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5 BOARD OF ETHICS
6 COUNTY OF MAUI
7 STATE OF HAWAII
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12 REGULAR MEETING
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18 Held at the Planning Department Conference Room, Kalana
19 Pakui Building, 250 South High Street, Wailuku, Maui,
20 Hawaii, commencing at 12:30 p.m., Wednesday, December 14,
21 2011.
22
23
24 Reported By:
25 Rachelle Primeaux, CSR No. 370

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1 APPEARANCES
2 Michael Westfall, Chair
3 Marti Wukelic, Vice-Chair
4 Sheri-Ann Daniels
5 Sydney Kikuchi
6 Donald Sheridan
7 Rebecca Woods
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9 Staff Present:
10 Gary Murai, Deputy Corporation Counsel
11 Angela Andrade, Executive Secretary
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1 MAUI COUNTY BOARD OF ETHICS
2 TRANSCRIPT OF PROCEEDINGS
3 * * *
4 CHAIR WESTFALL: Let's go ahead and get started.
5 Call to order the Maui County Board of Ethics meeting for
6 Wednesday December 14th, 2011. Attendance: Michael
7 Westfall, Marti Wukelic, Don Sheridan, Sheri-Ann Daniels,
8 Rebecca Woods, Sydney Kikuchi. And the others are absent.
9 Did everyone get a chance to review the minutes of
10 November 9th, 2011? Do I have a motion to accept those?
11 MEMBER SHERIDAN: I move that we accept the
12 minutes.
13 MEMBER WOODS: Second.
14 CHAIR WESTFALL: All those in favor, signify by
15 saying aye.
16 BOARD MEMBERS: Aye.
17 CHAIR WESTFALL: Any opposition?
18 (Silence.)
19 CHAIR WESTFALL: Passes unanimously. Do we have
20 any public testimony?
21 BOARD SECRETARY: None.
22 CHAIR WESTFALL: Communication items. Scheduling
23 of public hearing regarding amendments to Chapter 04-101,
24 Rules of the Maui County Board of Ethics. Gary, do we have
25 any update?

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1 MR. MURAI: I have to apologize to the Board. I
2 think the last time I told the Board that the final review
3 of the proposed changes was imminent, and I was mistaken.
4 It's taking a little bit longer. Our law technician who is
5 charged with reviewing it says she's almost pau, but you
6 know, she's reviewing a bunch of other rules as well. So
7 she apologized.
8 And I'm almost afraid to commit to having them
9 done by the next meeting. But again, we apologize, but
10 the -- what has to happen after she's done is that there's
11 one final review by the Corporation Counsel Pat Wong, and
12 then the Board can review. And then if the Board approves
13 that final version, schedule it for public hearing.
14 Now, I know that while this has all been going on,
15 the rules revisions subcommittee has been doing more work,
16 and I understand that there may be additional rule changes
17 and those should not unduly delay the final version, because
18 they're not really voluminous or extensive. So, again, I
19 thought that we would have had them done a while ago, but
20 they are not, and I apologize for that. Let's shoot for
21 next meeting in January.
22 CHAIR WESTFALL: I'm sorry, we're shooting for
23 January for?
24 MR. MURAI: For the rules being reviewed by my
25 office and being sent back to the Board for the Board's

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1 final review, approval and then scheduling of public
 2 hearing.
 3 CHAIR WESTFALL: Okay. All right. Thank you,
 4 Gary. Report from rules review subcommittee. I guess I'll
 5 just give a brief review. We passed around a revision of
 6 one of the rules, and I did review the minutes from our last
 7 meeting. And I'm not sure if my articulation of this change
 8 was that clear.
 9 There was a lot of confusion as to what we were
 10 doing. The revision is on the first page, and then on the
 11 second page is the rule as it currently reads. And I
 12 thought I would just make a couple of comments to try to
 13 clarify and to be concise in what we're attempting to do
 14 here, but first this is not a new rule or provision. All
 15 we're doing is clarifying Rule 04-101-51, which is in the
 16 theme of what the subcommittee has been doing for the last
 17 year and a half or two years as far as revising the existing
 18 rules.
 19 And importantly, number two, it's not associated
 20 with a public initiated complaint. We had a lot of
 21 discussion going back and forth, and that's because we had
 22 other things going on. This is purely when the Board is
 23 going to initiate a complaint. And the important thing to
 24 note there is when the public initiates a complaint, the
 25 burden of establishing the facts, the burden of proof, all

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1 of that is on the person writing the complaint. In this
 2 case, if the Board initiates the complaint, that burden
 3 shifts to the Board. So this rule is simply just explaining
 4 the method that the Board might go about in trying to
 5 establish facts, et cetera, et cetera.
 6 I used -- and I misspelled it, and I apologize
 7 there are lots of misspellings here. Because I just did
 8 this a little while ago, and earlier the members in the
 9 subcommittees were correcting things. So I apologize for
 10 that. But I used the term preliminary inquiry. In our
 11 rules currently, they use the word investigation. We've
 12 used the word review, examination. Sometimes I get feedback
 13 that those terms are a little strong and that maybe we want
 14 to be talking as though this is a preliminary activity
 15 because we haven't determined if we're even going to file a
 16 complaint at that point, so I used that term. We can leave
 17 that open to maybe the Gary, the attorneys can take a look
 18 at that, and if they're all right with it, fine. If they
 19 want to come up with other things, that's fine, too.
 20 I think I already meant that -- okay. The rule as
 21 it's currently written is a little confusing because it
 22 starts off by saying board initiated complaint. One could
 23 read that and assume that the Board has already initiated
 24 the complaint and what we've interpreted is that that's not
 25 really the case. The Board has some baby steps, if you

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1 will, that it can take before it decides to initiate a
 2 complaint. And again, I should come back and say premising
 3 this is this is when we're getting information by any means,
 4 but it's not a public initiated complaint. We get it
 5 through the newspaper. We hear about it by way of a letter,
 6 something like that out of the ordinary.
 7 And the Board feels strongly enough that we need
 8 to take a look at it. So the first step is essentially to
 9 verify the facts, and that's what we're trying to do with
 10 this process. We are not attempting to determine probable
 11 cause. We're not attempting to determine if a violation has
 12 actually occurred. Those are in the next processes of the
 13 informal hearing or the formal hearing. So, all we're doing
 14 here is establishing some facts. And I use an example of --
 15 well, not the best example.
 16 We had a situation sometime back where information
 17 had come to us, and we spent a lot of time going back and
 18 forth. And we simply at some point decided that we told or
 19 asked staff to go look at the minutes. This was a complaint
 20 about another commission, that someone had some -- a
 21 conflict of interest and was voting on something that they
 22 shouldn't. And after some time going back and forth,
 23 because we had all assumed that this vote had actually taken
 24 place, when we checked the minutes, we realized there was no
 25 vote. It had never taken place.

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1 So that's what we're really trying to do. We're
 2 making sure our bases are covered, votes have taken place.
 3 Things are factual. And that's really just -- that's kind
 4 of my premise to what we've done here. Don had a couple of
 5 questions, not just on grammar, but Don in Section E where
 6 I -- or where we articulate the outcomes, one, we can
 7 redirect the matter for further review, or we can dismiss
 8 it. Three, we can dismiss the matter without a
 9 determination. He thought that that was redundant. Maybe I
 10 can leave that to the attorneys to take a look at to see if
 11 they have suggestions, but that's essentially it.
 12 So any discussion? Essentially today all we're
 13 doing is bringing this forward. As mentioned, it goes to
 14 the attorneys for review. It comes back to us for approval.
 15 So I realize you just got this today. You probably haven't
 16 read it. If you want to read it and you want to comment and
 17 change it, it's going to come back to us again, so this is
 18 just a first stab, so to speak.
 19 MEMBER WOODS: I want to say thank you for doing
 20 this. I think it's very clear. It looks good, but I do
 21 agree with Don about the redundancy.
 22 MEMBER WUKELIC: I understand what he's getting at
 23 though.
 24 CHAIR WESTFALL: Well, let me say I'm going to be
 25 clear. Most of this I'm finding from other places, so I

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1 wasn't the sole author and the idea person behind it. It's
 2 coming from just looking at other jurisdictions and what's
 3 been written elsewhere, so I'm certainly open to any
 4 suggestions.
 5 MEMBER WOODS: It looks great.
 6 CHAIR WESTFALL: Maybe we'll leave it to you guys
 7 can comment and bring it up. What I'll do is forward this
 8 to you in an e-mail form.
 9 MR. MURAI: Okay.
 10 CHAIR WESTFALL: Any other discussion as to the
 11 subcommittee? Maybe Marti, you want to maybe say a few
 12 words on education on the web page and some of the things we
 13 would like to do there.
 14 MEMBER WUKELIC: Way back in the day a couple of
 15 years ago when we started to really work on the
 16 subcommittee, one of the things I was really interested in
 17 was the educational aspect of informing the public,
 18 educating them on what ethics is, what they can do and all
 19 of that. And that's still in my mind. What I said to Mike
 20 though is when we did two little things, when we added the
 21 financial disclosure and when we added the form, it was just
 22 huge.
 23 So I'm not even sure how far we have to go down
 24 that route, but I still like the idea understanding this is
 25 everybody is volunteering, and everything is secondary job

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1 duties for staff. I'm still wondering if it's a good idea
 2 to think further about how we can get the idea of what an
 3 ethical breach or not an ethical breach really is to the
 4 community. I don't know. Do you guys see a value in that,
 5 or do you think that with the things we've added are good
 6 enough? Because I don't want to make extra work for people
 7 by any means.
 8 CHAIR WESTFALL: I think it's certainly of value.
 9 I'm not sure -- do you know what the process would be, or
 10 either one of you, I'm sorry?
 11 MR. MURAI: For what?
 12 CHAIR WESTFALL: If we wanted to upgrade the web
 13 page -- let me start over here. My recollection is last
 14 time we did this, we had to get on somebody's calendar in
 15 the IT department.
 16 BOARD SECRETARY: We have to check with MIS.
 17 MR. MURAI: MIS has, and I forget his name. I can
 18 picture him. But his job is servicing the various county
 19 departments and boards and help them with their web pages.
 20 As a matter of fact, if you would like, we can invite him to
 21 come speak to us and tell us what they can and can't do for
 22 us.
 23 For example, I know that I had asked him to come
 24 speak to the Commission on the Status of Women, because what
 25 they wanted to do was they said, well, because we're an

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1 advisory board and we advise the mayor, sometimes we want to
 2 gather information ourselves.
 3 So can we use services like Survey Monkey to
 4 conduct surveys? So the guy came and said, no, you don't
 5 need to do that. Our county -- our IT system already has
 6 survey capacities. So he was able to tell them about
 7 features of our own county website that certainly we weren't
 8 aware of, and the commission members were able to ask him
 9 questions about what can and can't be done. It was very
 10 helpful.
 11 So the sense I got was that they're very helpful,
 12 and they were -- for the life of me, I can't remember his
 13 name. But he was a nice guy, very willing to help. And
 14 it's -- it wasn't that big a deal. So we can do one of a
 15 couple of ways where certainly Angela and I can pass things
 16 on to MIS and say the Board of Ethics is interested in doing
 17 this, that or the other thing, or you could invite him to
 18 come down to our next meeting and answer questions directly.
 19 MEMBER DANIELS: I like that because maybe we can
 20 think of some ideas to pose and ask.
 21 MR. MURAI: So the kinds of questions were what
 22 kind of links, what kind of other agencies or other web
 23 sites can we link to. And he said, well, that's possible.
 24 Like, for example, for the Commission on the Status of Women
 25 they establish links to the state commission.

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1 MEMBER WOODS: Exactly. We can offer suggestions.
 2 CHAIR WESTFALL: Okay. So let's, maybe Angela,
 3 maybe you two get together and try to put him on the agenda
 4 for the next meeting.
 5 MEMBER WUKELIC: But by the same token, however, I
 6 think that we don't want to do something just because, oh,
 7 we found out we could do it. I think it would help if the
 8 subcommittee and me, because I'm driving this a little bit,
 9 would have a substantial idea this is the thing we like to
 10 do rather than because we can do it, sure let's do it.
 11 So maybe as a subcommittee, we can do that. Do
 12 you remember the links -- like a long time ago, a few years
 13 ago, they had some links to some wonderful options. And I
 14 think maybe it would be good to do that.
 15 CHAIR WESTFALL: Those were basically to Honolulu
 16 and the state, other jurisdictions. I think it would be
 17 useful to have him come. He can tell us what we can do. We
 18 can schedule maybe another subcommittee with him and kind of
 19 go over. We're all okay with that?
 20 MEMBER WUKELIC: Yes.
 21 CHAIR WESTFALL: New business. Financial
 22 disclosures, none. Communication items. Letter to Mayor
 23 Arakawa from Deputy Corporation Council, Adrienne Heely
 24 dated November 3rd, 2011. Did you all receive that? I
 25 don't think there's anything to do with it.

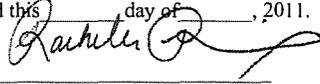
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1 Lobby registrations, none. Announcements, none.
 2 Next meeting, Wednesday, January 11th, 2012.
 3 So that ends regular session. Do I have any
 4 volunteers to read this executive session -- Don.
 5 MEMBER SHERIDAN: With reference to the agenda
 6 items listed below, one or more executive meetings are
 7 anticipated; in particular --
 8 CHAIR WESTFALL: I'm sorry, maybe I should ask,
 9 Mr. Goode, if you could just step out for a few minutes. We
 10 have a couple of items that we'll briefly go over, and then
 11 we'll have you come back.
 12 MEMBER SHERIDAN: In particular, the Board of
 13 Ethics anticipates it will consider the evaluation,
 14 dismissal or disciplining of an officer or employee of the
 15 County of Maui where considerations of matters affecting
 16 privacy will be involved.
 17 The Board may also consult with the Board's
 18 attorney on questions and issues pertaining to the Board's
 19 powers, duties, privileges, immunities and liabilities.
 20 Therefore, pursuant to Hawaii Revised Statutes, HRS Sections
 21 92-5(a)(2) and (4), the following items may be considered in
 22 executive session. The Board may also convene in
 23 adjudicatory session pursuant to HRS Section 92-6.
 24 CHAIR WESTFALL: Thank you, Don.
 25 (The Board went into Executive Session at 12:50

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1 p.m.)
 2 REGULAR MEETING RESUMES
 3 * * *
 4 CHAIR WESTFALL: We're back into regular session.
 5 MEMBER SHERIDAN: I've got a question. During the
 6 last meeting, we discussed the number of unexcused absences
 7 by a Board Member, and one Board Member has been absent and
 8 is absent again today. And this is kind of a crippling
 9 thing for us.
 10 CHAIR WESTFALL: I apologize. I was supposed to
 11 call that person, and I didn't. So I will call that person.
 12 Well, I'm see if that person responds even to me. I don't
 13 know if that's the case. I think it's been six months since
 14 that person has been at a meeting.
 15 BOARD SECRETARY: June.
 16 CHAIR WESTFALL: So I will call her this week, or
 17 that person. Any other comments, announcements?
 18 Do I have a motion to adjourn the regular session?
 19 MEMBER WUKELIC: I so move.
 20 CHAIR WESTFALL: Second?
 21 MEMBER SHERIDAN: Second.
 22 CHAIR WESTFALL: All those in favor, say aye.
 23 BOARD MEMBERS: Aye.
 24 CHAIR WESTFALL: Adjourned.
 25 (The meeting adjourned at 1:48 p.m.)

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 2 CERTIFICATION
 3
 4 I, RACHELLE PRIMEAUX, Notary Public for the State of
 5 Hawaii, certify:
 6 That the proceedings contained herein were taken by me
 7 in machine shorthand and were thereafter reduced to print
 8 under my supervision by means of computer-aided
 9 transcription; that the foregoing represents, to the best of
 10 my ability, a true and accurate transcript of the
 11 proceedings had in the foregoing matter.
 12 I further certify that I am neither attorney for any
 13 of the parties hereto nor in any way concerned with the
 14 cause.
 15
 16
 17 Dated this _____ day of _____, 2011.
 18 
 19 _____
 20 Rachelle Primeaux, CSR No. 370
 21
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 25