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4 COUNTY OF MAUI, STATE OF HAWAII
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9 BOARD OF ETHICS
10 REGULAR MEETING
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16 Held at the Planning Department Conference Room,
17 250 South High Street, Wailuku, Maui, Hawaii, commencing
18 at 12:30 p.m., on Wednesday, August 14, 2013.
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22 Reported by: Tonya McDade, CSR, CRR
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1 ATTENDANCE
2 BOARD MEMBERS PRESENT:
3 Michael Westfall, Chair
4 Donald Sheridan, Vice-Chair
5 Randol Leach, Secretary
6 Norman Franco, Member
7 Lois Prey, Member
8 Lilah Inaba, Member
9 Abel Kahooohanohano, Jr., Member
10 Herman Nascimento, Member
11
12 BOARD MEMBERS EXCUSED:
13 Sydney Kikuchi, Member
14 STAFF PRESENT:
15 Patrick Wong, Corporation Counsel
16 Angela Andrade, Executive Secretary
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1 (Wednesday, August 14, 2013, 12:30 p.m.)
2 * * *
3 CHAIR WESTFALL: Call to order the meeting of
4 the Maui County Board of Ethics for Wednesday, August
5 14, 2013.
6 Item 2, Attendance: Michael Westfall; Don
7 Sheridan; Randol Leach; Norman Franco; Louis [sic] Prey;
8 Lilah Inaba; Abel Kahooohanohano -- did I get that one
9 right this time?
10 MEMBER KAHOOHANO HANO: Very good.
11 CHAIR WESTFALL: Yay. And Herman Nascimento.
12 So you need to give me some congratulations since I got
13 all the names right for the first time.
14 VICE-CHAIR SHERIDAN: Lois Prey.
15 CHAIR WESTFALL: Prey, okay.
16 VICE-CHAIR SHERIDAN: No.
17 CHAIR WESTFALL: Again, I always apologize.
18 MEMBER PREY: I don't think I look like a man,
19 "Louis."
20 CHAIR WESTFALL: Item 3, Minutes for July
21 10th, 2013, of the Regular Session. Do I have a motion
22 to approve those?
23 MEMBER LEACH: So moved.
24 MEMBER PREY: Second.
25 CHAIR WESTFALL: All those in favor, signify

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1 by saying "aye."
2 (Response.)
3 CHAIR WESTFALL: Any opposition?
4 (No response.)
5 CHAIR WESTFALL: Seeing none, those are
6 unanimously approved.
7 The Chairman is going to ask for a motion to
8 suspend the rules so that we might make some agenda item
9 changes. Can I have a motion?
10 VICE-CHAIR SHERIDAN: I so move.
11 MEMBER PREY: I second.
12 CHAIR WESTFALL: The motion is what I -- what
13 I indicated. Seconded?
14 MEMBER PREY: Yes.
15 CHAIR WESTFALL: Any discussion? Basically,
16 the agenda this month -- and I apologize, this is a sort
17 of unedited version that went out because of the time.
18 You know, for Sunshine rules, we have to get this out in
19 a certain time. So this was sort of the unedited
20 version. I asked Gary if there was a way after the fact
21 we could kind of clean this up for the permanent record.
22 And he pointed me to Hawaii Revised Statutes on
23 meetings. And there's a provision in there that we can
24 as long as they're not material and they don't affect
25 lots of people. The changes that I would be proposing

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1 only affect the people that are here, so -- everyone
2 except Sydney is here, so I think we're okay in that
3 regard.
4 Mr. Wong can --
5 MR. WONG: That's accurate.
6 CHAIR WESTFALL: Great. I guess what I will
7 need to do is I will mention each one of these
8 individually and have the motion to make the change,
9 then we'll have a vote and do that.
10 The first one is Item 5(c), status of
11 subcommittee -- Status of Research Subcommittee. What I
12 would like to do is just strike (1), (2) and (3), and
13 put "Report from Subcommittee." Any discussion? Can I
14 have a motion to approve that?
15 VICE-CHAIR SHERIDAN: I so move.
16 MEMBER PREY: Second.
17 CHAIR WESTFALL: All those in favor, signify
18 by saying "aye."
19 (Response.)
20 CHAIR WESTFALL: Any opposition?
21 (No response.)
22 CHAIR WESTFALL: Seeing none, that has been
23 amended.
24 The second one is going to be under New
25 Business, Item 6(e). This will be Media Policy. I've

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1 been getting some calls from some radio stations and
2 different things, and I just wanted to have just a brief
3 consensus on how to handle those. Again, it only
4 affects the people here. Can I have a motion to add
5 that to the agenda?
6 MEMBER INABA: So moved.
7 VICE-CHAIR SHERIDAN: Second.
8 CHAIR WESTFALL: Any discussion? Seeing none,
9 signify by saying "aye."
10 (Response.)
11 CHAIR WESTFALL: Any opposition?
12 (No response.)
13 CHAIR WESTFALL: Seeing none, that will be
14 amended.
15 And the third one is under item -- in
16 Executive Session, Item 4(e), discuss retaining outside
17 counsel for items which may pose a conflict of interest
18 for the Department of Corporation Counsel. I would like
19 to move that to Item (f) in Regular Session and change
20 the wording slightly to discuss when and under what
21 situations retaining substitute counsel for items which
22 may pose a conflict of interest for the Maui Department
23 of Corporation Counsel might be appropriate. Do I have
24 a motion to that?
25 VICE-CHAIR SHERIDAN: I so move.

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1 MEMBER PREY: Second.
2 CHAIR WESTFALL: Any discussion?
3 (No response.)
4 CHAIR WESTFALL: Seeing none, all those in
5 favor, signify by saying "aye."
6 (Response.)
7 CHAIR WESTFALL: Any opposition?
8 (No response.)
9 CHAIR WESTFALL: Seeing none, that one, also.
10 So thank you, Members. Now we can move back
11 to the agenda.
12 I don't see any public testimony under Item
13 Number 4. There's no one here?
14 MS. ANDRADE: No.
15 CHAIR WESTFALL: Item 5, Old Business:
16 Financial Disclosures, none.
17 Communication Items, none.
18 Status of Research Subcommittee Report. Want
19 me to give the report, Members?
20 We met again today. I, actually, have pretty
21 much finished the draft of the recommendations from the
22 subcommittee on the three topics that we were assigned.
23 I think what we're going to do is try to finish up that
24 draft in the next couple of weeks and then submit it to,
25 I guess, Gary. Mr. Wong?

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1 MR. WONG: You would submit it to our
2 Department, and we'll take care of it.
3 CHAIR WESTFALL: Okay. We'll have them give a
4 review of those items. Almost everything in it are
5 simply just the Board's interpretation of existing
6 rules, some terms and things like that. As you know,
7 we've had discussion previously. So, hopefully, by the
8 next meeting, we can do a presentation of those two
9 items. Is there any more discussion on that?
10 I'm sorry. You're here for --
11 MR. SEGAL: I am Brandon Segal. I am here for
12 the --
13 CHAIR WESTFALL: Advisory opinion.
14 MR. SEGAL: Yes.
15 CHAIR WESTFALL: All right. Members, I am
16 going to again ask if we can suspend the rules. What I
17 would like to do is move up his item, which is in
18 executive committee, so we can get him here and out back
19 to work.
20 MR. SEGAL: Thanks. Appreciate it.
21 CHAIR WESTFALL: If everyone is okay with
22 that. I guess I need a motion to --
23 VICE-CHAIR SHERIDAN: I so move.
24 MEMBER PREY: Second.
25 CHAIR WESTFALL: -- suspend the rules.

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1 Second. All those in favor, signify by saying "aye."
 2 (Response.)
 3 CHAIR WESTFALL: Okay. Now we will -- you can
 4 go to the podium and we'll be with you in just one
 5 second.
 6 MR. SEGAL: Sure. No problem.
 7 CHAIR WESTFALL: What we are going to do is
 8 adjourn the Regular Session. So I need a motion to
 9 adjourn the Regular Session.
 10 VICE-CHAIR SHERIDAN: I so move.
 11 MEMBER FRANCO: Second.
 12 CHAIR WESTFALL: All those in favor, signify
 13 by saying "aye."
 14 (Response.)
 15 CHAIR WESTFALL: So no opposition, that's
 16 unanimous consent. We will now move to Executive
 17 Session. We'll have to ask him to --
 18 VICE-CHAIR SHERIDAN: Clark, could you --
 19 CHAIR WESTFALL: Step out for a minute. We're
 20 going into an Executive Session.
 21 If I can have a Member read the preamble here.
 22 Okay. Randol.
 23 MEMBER LEACH: With reference to the agenda
 24 items listed below, one or more executive meetings are
 25 anticipated. In particular, the Board of Ethics

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1 anticipates it will consider the evaluation, dismissal
 2 or disciplining of an officer or employee of the County
 3 of Maui where considerations of matters affecting
 4 privacy will be involved. The Board may also consult
 5 with the Board's attorney on questions and issues
 6 pertaining to the Board's powers, duties, privileges,
 7 immunities and liabilities. Therefore, pursuant to
 8 Hawaii Revised Statutes Sections 95 -- I'm sorry --
 9 92-5(a)(2) and (4), the following items may be
 10 considered in Executive Session. The Board may also
 11 convene in adjudicatory session pursuant to HRS Section
 12 92-6.
 13 (Recess to Executive Session, 12:39 p.m. to
 14 1:12 p.m.)
 15 CHAIR WESTFALL: All right. So now we're back
 16 in Regular Session. And let's see. I'm sorry, I don't
 17 remember where we left off in Regular Session.
 18 MEMBER FRANCO: New Business.
 19 CHAIR WESTFALL: New Business. Okay.
 20 Financial Disclosures: We have one I need a motion to
 21 acknowledge receipt of. I need a motion to acknowledge
 22 receipt of that, then we can go into discussion.
 23 MEMBER KAHOOHANOHANO: So moved.
 24 CHAIR WESTFALL: Okay. Second?
 25 MEMBER PREY: Second.

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1 CHAIR WESTFALL: Any discussion on this one?
 2 No discussion?
 3 MEMBER PREY: No.
 4 CHAIR WESTFALL: All right. All those in
 5 favor of acknowledging receipt of the Financial
 6 Disclosure, signify by saying "aye."
 7 (Response.)
 8 CHAIR WESTFALL: Any opposition?
 9 (No response.)
 10 CHAIR WESTFALL: Seeing none, that one is
 11 unanimously acknowledged.
 12 Communication Items: Letter from Lance
 13 Taguchi to Michael Westfall, dated July 15, 2013. That
 14 appears to just be an update of his financial
 15 disclosure. Any discussion?
 16 (No response.)
 17 CHAIR WESTFALL: Seeing none, we'll move on.
 18 Lobbyist Registration is none.
 19 Moving on. (d), discuss meeting between
 20 Councilman Mike White and Board of Ethics Chair Michael
 21 Westfall scheduled for August 20th, 2013, regarding
 22 review of his plans with regard to the Nepotism Policy,
 23 in addition to other suggested revisions to the Maui
 24 County Code of Ethics. This is just to let you know
 25 that I got a call and an email asking me to come to his

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1 office for a review of where he's going on these things
 2 and suggestions on the Ethics Code. I don't know
 3 anything beyond that and just wanted to let you folks
 4 know. Any discussion? Any suggestions? Any thoughts?
 5 MEMBER PREY: No.
 6 CHAIR WESTFALL: Moving on.
 7 MEMBER FRANCO: Be brave.
 8 CHAIR WESTFALL: Item (e), Media Policy. I
 9 got a call from, actually, a past member who has been
 10 getting calls from some radio station and somebody else
 11 in the media. And they've now called me in and want to
 12 do some kind of interview about -- well, they haven't
 13 said what they wanted to talk about, so I've been
 14 putting them off. But what I just wanted to share with
 15 you folks is -- and there's no rules on engagements with
 16 the media. And certainly any member gets called by the
 17 media, and you want to make comment, you can make any
 18 comment you want as an individual, but what I am going
 19 to ask is that if someone asks you for the official
 20 policy, if you will, of the Board, that you refer that
 21 to either myself, Don or Randol as the three officers so
 22 that there's consistency in what is going out.
 23 I served on a commission previously, just as a
 24 little history, where the media was very good at
 25 figuring out who would say certain things a certain way

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1 that were not necessarily the official positions. And
2 it became quite difficult to operate with that. If they
3 ask you for the official thought, just one of the
4 officers from -- this will just be the Chairman's policy
5 until I am -- my term is up. If that's all right?
6 VICE-CHAIR SHERIDAN: That's fine.
7 CHAIR WESTFALL: Abel, you had comment on
8 that?
9 MEMBER KAHOOHANOHANO: I would just take it a
10 step further. Tell them nothing. My experience before,
11 they twist things around. So it's better that if you
12 are a part of a board like this, Ethics Board, my
13 opinion, okay, just not make comments unless it's an
14 official response that we had or whatever, but that
15 should be Mr. Westfall's kuleana.
16 CHAIR WESTFALL: I am going to do whatever
17 the --
18 MEMBER KAHOOHANOHANO: That's what I would
19 want, refer 'em to you.
20 CHAIR WESTFALL: But I do want to mention --
21 and I'm sorry, Angela did try to get -- there is an
22 Office of Information Practices, and they're going to
23 come to our next meeting. They weren't available for
24 this meeting. They can kind of give us some thoughts.
25 I don't know what it is, but, you know, there's been

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1 multiple calls from someone or some entity. So I just
2 want to be sure that we're all okay, on the same page.
3 All right.
4 And the last item under New Business is
5 discuss when and under what situations retaining
6 substitute counsel for items which may pose a conflict
7 of interest for the Maui Department of Corporation
8 Counsel might be appropriate.
9 MEMBER LEACH: Are we in Regular Session?
10 CHAIR WESTFALL: Yes.
11 MEMBER LEACH: That's Executive Session.
12 CHAIR WESTFALL: No. We moved it to Regular
13 Session.
14 MEMBER LEACH: Oh, gotcha.
15 CHAIR WESTFALL: The reason is this is going
16 to be a general discussion.
17 As a premise or predicate to this, there may
18 be, in the future, some issues that come up that have to
19 do with other bodies, commissions, and maybe the
20 Council. Today is not to discuss that, but, in the
21 past -- and I guess I will be -- well, the reason we
22 have Mr. Wong here today rather than Gary -- and I need
23 to go on the record that the Chairman has high esteem
24 for Gary and his work, so it's nothing personal or
25 anything, but I had originally thought that we might be

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1 bringing up some items that had to do with other areas
2 in the County that the Corporation Counsel provides
3 legal represent -- not representation -- legal advice.
4 And so I asked Mr. Murai that he would recuse himself
5 from that portion of the meeting because there might be
6 a conflict of interest with his office. Not him
7 personally, but the office. And I based that on -- and
8 Randol will remember because the minutes that I found
9 were from when Randol was Chairman.
10 We had a situation, several years ago, where
11 we had a complaint against a councilperson, and
12 Corporation Counsel recused themselves. And we had
13 what's called substitute counsel, which means someone
14 from the Big Island came for that particular item. So I
15 was only following that, thinking I wasn't causing any
16 problems, but just going along with what the process
17 was. We had a little bit of back and forth on recusal
18 and on these different terms, so that's what we will
19 continue to study.
20 So rather than getting into any of those other
21 things which are premature at this point, I thought it
22 might be better to just have a general discussion as to
23 when you would ask for substitute counsel. And Mr. Wong
24 is here today, so we can ask him questions of that.
25 Let's see. Any Members have any comments yet

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1 or any -- I did send Mr. Wong the transcripts from the
2 meeting where our former legal person, Mrs. Heely, who
3 is now an attorney [sic], Ms. Heely, in which she
4 recused herself, I will use the term recusal, then some
5 other information.
6 In your packets -- and I don't know -- you
7 know, this was in my packet -- I don't know if you still
8 get them in the back section -- there's a number of
9 items for our reference of these sort of gray area
10 issues. And one of them is Corporation Counsel and
11 their representation or their position in providing us
12 legal advice. There's some letters from then Chairman
13 Anthony Ranken, who I believe is an attorney, to the
14 then head of Corporation Counsel J.P. Schmidt on this
15 topic that are quite detailed. I did go back and also
16 look at the minutes of some of those meetings. And with
17 all respect to Mr. Wong as an attorney, the Board at
18 that time was made up of about half attorneys. So half
19 the meetings, this was the topic for many months. So
20 there's copious amounts of material on this subject
21 already.
22 But I will let Mr. Wong at this point make any
23 comments that he wants. My only question would be just
24 when do you think it's appropriate or what process
25 should we go through and, you know, in a general sense.

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1 MR. WONG: Those are very good questions. And
 2 I appreciate the fact that you're actually raising them.
 3 I did read the material you provided to me. And,
 4 actually, the material should be provided to everybody.
 5 CHAIR WESTFALL: And I will stop you. I am
 6 not sure, you know, I've been here too long already, it
 7 was in my binder, do the rest of you have this?
 8 MEMBER PREY: No.
 9 CHAIR WESTFALL: Maybe, Angela, I will leave
 10 this with --
 11 MS. ANDRADE: I think you're confused with the
 12 binder and the packet. He's talking about the binder
 13 you got when you became Members, when we provided you
 14 with a binder. I believe those letters are part of the
 15 new binder.
 16 MEMBER PREY: Okay.
 17 MS. ANDRADE: That's been provided to the new
 18 Members.
 19 CHAIR WESTFALL: Okay. So, anyway, you
 20 probably already have them. We can make copies if you
 21 need it.
 22 MR. WONG: So, anyway, that topic of conflict
 23 of interest is raised on a regular basis with my
 24 department. And it's also raised on a regular basis
 25 with my department through the Administration, the

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1 Mayor, and the Council itself. And the way we address
 2 it is very simple.
 3 First, we, as attorneys, need to identify
 4 whether or not we believe conflict exists. In order to
 5 identify a conflict, we need to understand what the
 6 facts are in the underlying matter. If we determine
 7 that there may be a conflict, then we need to ask
 8 ourselves, in application of the Rules of Professional
 9 Conduct, whether or not we can cure the conflict. In
 10 circumstances where the conflict cannot be cured, then
 11 we look at advising the client that they should seek
 12 special counsel. The County has only one entity that
 13 can appoint. Aside from this Board, during an
 14 impeachment process, this Board during impeachment
 15 process has authority to seek special counsel.
 16 Otherwise, the Council of the County of Maui is the
 17 entity that can appoint special counsel because they
 18 need to then define who the counsel is, and we go
 19 through a selection process for that, what their
 20 billable rates would be, what their taxable costs would
 21 be, and the Council would then take that topic under
 22 advisement into Executive Session to discuss the
 23 parameters of it. That law firm or individual would
 24 then be engaged in a separate contract with the County.
 25 That contract would be administered through my office.

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1 We would have no say in how that attorney provides
 2 advice and counsel to whatever entity is providing the
 3 advice and counsel, but we would have say on monitoring
 4 the bills and making sure they get paid on a regular and
 5 consistent basis.
 6 We would also be responsible for, my
 7 department would be, if that special counsel would need
 8 an increase in their contract amount. Let's say they
 9 originally was engaged for \$20,000, but, after working
 10 on the matter for some time, their fees have been
 11 exhausted and they need another \$20,000. Okay. The
 12 Council does not authorize an unlimited budget for any
 13 law firm.
 14 It's been my practice, when I came into this
 15 department, not to spend extra money for outside
 16 counsel. Instead, like any other governmental entity,
 17 the AG's office, Corporation Counsel in Honolulu, the
 18 Big Island and Kauai, if there's a deputy that
 19 represents a body, like this one here, and there's a
 20 councilmember that must appear for this body, and that
 21 councilmember requests legal representation from my
 22 department, then we assign someone and we isolate the
 23 two individuals from each other. The person that's
 24 advising this body cannot speak to or cannot deal with
 25 that other attorney on that matter. That's the Chinese

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1 wall. The files are separated into a different
 2 locations. The secretaries don't talk. The paralegals
 3 don't talk. The supervisory capacity is isolated. I
 4 would supervise one team, my first deputy would
 5 supervise the other team. And if it causes for more
 6 breakdown, then we break it down further. And we're
 7 responsible for making sure that there's no overlap,
 8 there's no release of information.
 9 And the standing rule in my office is if that
 10 Chinese wall is violated, that person, whoever it may
 11 be, whether it's a clerical staff, paralegal, or
 12 what-have-you, that person is subject immediately to
 13 disciplinary action for violation of our intercept
 14 procedures. The policy's in writing, it's posted
 15 throughout my office. It's in both file rooms, it's in
 16 the copy room. So there is no -- in my view, no chance
 17 of an attorney advising this Board providing any
 18 information that's confidential to this Board to anyone
 19 appearing before this Board that's represented by a
 20 different deputy. It's just not going to happen. That
 21 is a procedure that we follow based on the process
 22 developed by the Office of Disciplinary Counsel.
 23 In discussion with Office of Disciplinary
 24 Counsel on a different matter of identical substance,
 25 they referred me back again to the same Chinese wall

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1 scenario. So I bring to you very recent information, as
2 of couple weeks ago, two weeks ago, where I personally
3 had a discussion with a staff attorney at the ODC
4 raising very similar issues and being reminded that we,
5 too, can still create that Chinese wall. As long as I
6 am confident that the deputy advising this Board is not
7 sharing information with another deputy that may appear
8 with another County employee before you, then we can do
9 it.

10 If, on the other hand, the conflict is so deep
11 that I cannot isolate one or the other, then that's
12 something that I would again raise with the Office of
13 Disciplinary Counsel and then advise the clients, each,
14 that they should seek their own special counsel. And
15 that would then be crafted in the form of resolution.

16 And this Board can do that, create a
17 resolution, and propose it to the Council. The Council
18 will then evaluate in their opinion whether or not the
19 need for special counsel is there.

20 Do you have any questions?

21 CHAIR WESTFALL: Members, questions?

22 MEMBER FRANCO: Sounds like a good policy.

23 CHAIR WESTFALL: I had two questions. So --
24 well -- so, we did read what Ms. Heely wrote, hers is a
25 little different than what you're saying. I understand

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1 that you're running the show now and it's your show, not
2 hers, so you would -- I am trying to ask this politely.
3 You're saying that --

4 MR. WONG: Let me suggest this --

5 CHAIR WESTFALL: Okay.

6 MR. WONG: -- in reference to Ms. Heely's
7 comments.

8 CHAIR WESTFALL: And I just need to -- this
9 was the only reference I had and this is what I was
10 going on. So that's why we're having you here today.

11 MR. WONG: Why don't you read the reference
12 for everybody else's benefit?

13 CHAIR WESTFALL: Sure. I'll, actually, have
14 Randol read it since he was the Chairman then, but this
15 is -- I will give you the context. This is when we were
16 having the hearings on the Nishiki issue. And I also
17 highlighted something here because at the time, as of
18 this particular meeting, the interesting thing is we
19 didn't have a complaint in front of us, the complaint
20 was filed later that day. So there are some questions
21 in the beginning here that I had asked, in fact, to
22 Mr. Nishiki's representative had he been notified of a
23 complaint, and he had said no. What we were really
24 doing was just reviewing the guy's financial disclosure
25 and having issues with that.

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1 But Ms. Heely says to the Chairman: Mahalo
2 and good afternoon, Chairman Kaufman, Vice-Chair Aluli,
3 Fellow Board Members. Thank you for the opportunity to
4 address you. The Charter provides the Corporation
5 Counsel, the chief legal advisor and legal
6 representative of the County of Maui, of the Council,
7 the Mayor, and all departments, and all boards and
8 commissions, and all officers and employees in matters
9 relating to their official duties. Therefore, the
10 Department of Corporation Counsel is tasked, among other
11 things, with being the legal advisor to the Council and
12 to the Board of Ethics. The Hawaii Rules of
13 Professional Conduct also provide guidance to lawyers
14 regarding conflicts of interest. Specifically, Hawaii
15 Rules of Professional Conduct Rule 1.7A states that a
16 lawyer shall not represent a client if the
17 representation of that client would be directly adverse
18 to another client. The fact that a complaint, Complaint
19 0-1 [sic], has been filed against a councilmember
20 creates a conflict of interest under our Rules of
21 Professional Conduct, 1.7. Accordingly, our office
22 recommends that the Board of Ethics request Council
23 approval for special counsel and for all matters
24 relating to the Complaint 09-1, including Items 5C in
25 the draft letter, Item 6 (inaudible) of the affidavit

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1 until special counsel is presented to you. Thank you
2 for the opportunity to address you.

3 MR. WONG: That's not inconsistent with, in my
4 view, what I just said. In that particular
5 circumstance, I don't disagree that the attention of
6 special counsel was something that they believed they
7 needed to do. Quite frankly, I understand that, in
8 those circumstances, you had a deputy that came from the
9 Big Island who subbed in for the deputy here. And
10 that's certainly something that I can arrange. It's not
11 unheard of for me to do that. I've also taken
12 additional steps by engaging the prosecutor under
13 special circumstances to provide advice and counsel, I
14 believe, to this body when I first became appointed.

15 CHAIR WESTFALL: Yeah, that's right.

16 MR. WONG: I had my own conflict of interest
17 issues that I wanted this body to vet. At the same
18 time, I had the Office of Disciplinary Counsel review
19 that. So to the extent that in those -- in that period
20 of time, during that circumstance, that Ms. Heely
21 decided that it would be prudent to have special counsel
22 sub in, I don't have a problem with that at all. If you
23 present me with similar circumstances, I will arrive at
24 the same opinion.

25 It's not a hard and fast rule, and, you know,

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1 in every circumstance, this one thing occurs, there must
2 be special counsel. I believe that with an office like
3 the Attorney General's Office, you're going to have one
4 deputy representing the State capacity, one representing
5 the department involved in any litigative matter. And
6 that can happen. In our capacity, I can have one deputy
7 representing a department, one deputy representing the
8 Council. You know, that scenario would, in my view,
9 resolve any conflict as long as the deputies are not
10 trading secrets that are afforded from whatever client
11 that they're representing.

12 So it's a tough scenario in the public
13 practice. It really is. It's -- it's easier in private
14 practice when you have a current client that you want to
15 represent against a current client. You know, you can
16 do it when you have multiple clients in the same matter,
17 as long as the clients consent in writing. That's
18 provided for under the rules of professional
19 responsibility. You can represent a former client
20 against a current client as long as, again, the clients
21 consent in writing and you believe, as an attorney, you
22 can adequately represent both interests. Most attorneys
23 won't get into that. Most won't want to deal with that.
24 And it's easier to say let's just have somebody else
25 outside come in.

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1 So if you have the circumstances, similar to
2 what was raised before Ms. Heely, what was raised today,
3 it's not unheard of for you to ask should we get special
4 counsel. That's certainly a question that I can, and
5 will gratefully, take to the Council.

6 CHAIR WESTFALL: From a practical standpoint,
7 I think what you're suggesting is that it's case by
8 case.

9 MR. WONG: Absolutely.

10 CHAIR WESTFALL: And as a process, do we bring
11 this -- this is where, you know, your Chairman took it
12 upon himself to communicate to Mr. Murai. So in the
13 practical sense, do I need to bring that to the Board
14 first, or do I bring it to your attention first, or is
15 there a process that I should --

16 MR. WONG: Well, certainly, if this body will
17 be asking the Council for the appointment of special
18 counsel, this body needs to act on that.

19 CHAIR WESTFALL: Well, okay. You're kind of
20 ahead of me here. In a practical sense, we're going to
21 have some -- we may have some issues in front of us.
22 There may be a situation where maybe your department has
23 a conflict. What I am hearing is it's case by case.

24 MR. WONG: It is.

25 CHAIR WESTFALL: So do I simply -- assuming

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1 Mr. Murai is our legal advisor, do I bring it to his
2 attention and he makes the call, or is it something that
3 I bring to the attention of the Board and the Board
4 makes the call, or bring it to your attention and -- I
5 am not trying to be difficult. I am trying to find a
6 path here.

7 MR. WONG: Well, I would hope that if you
8 brought it to Gary's attention, or any deputy sitting
9 here, that whatever the topic is, that attorney will
10 make an assessment as to whether or not a conflict
11 exists or not, and, if they believe a conflict exists,
12 will advise you properly and say, okay, there's a
13 conflict, you need to hold up and we need to, you know,
14 take a side step. If there's no conflict and that
15 attorney believes he can provide you with appropriate
16 advice and counsel, then so be it. That attorney's
17 licensed to practice law and that attorney must be able
18 to deal with the facts as presented before him or her.

19 So, yeah, you can do it one of both ways,
20 actually. You can, as the Chair, raise it, or as this
21 body raise it with whoever is sitting in this role at
22 your next meeting. You can also put it on the agenda,
23 if that's what you want to do.

24 CHAIR WESTFALL: Okay. Any other questions?
25 MR. WONG: But let me just add one caveat.

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1 CHAIR WESTFALL: Sure.

2 MR. WONG: If you, as the Chair, believe that
3 there's a conflict and you want to press the need for
4 special counsel, this body would have to vote on that.

5 CHAIR WESTFALL: Correct. And if you read
6 that in here, that's what that was about.

7 MR. WONG: Yeah.

8 CHAIR WESTFALL: And in this case, and just so
9 we're all on the same page, nobody on the commission
10 made any mention whatsoever of bringing in another
11 person. The Corporation Counsel did it on their own.
12 And right after this, we took a vote to go with
13 different counsel. So --

14 MR. WONG: And that's because she was probably
15 confronted with a certain set of facts that she, in her
16 opinion, believed I need to give you correct and
17 appropriate advice and counsel. And I don't think Gary
18 or any other deputy in my office would have done it any
19 differently.

20 CHAIR WESTFALL: Right. And I am not saying
21 anything personal against Gary. I just went by if it
22 has to do with the Council and there's a conflict, then
23 you're saying that's not the case.

24 MR. WONG: Not all the time, no.

25 CHAIR WESTFALL: All right. Any other

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1 questions, comments?
 2 All right. That will end Regular Session.
 3 Any Announcements, Item 7?
 4 The next meeting is Wednesday, September 11th,
 5 2013. That ends regular -- I guess I need a motion to
 6 end Regular Session.
 7 VICE-CHAIR SHERIDAN: I so move.
 8 MEMBER PREY: Second.
 9 CHAIR WESTFALL: All those in favor?
 10 (Response.)
 11 CHAIR WESTFALL: You need to leave, Lois?
 12 MEMBER PREY: Yes.
 13 CHAIR WESTFALL: We can take a break. We have
 14 one more item in Executive Session.
 15 MEMBER PREY: Oh, no. Okay.
 16 CHAIR WESTFALL: You folks want to take a
 17 break and then come back and handle that, or just keep
 18 going?
 19 MEMBER PREY: Keep going.
 20 CHAIR WESTFALL: All right. So now I need a
 21 motion to go into Executive Session.
 22 VICE-CHAIR SHERIDAN: I so move.
 23 MEMBER PREY: Second.
 24 CHAIR WESTFALL: All those in favor, signify
 25 by saying "aye."

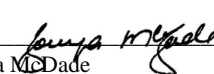
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1 (Response.)
 2 CHAIR WESTFALL: Any opposition?
 3 (No response.)
 4 CHAIR WESTFALL: Seeing none, does anybody
 5 want to read the preamble here?
 6 MEMBER LEACH: To be consistent, I will read
 7 it again. Can we cut and paste? With reference to the
 8 agenda items listed below, one or more executive
 9 meetings are anticipated. In particular, the Board of
 10 Ethics anticipates it will consider the evaluation,
 11 dismissal or disciplining of an officer or employee of
 12 the County of Maui where considerations of matters
 13 affecting privacy will be involved. The Board may also
 14 consult with the Board's attorney on questions and
 15 issues pertaining to the Board's powers, duties,
 16 privileges, immunities and liabilities. Therefore,
 17 pursuant to Hawaii Revised Statutes Sections 92-5(a)(2)
 18 and (4), the following items may be considered in
 19 Executive Session. The Board may also convene in
 20 adjudicatory session pursuant to HRS Section 92-6.
 21 CHAIR WESTFALL: Thank you.
 22 (Recess to Executive Session, 1:39 p.m. to
 23 1:53 p.m.)
 24 CHAIR WESTFALL: Now we're back in Regular
 25 Session.

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1 The meeting is adjourned. All those in favor,
 2 signify by saying "aye."
 3 (Response.)
 4 CHAIR WESTFALL: I need a motion first.
 5 MEMBER PREY: Aye. Aye. Aye.
 6 CHAIR WESTFALL: I'm sorry. Let's stop.
 7 We're -- so many motions today. Thank you for your
 8 patience. I need a motion to adjourn Regular Session.
 9 VICE-CHAIR SHERIDAN: I so move.
 10 MEMBER PREY: Second.
 11 CHAIR WESTFALL: Don makes the motion, Lois
 12 seconds. All those in favor?
 13 (Response.)
 14 CHAIR WESTFALL: Okay. Any opposition?
 15 (No response.)
 16 CHAIR WESTFALL: Seeing none, the motion
 17 passes. Thank you.
 18 (Meeting adjourned, 1:53 p.m.)

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1 CERTIFICATE
 2
 3
 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 3rd day of September, 2013.
 16
 17
 18 
 19 Tonya McDade
 20 Certified Shorthand Reporter #447
 21 Registered Professional Reporter
 22 Certified Realtime Reporter
 23 Certified Broadcast Reporter
 24
 25

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