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COUNTY OF MAUI, STATE OF HAWAII

BOARD OF ETHICS
REGULAR MEETING

Held at the Planning Department Conference Room,
250 South High Street, Wailuku, Maui, Hawaii, commencing
at 12:48 p.m., on Wednesday, August 10, 2011.

Reported by: Tonya McDade, CSR, CRR
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1 ATTENDANCE

2 BOARD MEMBERS PRESENT:

3 Michael Westfall, Chair
4 Marti Wukelic, Vice-Chair
5 Donald Sheridan, Secretary
6 Sydney Kikuchi, Member
7 Gene Viglione, Member

8 STAFF PRESENT:

9 Gary Y. Murai, Deputy Corporation Counsel
10 Angela Andrade, Executive Secretary

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1 (Wednesday, August 10, 2011, 12:48 p.m.)

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CHAIR WESTFALL: Call the meeting of
Wednesday, August 10th, 2011, of the Maui County Board
of Ethics to order.

Attendance: Michael Westfall; Marti Wukelic;
Don Sheridan; Sydney Kikuchi; and Gene Viglione are all
in attendance. The others are absent or excused.

Has everyone had an opportunity to review the
minutes of July 13th, 2011? May I have a motion to
accept them?

MEMBER SHERIDAN: I move to accept them.

MEMBER VIGLIONE: I second.

CHAIR WESTFALL: All those in favor, say
"aye."

(A chorus of ayes.)

CHAIR WESTFALL: Any opposition?

(Silence.)

CHAIR WESTFALL: Seeing none, the minutes are
accepted.

Public testimony. I don't see any public
testimony.

Old Business: (a), Financial Disclosures.

None.

Communications Items. Report from the Rules

1 Review Subcommittee. I don't have anything. Do you
2 have anything?

3 MR. MURAI: No.

4 CHAIR WESTFALL: I'm referring to our
5 Corporation Counsel.

6 MR. MURAI: No, Mr. Chair, I don't have
7 anything to add as far as the report from the
8 subcommittee. But I see, from the agenda, the matter is
9 on the agenda for possible placement, setting of public
10 hearing of the rules revisions. So we can field
11 questions from the Board at that time.

12 CHAIR WESTFALL: Okay. There was a copy of
13 the revised rules that was included in the packet. Did
14 anyone have any questions or comments? I see Don.

15 MEMBER SHERIDAN: Oh, yeah. On Page 101-3, it
16 says, "Lobbyist means any person who engages himself or
17 herself for pay or other consideration." What is other
18 consideration? You're talking about trades or --

19 MR. MURAI: Could be, I suppose, by
20 consideration, anything of value. Whether it's a free
21 round of golf, meals in a restaurant, favors, I guess.

22 MEMBER SHERIDAN: Okay.

23 MR. MURAI: This definition of lobbyist is not
24 being amended. That's been on the books for some time
25 now.

1 MEMBER SHERIDAN: Okay. Can we go down to
2 severability? Can you elucidate on that a little bit?
3 That is not clear in my mind.

4 MR. MURAI: I guess these kinds of clauses are
5 considered saving clauses. In other words, what I take
6 that to mean is if, for the sake of discussion, a
7 portion of one of the chapters, subchapters of these
8 rules are deemed to be unconstitutional or illegal or
9 improper, the invalidation of one rule does not
10 invalidate the entire set of rules.

11 MEMBER SHERIDAN: Okay. 101-7, I have
12 underlined, under (d), the secretary, the words, "shall,
13 with the assistance of legal counsel and staff." That
14 means with you and your staff, I take it?

15 MR. MURAI: Well, I presume that means with
16 the Office of the Corporation Counsel. And the
17 Executive Secretary would be Angela. In other words,
18 the staff assigned to the committee.

19 MEMBER SHERIDAN: I see. Okay. Financial
20 disclosures, 101 -- I guess that's -- I've never seen
21 one of those things come -- oh, I think you got a typo
22 on 101-21, under, "The Board shall examine all
23 disclosure," I think it should read "statements." Read
24 "statements."

25 MR. MURAI: I'm sorry?

1 MS. ANDRADE: Where are we?
 2 MEMBER SHERIDAN: 101-21, review by the Board.
 3 MR. MURAI: Which subparagraph is it?
 4 MEMBER SHERIDAN: 101-47.
 5 MR. MURAI: 101-47. Okay.
 6 VICE-CHAIR WUKELIC: Oh, I see.
 7 MEMBER SHERIDAN: Okay. 101-23, under
 8 §04-101-49.1, Penalties. Under, I, failure of
 9 appointed, elected, yada, yada, yada, who is going to
 10 enforce that? And then the next paragraph down,
 11 Paragraph ii, \$25 to be collected by the Board, right?
 12 MR. MURAI: I'm sorry. What was the --
 13 MEMBER SHERIDAN: Here you go.
 14 MS. ANDRADE: On Page 101-23.
 15 MEMBER SHERIDAN: So, Michael, I guess you're
 16 going to have to go out and start collecting.
 17 CHAIR WESTFALL: Yeah, I guess so. You want
 18 to -- well, we had fairly significant discussion on this
 19 matter, that -- please correct me if I'm wrong --
 20 MR. MURAI: Sure.
 21 CHAIR WESTFALL: That our authority to fine is
 22 administrative only, sort of like the library. We can
 23 issue a fine because you didn't bring your books back.
 24 MEMBER SHERIDAN: This says collected.
 25 CHAIR WESTFALL: Well, we can try to collect

1 It, but we don't have the force -- and I'm trying to
 2 articulate the differences. We don't have the force of
 3 law in a sense that we can't go place a judgment on
 4 somebody or force them to pay. We can only say, "We
 5 fine you, please pay us." So essentially the mechanism
 6 is going to probably be sending letters, of that nature.
 7 At the end, if they don't pay the fine, then we'll have
 8 to come up with some other idea or -- not idea, but to
 9 come up with some other resolution.
 10 MEMBER SHERIDAN: Can we hire a hitman?
 11 CHAIR WESTFALL: I don't know if we have that
 12 in our budget.
 13 MR. MURAI: No. But you could -- you know,
 14 you could take it to court and reduce it to a judgment.
 15 I doubt that you would go that far, but that's possible.
 16 You know, depending on the amount at stake, file in
 17 District Court, get a judgment, place a lien on their
 18 property, garnish their wages, record the judgment with
 19 the Bureau of Conveyances, that sort of thing. It's
 20 highly unlikely given the cost of the expense of that
 21 kind of action, but it's possible.
 22 MEMBER SHERIDAN: It seems like an awful lot
 23 of work for this Board to have to go through should it
 24 happen.
 25 MR. MURAI: Should it happen, but, you know,

1 the thing is this, is that with the threat of sanctioned
 2 penalty, what we really want is compliance.
 3 MEMBER SHERIDAN: Yes.
 4 VICE-CHAIR WUKELIC: I don't think the issue
 5 is so much, Don, getting the 25 bucks from them, but if
 6 they're in elected office, if they're trying to be
 7 elected to an office, to have that on the backs, to have
 8 that on the files, that they can't even pay this \$25
 9 fine, I think, is kind of a point. Does that sound
 10 about right, Gary?
 11 MR. MURAI: Well, that was --
 12 CHAIR WESTFALL: Yes.
 13 MR. MURAI: Marti, you folks were -- well, I
 14 wasn't here when the subcommittee was, you know,
 15 formulating this, but, yeah, that's really what you want
 16 to do is encourage compliance.
 17 VICE-CHAIR WUKELIC: Because it will be out
 18 there publicly, so --
 19 MEMBER SHERIDAN: Okay. 101-29.
 20 MR. MURAI: 29.
 21 MEMBER SHERIDAN: Yeah, 101-29.
 22 CHAIR WESTFALL: Let me finish sort of a
 23 thought there.
 24 MEMBER SHERIDAN: Yeah.
 25 CHAIR WESTFALL: The issue of enforcement for

1 this commission is a very large question. And I think,
 2 in revising the rules, we felt that that would be
 3 something we would come back and discuss because, at the
 4 same time, even when we issue advisory opinions and we
 5 tell somebody not to do something, we have no
 6 enforcement, no follow-through. We're just assuming
 7 that they go out and correct their behavior or that
 8 their hiring authority has somehow corrected their
 9 behavior. So if the Board wants to have stronger
 10 enforcement abilities, that's a Charter issue, that's a
 11 much larger issue. So I'm saying we would come back and
 12 have discussion at some other point.
 13 MEMBER SHERIDAN: Okay. 101-29, the date of
 14 issuance. What if the Board determines the facts had no
 15 merit on that paragraph? §04 -- here you go.
 16 MR. MURAI: 59.
 17 MEMBER SHERIDAN: Yeah.
 18 MR. MURAI: I'm sorry, Don. What is the
 19 question?
 20 MEMBER SHERIDAN: What if the Board determines
 21 that the facts had no merit?
 22 MR. MURAI: The Board could simply decline to
 23 take further action or dismiss the complaint. I'm
 24 sorry, but these are for advisory opinions, right?
 25 MEMBER SHERIDAN: This is after an Advisory

1 Opinion's been rendered.
 2 MR. MURAI: Let me just make sure I understand
 3 the question. You're saying that the matter is not
 4 within the jurisdiction of this Board?
 5 MEMBER SHERIDAN: Well, it says, "The Board
 6 shall have deemed to have issued an advisory opinion or
 7 have refused to do so on the date that the advisory
 8 opinion refusal is mailed or delivered to the parties.
 9 When the request concerns the affairs of a person other
 10 than the person making the request, in addition to the
 11 above" -- the above, the request --
 12 VICE-CHAIR WUKELIC: Above, comma.
 13 MEMBER SHERIDAN: That will not -- yeah,
 14 should be a comma there. "Shall not be deemed filed
 15 until the person who is the subject of the opinion has
 16 had a reasonable opportunity to review the facts
 17 submitted and present that person's views." Well,
 18 that's why I asked if the Board determines the facts
 19 have no merit, then just tell them.
 20 MR. MURAI: I'm not sure I understand the
 21 question, but, because it is regarding an Advisory
 22 Opinion -- the Board may recall an example of where we
 23 had someone come in a few meetings ago requesting an
 24 Advisory Opinion as to whether he could do business with
 25 the County.

1 MEMBER SHERIDAN: Yes.
 2 MR. MURAI: And the Board determined that the
 3 rules of the Code of Ethics did not apply to him because
 4 he didn't fit into any of the categories. So the nature
 5 of the Advisory Opinion was that that person may conduct
 6 business with the County because what he -- you know, he
 7 did not fall into any of the -- in other words, the
 8 Board's opinion was, basically, no opinion because of
 9 the facts of that case. So when you said -- I'm not
 10 sure if that's -- that's an applicable example in
 11 response to your question, when you say what if the
 12 Board determines there's no merit or no -- the facts
 13 don't --
 14 VICE-CHAIR WUKELIC: If it involves another
 15 person, it kind of makes it like dividing by zero or
 16 something because it -- why would a person -- why would
 17 that third person that it's about want to dispute the
 18 fact that there is no merit to it? I mean, he would say
 19 no, I disagree, because there is merit to this complaint
 20 against me, because they're talking specifically about
 21 the third-party. If it's about a third-party, and
 22 you're saying if there's no merit, then what? And the
 23 third-party doesn't necessarily have to render an
 24 opinion because you just said there's no merit to this
 25 complaint against this guy. Does that make sense?

1 MEMBER SHERIDAN: All right.
 2 VICE-CHAIR WUKELIC: That's how I read it,
 3 anyway.
 4 MEMBER SHERIDAN: That's all I have.
 5 CHAIR WESTFALL: Any other questions or
 6 comments on the revised rules?
 7 VICE-CHAIR WUKELIC: I did have one. I'm
 8 wondering why it's gray on 101-33, if that's like a
 9 highlighted area.
 10 MEMBER SHERIDAN: Yeah, I had that down, too.
 11 MR. MURAI: That's something that needs to be
 12 taken out when we make this available for public
 13 inspection and posting.
 14 VICE-CHAIR WUKELIC: Okay. I was just
 15 curious.
 16 MR. MURAI: I don't know why it's there,
 17 either. It was there on the first draft I saw. And --
 18 MS. ANDRADE: We were going to ask Adrienne if
 19 there's a specific reason, but she wasn't around. So we
 20 figured, when we caught up to her, we would ask her.
 21 CHAIR WESTFALL: Probably to highlight it or
 22 something.
 23 MR. MURAI: So we're keeping a list of all the
 24 corrections that we've noted so far.
 25 CHAIR WESTFALL: On to Item 7, New Business.

1 Financial disclosures, none. Communication items,
 2 scheduling of public hearing regarding amendments to
 3 Chapter 04-101, Rules of the Maui County Board of
 4 Ethics.
 5 Could I get a motion to set a date for a
 6 public hearing to hear these?
 7 MEMBER SHERIDAN: I move that we set a date
 8 for public hearing.
 9 VICE-CHAIR WUKELIC: Second.
 10 CHAIR WESTFALL: All those in favor? Well,
 11 let me go to discussion. Now we'll discuss what the
 12 date is going to be.
 13 MEMBER SHERIDAN: That's a good idea. Hadn't
 14 we proposed that it would be in September?
 15 MR. MURAI: September 14th is our next
 16 regularly scheduled meeting. And we need to -- we've
 17 already prepared the publication, notice of -- well,
 18 assuming that the Board agrees that we'll set it for
 19 public hearing on September 14th, the rules require
 20 30-day notice. So assuming the Board approves September
 21 14th, notice would be published in The Maui News, single
 22 publication, letting the public know about the
 23 scheduling of the hearing on the revised rules, copies
 24 would be available for inspection at the Corporation
 25 Counsel's office. It will also be posted on the

1 County's website. And at the September 14th hearing,
 2 the Board will receive input from the public as to, you
 3 know, any questions, objections, concerns, support, that
 4 sort of thing.
 5 MEMBER SHERIDAN: Okay. Then I move that we
 6 have that meeting on September 14th.
 7 VICE-CHAIR WUKELIC: We're in discussion now,
 8 right? I just -- I just want to mention that our Chair
 9 will be gone, and I'll be chairing the meeting. And
 10 since he was so heavily involved in this whole process,
 11 I just want to float that concept out there, whether --
 12 I just want us to realize Michael won't be here.
 13 MEMBER SHERIDAN: When will the Chair be back?
 14 CHAIR WESTFALL: I'm not going to be back
 15 until October. So I'll be gone for all of September.
 16 MEMBER SHERIDAN: You would throw a monkey
 17 wrench into the works.
 18 MR. MURAI: Actually, you know, Mike --
 19 CHAIR WESTFALL: I booked this a while ago.
 20 MR. MURAI: -- did bring that up at the last
 21 meeting. And, of course, that was the time you couldn't
 22 make it, Don.
 23 MEMBER SHERIDAN: No. I was here.
 24 MR. MURAI: You were here?
 25 MEMBER SHERIDAN: Yes.

1 CHAIR WESTFALL: I'm certainly not opposed to
 2 do a conference call if somebody wanted to call me and
 3 just -- if that works, if somebody had questions.
 4 VICE-CHAIR WUKELIC: My only issue would be to
 5 clarify terms because, mostly, it will just be -- and I
 6 have no problem with chairing the meeting, we'll,
 7 mostly, be getting opinions, getting comments, getting
 8 testimony. But if somebody asks for clarification, if
 9 we could like --
 10 MR. MURAI: Would you feel more comfortable
 11 putting it off until October?
 12 VICE-CHAIR WUKELIC: I'm torn. It's more how
 13 the rest of the Board and how Michael feels about it
 14 weighed against -- we've been trying do this for five
 15 years, you know, so it's like --
 16 MEMBER SHERIDAN: Well, I don't think that
 17 putting it off for another month is going to be a big
 18 deal.
 19 VICE-CHAIR WUKELIC: I just want to do what's
 20 best for the --
 21 MEMBER SHERIDAN: So I think that with all the
 22 work that both you and Mike have done, that having both
 23 resources here in case there are some opinions or some
 24 questions would be better.
 25 VICE-CHAIR WUKELIC: Very tactfully put.

1 CHAIR WESTFALL: Let's see. Do you have a
 2 calendar over there, somebody, what the meeting date is
 3 in October?
 4 MS. ANDRADE: It's October 12th.
 5 CHAIR WESTFALL: 12th, okay.
 6 VICE-CHAIR WUKELIC: I suggest we do October
 7 12th, we set October 12th as the public hearing date.
 8 MEMBER SHERIDAN: I second that.
 9 CHAIR WESTFALL: Any more discussion?
 10 (Silence.)
 11 CHAIR WESTFALL: Okay. All those in favor of
 12 October 12th, say "aye."
 13 (A chorus of ayes.)
 14 CHAIR WESTFALL: Any opposition?
 15 (Silence.)
 16 CHAIR WESTFALL: I'm sorry.
 17 MR. MURAI: No, no. Go ahead. I just wanted
 18 to restate the motion afterwards, which is that it's
 19 been moved and seconded and unanimously approved that
 20 the proposed rules revisions will come on for public
 21 hearing on October 12th.
 22 And I just want to ask the Board for one more
 23 housekeeping matter, which is I would ask that as part
 24 of this process that, you know, what happened was --
 25 just like we saw today, Don and Marti, you caught a

1 punctuation that needs to be inserted. So I would like
 2 the Board's permission for Corporation Counsel's Office
 3 to be able to make grammatical nonsubstantive
 4 corrections to the proposed rules.
 5 VICE-CHAIR WUKELIC: Do you want a motion for
 6 that, too?
 7 MR. MURAI: Yeah, please.
 8 VICE-CHAIR WUKELIC: I move that your
 9 administration staff have the jurisdiction of making
 10 grammatical changes and fixes to the rules proposals as
 11 stated.
 12 MEMBER SHERIDAN: Second.
 13 CHAIR WESTFALL: Any more discussion on that?
 14 (Silence.)
 15 CHAIR WESTFALL: All those in favor, say
 16 "aye."
 17 (A chorus of ayes.)
 18 CHAIR WESTFALL: Any opposition?
 19 (Silence.)
 20 CHAIR WESTFALL: None. Motion carried.
 21 MR. MURAI: Thank you.
 22 CHAIR WESTFALL: I will just insert something
 23 here, I guess this is the only appropriate time.
 24 October 10th, I've been asked to speak with the Charter
 25 Commission as to the Ethics Board. I'm not exactly sure

1 what the questions are, but it might be appropriate that
 2 we're having a public hearing after that, so, if they
 3 have things that they're looking at, we'll have that
 4 already memorialized.
 5 MR. MURAI: They could even submit their own
 6 testimony, if they wish, or send a representative.
 7 CHAIR WESTFALL: All right. Number 8,
 8 announcements. None.
 9 Next scheduled meeting will be Wednesday,
 10 September 14th, 2011. Marti, you'll be chairing that.
 11 On to Executive Session. Do I have any
 12 volunteers to read this preamble?
 13 VICE-CHAIR WUKELIC: Since you guys had to
 14 wait for me, I'll do it. With reference to the agenda
 15 items listed below, one or more executive meetings are
 16 anticipated. In particular, the Board of Ethics
 17 anticipates it will consider the evaluation, dismissal
 18 or disciplining of an officer or employee of Maui County
 19 where considerations of matters affecting privacy will
 20 be involved. The Board may also consult with the
 21 Board's attorney on questions and issues pertaining to
 22 the Board's powers, duties, privileges, immunities and
 23 liabilities. Therefore, pursuant to Hawaii Revised
 24 Statutes, Sections 92-5(a)(2) and (4), the following
 25 items may be considered in Executive Session. The Board

1 may also convene in Adjudicatory Session pursuant to
 2 Hawaii Revised Statutes, Section 92-6.
 3 (Recessed to Executive Session, 1:11 p.m. to
 4 1:36 p.m.)
 5 MR. MURAI: Let's go back into Regular
 6 Session.
 7 CHAIR WESTFALL: We're now back into Regular
 8 Session. Do I have a motion to adjourn?
 9 MEMBER SHERIDAN: I move that we adjourn.
 10 VICE-CHAIR WUKELIC: I second.
 11 CHAIR WESTFALL: All those in favor, say
 12 "aye."
 13 (A chorus of ayes.)
 14 CHAIR WESTFALL: The meeting is adjourned.
 15 (Meeting adjourned at 1:37 p.m.)
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CERTIFICATE

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 4 I, TONYA MCDADE, Certified Court Reporter of
 5 the State of Hawaii, do hereby certify that the
 6 proceedings contained herein were taken by me in machine
 7 shorthand and thereafter was reduced to print by means
 8 of computer-aided transcription; and that the foregoing
 9 represents, to the best of my ability, a true and
 10 accurate transcript of the proceedings had in the
 11 foregoing matter.

12 I further certify that I am not an attorney
 13 nor an employee of any of the parties hereto, nor in any
 14 way concerned with the cause.

15 DATED this 7th day of September, 2011.

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 19 Tonya McDade
 20 Certified Shorthand Reporter #447
 21 Registered Professional Reporter
 22 Certified Realtime Reporter
 23 Certified Broadcast Reporter
 24
 25