send out mailings and legislative summaries in an election year to avoid the appearance of using their position to get an inappropriate advantage. Mr. Inouye seconded the motion; all members voted aye, motion carried.

- b. Communication No. 2006-98:** Corporation Counsel Numbered Memorandum 2006-96 re: Revised Hawai'i State Ethics Commission Flyer relating to Campaign Restrictions for State Officials and State Employees.

**Motion and Vote:** Mr. Joseph moved to accept and file the communication, Mr. Inouye seconded the motion; all members voted aye, motion carried.

## 5. UNFINISHED BUSINESS

### a. **Financial Disclosure Subcommittee Report.**

Ms. Lum provided handouts to the members of the Board (attachment herein). Some suggestions of items to include on the detailed instruction were:

Whether the form should be reviewed in Open or Closed Session.

Currently the instructions do not provide a choice for review during an open or closed session

Where the financial forms are located.

The financial form can be located online at the County Website under the Board of Ethics.

The time period it covers and when it should be filed.

Where the form should be filed upon completion.

It was agreed that the Secretary for the Board of Ethics shall maintain a record of all disclosures and when they have been filed.

Who should be contacted if a Board or Commission does not appear in the disclosure listing to determine if a disclosure is necessary.

It was recommended that they contact either the Corporation Counsel or the Mayor's office.

Whether or not a revision date be included on the form.

Should the amounts of the Financial Amount Code be raised to be consistent with the State Ethics Code.

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The County Code states that the Financial Amount Code may be changed. The G amount can be change to reflect more that \$150,000 and less than some stated amount. There may be additions to the Financial Amount Code (H, I, J). Members of the board agreed that they should set the amount as high as \$1,000,000 which is consistent with the State Financial Code Amount.

Item 5 of the County Instruction currently reads “Interests in Real Property Held in the County.” Should it be modified to remove “Held in the County”?

The Board agreed that the words “Held in the County” should be eliminated.

The State Instructions state in Item 6 that “you are not required to disclose real property held that is your personal residence,” and in Item 7 “you are not required to disclose real property acquired that is your personal residence,” and in Item 8 “you are not required to disclose real property transferred that was your personal residence.” Should they put this into the County instructions?

Ms. Leithead-Todd stated that we are really looking for investments and things that people have made profits made on. Disclosure of personal properties may be an invasion of privacy. Even the Real Property web site has been modified so that people are given a measure of protection. Ms. Leithead-Todd indicated that the form cannot be changed unless you change the County Code. The problem is that the Financial Disclosure is stated in the County Code. If you want to delete personal residence then a recommendation to change the County Code may be in order. This is particularly true for volunteer Board and Commission Members who are not being compensated. This may not pertain to elected officials.

The status of the following committees in regards to Financial Disclosures needs to be verified:

- a. Cost of Government--if created by Charter they would be required to file.
- b. Kailua Village Design Commission.

Ms. Sharpless stated that she wants to follow the State Financial Disclosure Form, and then refer to the County Code to see if there are any conflicts. She said that there is inconsistency when we follow the State on some issues, but not on others. She believes that this is what makes a process obsolete and open to interpretation. She gave an example of someone serving on a commission at the County level and serving on a committee at a State level. Having the same form would make it much easier to document data. Having a slightly different county form would make it difficult to

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compare to the State form. It would be easier if there was one procedure that fit both situations.

Ms. Lum indicated that the problem occurs because the State Code differs from the County Code regarding spouses and dependant children. As a result spouses and dependent children have been eliminated from the County instructions. The County Code says "yours or another person(s)." The State Code says "you, spouse, dependant children," so the codes are different.

Ms. Sharpless said that she feels the forms should be exactly the same. If it requires a change the County Code, then we should do that. She would like the wording on the State form and on the County form to be exactly the same.

Mr. Joseph said that he liked the simplified County form better. It is easier to look at, and easier to fill out. The State form is too formal and condescending. The County form is much simpler.

Ms. Kendall said that she thinks this is serious business. She thinks the people that complete this form are not stupid. People with million dollar homes know exactly what this means. People these days are more sophisticated and if they don't know the meaning of something before they fill it out, then they should find out what it means.

Mr. Joseph thought that the purpose of this discussion was to simplify the process.

Mr. Williams said that it was primarily to make it consistent, uniform, and understandable.

Ms. Sharpless said that Lincoln's goal was not to discourage people. There was to be no lowering of the bar to make it easy. There is no sugar coating on this. The standard remains high, and to conform to the standard everything needs to be the same, not necessarily user friendly.

Ms. Lum agreed with Mr. Joseph. She was trying to take the State wording and put it into the County form, line by line, and still keep the form cleaner looking with less wording on it.

Ms. Leithead-Todd indicated that she likes the County form better. Ms. Lum has eliminated some redundancy. She liked Items 2 and 3, where the same wording was contained within a box. It makes it easier to follow, and the bigger type is easier to read. The State has smaller type. It is, basically, the same wording.

Ms. Lum said she will double check the wording so that we are consistent with the County Code. She asked if the members liked the opening quote from the Constitution. It was agreed to be a nice touch because it is the source, and why we have a Code of Ethics. Ms. Lum will try to make it more like what the State says in the form boxes, and then give the draft to Ms. Leithead-Todd for review.

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Ms. Sharpless said that she would like the items to reflect the County Code “verbatim.” She said if we are not going to follow the State disclosure, then she would like our Disclosure Form to reflect, verbatim, the County Code. If we interpret, or make it simpler, we change the standard by which someone could be judge by this. She would like to see the County Code actually quoted within the Disclosure form.

Ms. Leithead agreed some portions of the County Code that have been left out of the Disclosure form. By quoting the Code it will make it easier for people to understand what it is that they need to do.

Mr. Joseph wanted to know what happens when you have a person on a board or commission who blatantly refuses to complete a disclosure statement.

Ms. Leithead-Todd referred to the County Code which states that a penalty could be in order. The appointing authority has the power to discipline. If a candidate fails to file a disclosure they can be fined a \$1,000 penalty and one year imprisonment. If a board member (officer) refuses to file then their appointment could be revoked. The disclosure is a duty of your appointment.

The secretary of the Board of Ethics is maintaining a database that reflects the date that all Board members have filed their disclosures. The chair suggested that the secretary call the board secretaries of the delinquent members. If the board member refuses to submit a disclosure then we should let the appointing authority know. If we still receive no response the Board of Ethics secretary will compose a letter for the chair to sign and it will be forwarded to the board secretary for action.

Ms. Sharpless asked if we needed to add these functions into the Board of Ethics rules of practice and procedures. If oversight of the compliance of the Ethics Code is a function of this committee, then we will have a process for enforcement.

**Motion and Vote:** Ms. Sharpless moved to thank Ann Lum for her diligent work on the revised financial disclosure form and requested that the form be edited, as directed by Bobby Jean Leithead-Todd, to include the exact wording of the County Code for Items 1 thru 9 and change the financial coding up to one million dollars. Ms. Lum seconded the motion; all members voted aye; motion carried.

**Motion and Vote:** Ms. Sharpless moved to request that the issue of compliance with our Financial Disclosure rules and form be place on the next meetings agenda under new business in terms of review of our Rules of Practice and the Board’s role in recordation, review, and compliance. Mr. Joseph seconded the motion; all members voted aye; motion carried.

**b. Review of the State Ethics Checklist for Financial Disclosures**

**Motion and Vote:** Mr. Joseph made a motion to accept and file; Mr. Inouye seconded the motion; all members voted aye; motion was carried.

**c. Review of State Ethics Code Handout**

The question before the Board was if the Hawaii Board of Ethics wished to produce a handout similar to the State Ethics Code Handout which explains the Ethics Code to newly elected, re-elected, and appointed members of Boards.

**Motion and Vote:** Ms. Lum made a motion that this issue be deferred to our next meeting to give members of the Board time to review and decide if they wished to do something similar; Ms. Sharpless seconded the motion; all members voted aye; motion carried.

**6. EXECUTIVE SESSION**

**Motion and Vote:** Mr. Joseph made a motion to move into Executive Session to review the Financial Disclosure of Daniel B. Banks; Mr. Inouye seconded, all members voted aye.

The Board moved into Executive Session at 11:35 a.m. and re-entered Regular Session at 11:45 a.m., at which time the Chair announced that the Board had reviewed the financial disclosure of Daniel B. Banks.

**Motion and Vote:** Mr. Joseph moved to accept and file the financial disclosures of Daniel B. Banks and to return to Regular Session; Ms. Sharpless seconded the motion; all members voted aye; motion carried.

**7. ANNOUNCEMENT**

Next monthly meeting is scheduled for November 8, 2006 at 10:00 a.m. at the Corporation Counsel Conference Room, Hilo Lagoon Centre, 101 Aupuni Street, Suite 325, Hilo, Hawai'i.

**8. ADJOURNMENT**

**Motion and Vote:** Mr. Joseph moved to adjourn, Mr. Inouye seconded the motion, and all members voted aye.

*The meeting adjourned at 11:46 a.m.*

Respectfully submitted:

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Karen Delimont, Secretary