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MAUI COUNTY BOARD OF ETHICS

STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS

REGULAR MEETING

Held at the Planning Conference Room, Kalana Pakui Building, 250 High Street, Wailuku, Maui, Hawaii, commencing at 12:32 p.m., on November 13, 2019.

REPORTED BY: SANDRA J. GRAN, RPR/CSR #424

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APPEARANCES

BOARD MEMBERS PRESENT:

CHAIRPERSON:

MATTHEW MACARIO

SARA GADARIAN

RACHEL PHILLIPS

DONNA CLAYTON (left early)

WILLIAM CURTIS, JR.

DAVID WEISS

STAFF PRESENT:

DEPUTY CORPORATION COUNSEL:

GARY MURAI

COMMISSION SECRETARY:

CORY-LYNN VICENS

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00:00:22 1 (November 13, 2019, 12:32 p.m.)

00:00:22 2 * * *

00:-57:-50 3 CHAIR MACARIO: (Gavel.) Okay. Calling the

00:-57:-45 4 November 13, 2019, meeting of the Maui County Board of Ethics

00:-57:-37 5 to order. It is currently 12:32 p.m. This is Matt Macario,

00:-57:-03 6 the chair. And just a reminder that we do not have a court

00:-56:-57 7 reporter with us today, so we're being -- the record is being

00:-56:-53 8 kept by recording devices, so I'm going to ask the board

00:-56:-49 9 members to go around and just sort of state their names so

00:-56:-41 10 that the names can be recognized by the reporter later. Why

00:-56:-31 11 don't we start with you, Rachel.

00:-56:-31 12 MEMBER PHILLIPS: Rachel Phillips.

00:-56:-21 13 MEMBER WEISS: Dave Weiss.

00:-56:-21 14 MEMBER CLAYTON: Donna Clayton.

00:-56:-11 15 MEMBER CURTIS: Bill Curtis.

00:-56:-11 16 CHAIR MACARIO: And Matt Macario. And it does look

00:-56:-01 17 like Member Sara Gadarian is coming into the room now, so for

00:-55:-51 18 the record, Sara is present. Let's just adjourn for a minute

00:-55:-51 19 so we can let Sara take her seat. (Gavel.)

00:-55:-42 20 (Pause in Proceedings: 12:33 p.m.-12:35 p.m.)

00:-49:-21 21 CHAIR MACARIO: All right. Back on the record.

00:-49:-22 22 (Gavel.) It's now 12:35. Again, this is Matt Macario. All

00:-49:-02 23 board members are -- that were previously identified are here.

00:-49:-02 24 We have quorum.

00:-49:-02 25 The first item on the agenda is Review and Approval

00:-48:-55 1 of the October 9, 2019, Minutes. Is there a motion to approve
00:-48:-49 2 those minutes?

00:-48:-45 3 MEMBER CURTIS: So moved.

00:-48:-41 4 MEMBER GADARIAN: Second.

00:-48:-39 5 CHAIR MACARIO: That was -- that was Member Curtis.

00:-48:-34 6 MEMBER GADARIAN: Sara Gadarian.

00:-48:-30 7 CHAIR MACARIO: Member Curtis with the motion and
00:-48:-25 8 Sara with the second. Any discussion?

00:-48:-20 9 (No response.)

00:-48:-19 10 CHAIR MACARIO: All right. Hearing none, all in
00:-48:-18 11 favor?

00:-48:-17 12 (Response.)

00:-48:-09 13 CHAIR MACARIO: All opposed?

00:-48:-08 14 (No response.)

00:-48:-07 15 CHAIR MACARIO: Okay. That carries unanimously.

00:-47:-16 16 Next item on the agenda is Public Testimony. Cory,
00:-47:-09 17 do we have any public testimony today?

00:-47:00 18 MS. VICENS: Chair, we do not.

00:-46:-59 19 CHAIR MACARIO: Okay. Thank you.

00:-46:-42 20 All right. At this time I think I mentioned this to
00:-46:-35 21 some or all of you earlier, but we do have a time constraint
00:-46:-32 22 here, one of our members has to leave early. So in order to
00:-46:-29 23 make sure that we have quorum on the -- one of the items on
00:-46:-26 24 our agenda, I'm going to solicit a motion at this time to
00:-46:-23 25 amend our agenda to go into executive session to address

00:-46:-04 1 Agenda Item 3.d, that's the Informal Hearing on Complaint
00:-45:-54 2 No. 19-06, so that we can hopefully resolve that before the
00:-45:-49 3 member has to leave and avoid any quorum problems.

00:-45:-45 4 Is there someone willing to make such a motion?

00:-45:-37 5 MEMBER WEISS: This is Dave. So moved.

00:-45:-34 6 CHAIR MACARIO: Okay. Is there a second?

00:-45:-31 7 MEMBER CLAYTON: Second. Donna.

00:-45:-27 8 CHAIR MACARIO: Okay. Any discussion?

00:-45:-25 9 (No response.)

00:-45:-24 10 CHAIR MACARIO: Hearing none, all in favor?

00:-45:-21 11 (Response.)

00:-45:-19 12 CHAIR MACARIO: All opposed?

00:-45:-17 13 (No response.)

00:-45:-14 14 CHAIR MACARIO: Okay. That carries unanimously.

00:-45:-01 15 (Gavel.) So do I have to say that regular session is
00:-44:-51 16 concluded or adjourned?

00:-44:-51 17 MR. MURAI: We're recessing regular session and
00:-44:-41 18 entering into executive session and it is 12:36.

00:-44:-41 19 (Pause in proceedings: 12:36 p.m.-12:40 p.m.)

00:-40:-02 20 And, Member Paltin, thank you again for answering
00:-39:-52 21 that question. I think what we'll do first is give the
00:-39:-52 22 complainant an opportunity to make any comments he wishes and
00:-39:-32 23 then we'll turn to you. Thank you.

00:-39:-22 24 All right, sir. Would you step forward.

00:-39:-22 25 Thank you. If you wouldn't mind just identifying

00:-39:-17 1 yourself for the record. And, again, we have your written
00:-39:-08 2 materials and the complaint, so there's no need for you to
00:-39:-04 3 make additional comments unless you would like to. So go
00:-38:-59 4 ahead, feel free.

00:-38:-57 5 MR. MURAI: Oh, and, I'm sorry, before we begin and
00:-38:-53 6 before -- I just want to briefly explain for the parties very
00:-38:-46 7 briefly what the procedure is. Because this is an informal --
00:-38:-40 8 informal hearing, the -- each side will, you know, make a
00:-38:-35 9 presentation to the board, the board members may have
00:-38:-31 10 questions for the parties, but there is no -- there's no
00:-38:-21 11 cross-examination or that kind of thing. Each party may call
00:-38:-21 12 witnesses in support of their positions if they wish, but,
00:-38:-11 13 again, there's no cross-examination. And at the conclusion
00:-38:-11 14 the board may vote to close session again to go into
00:-38:-01 15 deliberations; however, the board will come out of
00:-38:-01 16 deliberations to -- to vote in open session. Okay? Every --
00:-37:-51 17 any questions before we move on? Sure.

00:-37:-41 18 MR. DAVIS: Will we be making an opening statement
00:-37:-41 19 and then come back to presentation or are we just --

00:-37:-32 20 MR. MURAI: No. Well, this is -- it's -- because
00:-37:-22 21 this is an informal process, you may -- as the chair just
00:-37:-12 22 noted, you know, we have your written materials and you can
00:-37:-12 23 assume that the board members have read your materials. If
00:-37:-02 24 you want to kind of summarize them or highlight matters, this
00:-37:-02 25 is your opportunity. So, in other words, there's no opening

00:-36:-59 1 and then a presentation, it's all in one shot.

00:-36:-56 2 MR. DAVIS: Okay.

00:-36:-53 3 MR. MURAI: So you'll get your opportunity, the
00:-36:-49 4 board members may have questions for you, then Councilmember
00:-36:-44 5 Paltin has her opportunity to make her presentation, the board
00:-36:-40 6 members may have questions for her, and then the board goes
00:-36:-36 7 into deliberation.

00:-36:-35 8 MR. DAVIS: Okay.

00:-36:-34 9 MR. MURAI: Okay.

00:-36:-34 10 CHAIR MACARIO: Okay. And before you begin, sir,
00:-36:-31 11 I'm sorry, I forgot to raise one issue. One of our members
00:-36:-21 12 has identified the potential for a conflict in the case and I
00:-36:-21 13 want to give him an opportunity to disclose that and just make
00:-36:-11 14 sure we're all aware of it.

00:-36:-11 15 Go ahead, Dave. Member Weiss.

00:-36:-01 16 MEMBER WEISS: My name is David Weiss. I'm -- I'm
00:-36:-01 17 an executive and an officer in a company that holds three
00:-36:00 18 commercial operating permits in Kaanapali with the catamarans
00:-35:-51 19 and currently the -- not any of our companies, but there is a
00:-35:-42 20 lawsuit filed by plaintiffs including West Maui Preservation
00:-35:-32 21 Association or WMPA. And I don't have a financial interest in
00:-35:-22 22 the company, I just want to make it clear that -- and disclose
00:-35:-22 23 the fact that I do work for a company that owns a commercial
00:-35:-12 24 permit and WMPA is a plaintiff in that lawsuit.

00:-35:-12 25 CHAIR MACARIO: All right. Thank you. And just for

00:-35:-09 1 the benefit of the parties who are here, we do have in our
00:-35:-05 2 rules a provision which allows for disqualification of a
00:-35:00 3 member for -- for bias or prejudice. I've reviewed that rule
00:-34:-55 4 and don't believe that it applies in this situation, but if
00:-34:-50 5 either the complainant or the respondent have an opinion on
00:-34:-43 6 the matter as to whether Member Weiss should consider
00:-34:-35 7 recusing, would you please let us know. I'll give you an
00:-34:-32 8 opportunity to do that.

00:-34:-31 9 MR. DAVIS: Not for me.

00:-34:-21 10 CHAIR MACARIO: Member Paltin?

00:-34:-11 11 MS. PALTIN: (Inaudible.)

00:-34:-11 12 CHAIR MACARIO: Well, with that said, I don't -- I
00:-34:-11 13 don't see a reason why you can't be impartial in this case,
00:-34:-04 14 Member Weiss, so unless you're -- unless you feel differently,
00:-33:-51 15 I would feel comfortable with you proceeding to --

00:-33:-51 16 MEMBER WEISS: I'm okay.

00:-33:-51 17 CHAIR MACARIO: -- participate in both the
00:-33:-41 18 discussion and the voting. Is that all right?

00:-33:-41 19 MEMBER WEISS: Fine with me.

00:-33:-42 20 CHAIR MACARIO: All right. Thank you.

00:-33:-42 21 All right. Sir, if you wouldn't mind just
00:-33:-32 22 identifying yourself and making any statement you'd like.

00:-33:-22 23 MR. DAVIS: First off, my name is Peter Davis, a
00:-33:-12 24 resident of Kihei. I'm an attorney. I'm not licensed here in
00:-32:-52 25 the state of Hawaii, I'm licensed in California, Colorado, a

00:-32:-35 1 number of federal courts, I'm separately licensed to practice
00:-32:-33 2 before the U.S. Supreme Court.

00:-32:-32 3 I have some materials I would like to distribute in
00:-32:-26 4 addition to the ones that were included with the filing of the
00:-32:-21 5 original complaint because I discovered more materials that I
00:-32:-21 6 believe are relevant. Is this the time for me to distribute
00:-31:-48 7 them?

00:-31:-48 8 CHAIR MACARIO: Yes. If you can hand those to our
00:-31:-43 9 executive secretary. Do you have copies for everyone or is it
00:-31:-31 10 just a single copy?

00:-31:-31 11 MR. DAVIS: I have copies for the respondent as well
00:-31:-31 12 as all the members of the board.

00:-31:-31 13 MEMBER WEISS: Can I ask you to speak a little
00:-31:-31 14 louder or into the mic, please.

00:-31:-21 15 MR. DAVIS: I'm sorry. Yes, I have copies for the
00:-31:-11 16 respondent and for all of the members of the board.

00:-31:-11 17 CHAIR MACARIO: Thank you.

00:-31:-11 18 MR. DAVIS: So while those are being distributed,
00:-31:-01 19 let me say again, I didn't have much interest in this case
00:-31:00 20 originally when it was filed and was proceeding through the
00:-30:-51 21 courts. My ears perked up when I saw that it was going to be
00:-30:-41 22 heard by the U.S. Supreme Court, that, for me personally,
00:-30:-31 23 was kind of a bellwether sit up and take notice event. I was
00:-30:-31 24 then kind of flabbergasted when I heard that the council was
00:-30:-21 25 going to consider withdrawing the appeal from the supreme

00:-30:-18 1 court. At that point I got more involved.

00:-30:-11 2 There were hearings before the GET committee, I went
00:-30:-02 3 and testified at both of those, May 20th, November 6th, I came
00:-29:-51 4 back and testified in front of the full council on the 30th.
00:-29:-36 5 During the November 6th GET committee hearing for the first
00:-29:-28 6 time, to my knowledge, the respondent acknowledged that she
00:-29:-19 7 was and had been a plaintiff in this case and a member and a
00:-29:-14 8 board member of West Maui Preservation Association. To me,
00:-29:-05 9 that instantly said conflict of interest, bias, she should
00:-28:-51 10 recuse herself, she shouldn't -- she should not participate in
00:-28:-51 11 the discussion, much less in the voting. I filed this
00:-28:-41 12 complaint at that point in time expecting that she would then
00:-28:-41 13 recuse herself when the full council heard it on the 20th of
00:-28:-31 14 September, but that did not happen, she went ahead and voted
00:-28:-21 15 then also. So my position is -- and what I'm advocating is
00:-28:-11 16 that all of those votes were inappropriate, she should have
00:-28:-01 17 recused herself based upon prior history and blatant bias and
00:-27:-51 18 that did not happen, so that's why I'm here today.

00:-27:-41 19 I think the first thing I want to do is clarify
00:-27:-42 20 exactly what respondent's role was. The important time you're
00:-27:-32 21 look -- I think -- let me go back a bit here. I think when
00:-27:-22 22 you look at what people do, what they did, it's very important
00:-27:-12 23 to understand why they did it, because that gives meaning to
00:-27:-02 24 what they did. That's a recurring theme for me: Why is this
00:-26:-52 25 much more important than what? And to understand why the

00:-26:-46 1 votes happened the way they did, I think we have to look at a
00:-26:-29 2 little of the history and I'll try to make this brief.

00:-26:-26 3 I think you all know that in 2012 a lawsuit was
00:-26:-21 4 filed and there were four plaintiffs and her organization was
00:-26:-14 5 one of them, West Maui Preservation Association. The court
00:-26:00 6 decided at the trial court level in 2015 and that lead to a
00:-25:-52 7 settlement agreement. Now, in the exhibits I passed out to
00:-25:-46 8 you, Exhibit C is just a confirmation that she was, indeed, a
00:-25:-41 9 board member and the president of West Maui Preservation
00:-25:-34 10 Association in 2018.

00:-25:-31 11 I've included copies of the settlement agreement
00:-25:-31 12 because when you get down to it, this is what everybody was
00:-25:-24 13 really fighting about for the last few months on whether or
00:-25:-14 14 not to settle this lawsuit. This is a very unusual settlement
00:-25:-11 15 agreement. As a lawyer, I can assure you that this is not
00:-25:-01 16 commonplace where you enter into a settlement agreement that
00:-24:-51 17 can all go away in a heartbeat and this one was set up that
00:-24:-51 18 way. There were many benefits in the settlement agreement
00:-24:-41 19 flowing to the plaintiffs, but if the county were to win the
00:-24:-32 20 lawsuit on appeal, they all went away. Withdrawing the appeal
00:-24:-32 21 from the supreme court had the same effect as losing the case.
00:-24:-22 22 If they withdraw the appeal, then the Ninth Circuit Court of
00:-24:-12 23 Appeals ruling stayed the ruling and the final ruling on the
00:-23:-52 24 case and all the benefits flowing from the settlement
00:-23:-52 25 agreement to the plaintiff organizations would then be locked

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in.

The next significant date was February 1st, 2018. On that date the opinion of the Ninth Circuit Court of Appeals on the county's appeal was issued and the county lost again. This would nominally be -- and that's, by the way, Exhibit B. (Inaudible.) This would normally be a happy day for the plaintiffs because winning at the Ninth Circuit Court of Appeals is almost a lock on a victory because it's very rare for the supreme court to accept appeals. The supreme court gets 8,000 appeals every year, on average, they accept 80 cases, so you can see that the chances of them taking any given case are really very small.

The four plaintiffs should have been celebrating, but they were not celebrating that day because they knew there was a problem on the horizon. Other federal courts on the mainland had had the exact same question that the ninth circuit addressed and had ruled differently. The one time you're almost guaranteed to get the supreme court to take your case on appeal is if there's a conflict between the district courts of appeal. So even though they got a victory, they knew that the supreme court was probably going to take it and with Trump having appointed a couple of conservatives already, the likelihood of this surviving an appeal was very small, so this kind of puts them into almost a panic mode: What are we going to do about this because it's not looking good for our

00:-21:00 1 team at this point in time. And the answer they came up with
00:-03:-48 2 is: Let's get the county to drop the appeal and the campaign
00:-03:-42 3 was launched to let's get the county to drop the appeal.

00:-03:-33 4 I turn your attention to Exhibit F. This is the
00:-03:-21 5 launching of the drop the -- drop the appeal campaign. This
00:-02:-49 6 was put out by the Sierra Club. You can see they're
00:-02:-40 7 encouraging getting ahold of the mayor, getting ahold of the
00:-02:-34 8 council people, tell them to stop wasting money on legal fees,
00:-02:-16 9 enough of this already, let's be done with it. But the
00:-02:-01 10 interesting thing about this is it wasn't the Sierra Club's
00:-02:00 11 idea, it was not their campaign. If you look at the fourth
00:-01:-54 12 and final page, you'll see who they credit for coming up with
00:-01:-41 13 this campaign highlighted, I think, in yellow for you. This
00:-01:-31 14 was the respondent's personal campaign and they said to her,
00:-01:-21 15 Mahalo. This tells me that this entire drop the appeal
00:-01:-11 16 campaign was her idea, her campaign, her personal cause.

00:-01:-01 17 She resigned as a board member of West Maui
00:00:-57 18 Preservation Association at the end of the year in 2018 so she
00:00:-54 19 could be sworn in as a council member. She did not, however,
00:00:-46 20 change her allegiance, she remained -- she remained a member
00:00:-36 21 of the team that was suing the county.

00:00:-29 22 The last exhibit I have for you is Exhibit G. This
00:00:-20 23 was a fascinating document. You all know that when something
00:00:-14 24 is coming for a hearing before the council, a lot of people
00:00:-09 25 put in written testimony as opposed to just showing up and

00:00:-06 1 testifying for three minutes, especially if what they have to
00:00:00 2 say takes longer than three minutes. So in this -- in this
00:00:06 3 email the respondent is communicating directly with the
00:00:11 4 attorney for the other side. First you'll note the greeting,
00:00:21 5 Aloha, hey, Isaac. This is not a formal email to someone she
00:00:32 6 doesn't know or hasn't had a lot of contact with. She goes on
00:00:40 7 to cite that there are engineering reports that are favorable
00:00:45 8 to the county and adverse to Earth Justice's position in the
00:00:58 9 case, what are we going to do about them? And here are
00:01:08 10 critical choice of words, "what can we," this, to me,
00:01:23 11 demonstrates more clearly than anything else this is her being
00:01:28 12 on their team. Giving the other side advance notice of
00:01:45 13 testimonies that are coming in so that they can prepare
00:01:48 14 rebuttal and do a more effective job of promoting their side
00:01:57 15 of the case versus the county's side of the case, to me, a
00:02:03 16 clear-cut conflict of interest, actions that are
00:02:09 17 reprehensible. So that is the conduct that I'm complaining
00:02:16 18 about.

00:02:17 19 I think that it's important to note why she voted
00:02:22 20 all three times. May 20th meeting there's a roll call vote,
00:02:34 21 it ends up four to four, so it stays alive because she voted.
00:02:42 22 If she doesn't vote, her campaign is dead. September 6th, she
00:02:52 23 once again votes, it's a five to four vote to send it to the
00:03:06 24 council. If she doesn't vote, it doesn't pass. September
00:03:15 25 20th in front of the full council, a five to four vote, it

00:03:21 1 passes. Without her vote, it doesn't pass. The why -- why
00:03:32 2 would someone based on a complaint like that I filed here
00:03:45 3 would go ahead and vote on September 20th knowing that you've
00:03:51 4 been accused of a conflict of interest and it's all going to
00:03:55 5 be brought out? She voted very simply because she had to.
00:04:03 6 Without her vote on all three occasions, it died.

00:04:10 7 And if you were sitting in a place like me and
00:04:27 8 watching the voting, it was kind of fascinating because the
00:04:33 9 roll call vote was called and they would come down the line
00:04:38 10 and they would come to her and she would say, Pass for now,
00:04:43 11 come back to me later. All three times, it was, Pass for now,
00:04:49 12 come back to me later, and only when it was obvious that she
00:04:53 13 had to vote, otherwise her campaign would die, did she vote.

00:05:03 14 That's my presentation.

00:05:04 15 CHAIR MACARIO: All right. Thank you, Mr. Davis.

00:05:11 16 Does anybody have any questions for Mr. Davis?

00:05:11 17 Okay. Corporation counsel has a question for you,
00:06:09 18 sir.

00:06:09 19 MR. MURAI: Mr. Davis, this is Gary Murai. How --
00:06:17 20 how do you distinguish or separate a -- an elected official's
00:06:26 21 duty or obligation to advocate for that which their
00:06:32 22 constituents support or want versus, you know, this -- versus
00:06:42 23 a claim that the elected official has a conflict because of
00:06:46 24 their past associations?

00:06:50 25 MR. DAVIS: Well, I think -- I think right off the

00:06:55 1 top, an elected official has to be perceived by not just their
00:07:02 2 constituents, but by the entire body of residents as being
00:07:08 3 fair, impartial, and unbiased. You can't come to the table
00:07:30 4 with a bias 'cause -- not even the appearance of bias. People
00:07:38 5 need to have confidence that the people that they've elected
00:07:52 6 who then make decisions on matters are doing so without a
00:07:56 7 personal bias.

00:08:05 8 MEMBER GADARIAN: So to -- my name is Sara Gadarian.
00:08:15 9 To follow up on that question, so if a person before they were
00:08:26 10 elected has freely disclosed their interest in the matter as a
00:08:40 11 non- -- in a nonprofit organization and then that's part of
00:08:48 12 that person's campaign material going out to the public, to
00:08:58 13 the voters before the election, then in your mind, does that
00:09:05 14 disqualify a person -- a person for continued to having an
00:09:13 15 interest in -- not financial, but an interest in that
00:09:18 16 nonprofit organization and the effects on that organization?

00:09:28 17 MR. DAVIS: I think if the personal involvement of
00:09:48 18 the elected official is at a level where it influences their
00:09:55 19 opinion and their judgment, if they are so committed to
00:10:01 20 something emotionally, then I think it's inappropriate for
00:10:06 21 them not to recuse themselves. And bear in mind that in
00:10:13 22 voting in favor of withdrawing the lawsuit each time, she was
00:10:19 23 directly voting monies to the organization that she resigned
00:10:27 24 from only because she had to resign and it's -- she was voting
00:10:31 25 money to West Maui Preservation Association, a not

00:10:40 1 insubstantial sum, by the way.

00:10:49 2 MEMBER GADARIAN: I'm sorry. How -- how do you
00:10:53 3 figure that she was voting money for that organization?

00:11:00 4 MR. DAVIS: If the county withdraws the appeal, then
00:11:05 5 the settlement agreement and all the provisions of it become
00:11:08 6 immediately active and the obligations of the county to give
00:11:13 7 money to the plaintiff organizations locked in.

00:11:19 8 MEMBER GADARIAN: And one more question, then. As a
00:11:27 9 county -- a member of the county council, are not -- are they
00:11:33 10 not weighing the money as part of their decision on what
00:11:44 11 their -- what comes before them, money involved to -- to or
00:11:51 12 from the county as part of their decision?

00:11:56 13 MR. DAVIS: It's hard to -- it's hard to bring that
00:12:02 14 into play here as an argument if -- if the county appeals the
00:12:09 15 case successfully, then there's no money going out.

00:12:16 16 MEMBER GADARIAN: Yes.

00:12:18 17 MR. DAVIS: So it's not balancing, it's just a
00:12:25 18 better financial result versus not a better financial result.
00:12:35 19 They wouldn't take -- if they obtain the appeal and win, then
00:12:48 20 that is, obviously, the best financial result. It's hard
00:13:00 21 to -- it's hard to fathom an argument in favor of settling the
00:13:07 22 case and spending the money as being a financial decision.

00:13:13 23 MEMBER GADARIAN: Then my follow-up: As a matter of
00:13:18 24 Code of Ethics, what is her financial benefit from that?

00:13:26 25 MR. DAVIS: The benefit coming from someone -- that

00:13:41 1 accrues to the organization that she was the president of
00:13:46 2 months before and would allow these (inaudible).

00:14:01 3 MEMBER CLAYTON: Excuse me. This is Donna. I
00:14:05 4 couldn't hear you. Please speak a little louder.

00:14:09 5 MR. DAVIS: Oh, I said it would be -- the financial
00:14:13 6 benefit that came from the settlement agreement would not go
00:14:17 7 into her pocket, obviously, but go -- it would go to the
00:14:23 8 organization that she had been the president up until a few
00:14:28 9 months before and where I think the evidence shows her
00:14:35 10 allegiances clearly still lie.

00:14:50 11 CHAIR MACARIO: Do you have any other questions,
00:14:51 12 Sara?

00:14:52 13 MEMBER GADARIAN: No, I don't. Thank you.

00:14:56 14 CHAIR MACARIO: Okay. I just have a couple. So I
00:14:59 15 just want to make sure I understand the basis for your
00:15:03 16 complaint. Your allegation is that by failing to disclose
00:15:16 17 this prior relationship before voting and then by voting on
00:15:22 18 the resolution or whatever it was, those are the acts of which
00:15:30 19 violate the Code of Ethics?

00:15:33 20 MR. DAVIS: Yes. I think she should have recused
00:15:37 21 herself, not participated in the discussions and not
00:15:41 22 participate in voting.

00:15:42 23 CHAIR MACARIO: Okay.

00:15:44 24 MR. DAVIS: And the disclosure that she made -- I
00:15:48 25 think the first knowledge the public had of her prior

00:15:51 1 involvement came on the -- the middle meeting, the September
00:15:57 2 6th meeting. I remember reading the shock on corporation
00:16:14 3 counsel's face when she heard that and questioned it and said,
00:16:18 4 Well, in that case -- she warned her at that point in time
00:16:22 5 during the hearing, she said, I think you may have a problem
00:16:25 6 with a conflict of interest here, but she went ahead and voted
00:16:31 7 anyway.

00:16:36 8 CHAIR MACARIO: Well, as I understand it -- well,
00:16:40 9 correct me if I'm wrong, is the financial interest at stake
00:16:46 10 here really attorney's fees?

00:16:57 11 MR. DAVIS: It's more than that. There's attorney's
00:17:03 12 fees, there's costs, out-of-pocket monies which will go back
00:17:10 13 to the plaintiffs to distribute in terms of what they put in,
00:17:17 14 I think that's a hundred thirty-two or a hundred thirty-six
00:17:24 15 thousand dollars. Then there's the two and a half million
00:17:33 16 dollars which the settlement agreement says that the county
00:17:36 17 has to put -- put up and spend building projects that will
00:17:40 18 improve water quality and that money cannot be spent on
00:17:46 19 existing things or repairing existing things, it has to be new
00:17:52 20 projects and, more importantly, the four plaintiff
00:17:58 21 organizations get oversight in choosing what those projects
00:18:02 22 are, that's a substantial benefit also and it's two and a half
00:18:06 23 million dollars.

00:18:08 24 CHAIR MACARIO: Okay. I don't think any of us or
00:18:10 25 many of us have seen the settlement agreement before today, so

00:18:15 1 one of the issues we'll need to decide as a board is
00:18:18 2 whether -- to what extent we're going to consider the new
00:18:23 3 materials you provided. Certainly, we have them in front of
00:18:26 4 us. Do you have any evidence that Member Paltin will -- or
00:18:36 5 has any remaining financial stake in this West Maui
00:18:44 6 Preservation Association?

00:18:45 7 MR. DAVIS: No. I don't think -- I don't think she
00:18:49 8 ever had a financial stake.

00:18:50 9 CHAIR MACARIO: Okay. So, again, I just want to
00:18:54 10 make clear, should any benefits revert to the agency, the
00:19:00 11 association, you're not contending that she would personally
00:19:04 12 receive a financial or other benefit; is that right?

00:19:08 13 MR. DAVIS: No, not personally.

00:19:11 14 CHAIR MACARIO: Okay. Those are all the questions I
00:19:15 15 had.

00:19:15 16 Any other questions?

00:19:17 17 MEMBER WEISS: I have one that you may or may not be
00:19:20 18 able to answer. You testified that I think on four occasions
00:19:28 19 Ms. Paltin was the deciding vote?

00:19:31 20 MR. DAVIS: Three.

00:19:33 21 MEMBER WEISS: Three occasions. Hypothetically, if
00:19:37 22 she did recuse herself and it was a tie, who -- is there a
00:19:43 23 tiebreaker? Is there somebody in the council or executive
00:19:49 24 office that breaks the tie?

00:19:53 25 MR. DAVIS: I think corporation counsel can respond

00:20:00 1 to that. My understanding is that the first vote came down
00:20:06 2 four to four, which was a tie, and Mike Molina kept it as
00:20:13 3 chair in his committee, put it back on the agenda in
00:20:17 4 September, and it passed five to four. If it had -- if she
00:20:22 5 had recused herself then, it would have been four to four
00:20:29 6 again. I believe that the -- Molina could have then sent it
00:20:33 7 to the full council with no recommendation one way or the
00:20:42 8 other. But at the full council, if she recuses herself, it's
00:20:49 9 four to four and it doesn't pass and it dies.

00:20:55 10 MEMBER WEISS: So there's no deciding vote? If
00:21:01 11 there is a -- there's nobody who jumps in, the mayor or
00:21:15 12 anybody that votes?

00:21:41 13 MR. MURAI: I don't --

00:21:21 14 MEMBER WEISS: You know, like in the senate if
00:21:22 15 there's a -- if there's a tie, the vice president votes or
00:21:36 16 somebody. Is there anybody that would break the tie?

00:21:41 17 MR. MURAI: You know, maybe the -- I don't want to
00:22:02 18 speculate, although I do know that, you know, generally
00:22:11 19 speaking if -- I'm not sure how many members were present or
00:22:15 20 whether the chair in that case voted or not and so I don't
00:22:22 21 want to venture a guess. Perhaps when responding
00:22:28 22 Councilmember Paltin comes up, you can pose that question to
00:22:34 23 her.

00:22:38 24 MEMBER CURTIS: But if there's a five to four vote,
00:22:41 25 there's nine council members, everybody voted.

00:22:46 1 MR. MURAI: Right.

00:22:48 2 MEMBER WEISS: My question was, is: If there was an
00:22:58 3 additional vote, her vote might not have been the one that
00:23:05 4 broke the tie anyway. Like I said, I don't know the county
00:23:10 5 procedures, tie break procedure.

00:23:37 6 MR. DAVIS: I don't believe there was a way to break
00:23:39 7 the tie. My understanding has always been that if it's a four
00:23:44 8 to four tie at the council, that the measure does not pass.

00:23:51 9 CHAIR MACARIO: All right. Thank you very much,
00:23:54 10 Mr. Davis. Appreciate it.

00:23:59 11 All right. Member Paltin, would you like to make a
00:24:04 12 presentation?

00:24:07 13 MS. PALTIN: Good morning. Thank you guys for your
00:25:46 14 service. Thanks for being here. So I guess to start off
00:26:16 15 with, I just wanted to remind you that this board went over my
00:26:23 16 candidate disclosure statement and there was discussion on the
00:26:40 17 things that I disclosed. It was agendized on April 11th,
00:26:47 18 2018. And I did put on my original candidate disclosure
00:26:57 19 statement that I was on the West Maui Preservation Association
00:27:08 20 and there was discussion at the April 11th, 2018, meeting and
00:27:16 21 it almost all centered around my slippers and nothing was
00:27:28 22 mentioned about me being on the West Maui Preservation
00:27:34 23 Association. So I did do my best to disclose that I was on
00:27:38 24 it, it was also on my campaign website that I was a member of
00:27:44 25 that organization, so I'm definitely not trying to hide it. I

00:27:49 1 thought that was part of the appeal of voting for me.

00:27:53 2 The other thing I wanted to bring your attention to
00:27:57 3 was my financial disclosure statement that I submitted as an
00:28:04 4 elected official and if you look at that, it's, I think,
00:28:11 5 agendized for February 13th, 2019, and at that financial
00:28:23 6 disclosure you can see that I'm no longer affiliated with West
00:28:34 7 Maui Preservation Association and, you know, there are
00:28:36 8 comments on all the elected officials' financial disclosure.
00:28:40 9 There was comments for Member Molina, Member Sugimura, Chair
00:28:51 10 King, Member Sinenci, and Lee, but there was no discussion
00:28:58 11 about my -- my financial disclosure. So just -- I don't know
00:29:02 12 if everybody was on the board of ethics at that time, but just
00:29:06 13 a little background history on that issue.

00:29:10 14 CHAIR MACARIO: Can I interrupt you for just a
00:29:12 15 second?

00:29:17 16 MS. PALTIN: Sure.

00:29:18 17 CHAIR MACARIO: These meetings you're talking about
00:29:21 18 are board of ethics past meetings?

00:29:25 19 MS. PALTIN: Yes.

00:29:28 20 CHAIR MACARIO: Okay. Thank you.

00:29:30 21 MS. PALTIN: And then -- so I wanted to address this
00:29:42 22 complaint that I got and I'm assuming that you guys all got
00:29:52 23 the complaint from the complainer. And when I reviewed it, it
00:30:01 24 seemed to me that his writing or his reasoning statement
00:30:08 25 didn't really match up with the numbers of the charter article

00:30:12 1 that he listed here, so if it's okay, I'd like to first just
00:30:17 2 go according to his statement and clarify things that he made
00:30:22 3 from -- starting from the second page with his statement.

00:30:29 4 So the first underlined paragraph, it -- it seems to
00:30:40 5 not make any sense because September 20th passed, we're still
00:30:47 6 at the supreme court, so that's kind of an outside issue. And
00:31:05 7 then when he goes down to summary of unethical conduct, true,
00:31:11 8 in 2017 I served as director of West Maui Preservation
00:31:16 9 Association. I don't see how serving on the board of a
00:31:20 10 nonprofit organization as a volunteer is an unethical conduct.
00:31:26 11 The same thing for 2018 when I served as president of a
00:31:30 12 nonprofit organization as a volunteer, also not unethical
00:31:36 13 conduct. The third sentence, in 2019 I twice voted as a
00:31:43 14 council member to pass resolutions that would give substantial
00:31:50 15 financial benefits directly to the WMPA while failing to
00:32:06 16 disclose my prior roles with them. So I went over that, I did
00:32:14 17 disclose that on my website, on my financial disclosure, in
00:32:20 18 the meetings several times. I can't help it if corp. counsel
00:32:33 19 wasn't paying attention the first time, you know, so -- but --

00:32:39 20 So I'd also like to assert that the third part is
00:32:56 21 not exactly factually correct, the part about substantial
00:33:08 22 benefits and failing to disclose, and so I would say that this
00:33:14 23 does not violate the Code of Ethics. And I'll give handouts
00:33:20 24 to prove that at the correct time.

00:33:25 25 So going down to Background Information, the second-

00:33:31 1 to-the-last paragraph, it says, In 2012 a lawsuit commonly
00:33:35 2 referred to as the Lahaina injection wells lawsuit was
00:33:42 3 initiated against the county on behalf of four plaintiffs,
00:33:48 4 West Maui Preservation Association was one of those
00:33:53 5 plaintiffs. So that's true also. And I just wanted to point
00:33:58 6 out that in 2012 I worked for the County of Maui, I was not on
00:34:02 7 the West Maui Preservation Association. I was an ocean safety
00:34:09 8 officer at D.T. Fleming's and, you know, at that time I was
00:34:16 9 supportive for a clean working environment. I also wasn't on
00:34:21 10 the council in 2012. The last statement on the page, also
00:34:31 11 true.

00:34:35 12 Next page, in 2015 the federal district court in
00:34:43 13 Honolulu ruled in favor of the plaintiffs, at that point the
00:34:48 14 parties entered into partial settlement; pretty much true.

-07:-31:-145 Next paragraph; true.

-07:-31:-146 Next paragraph, so the third paragraph it says, It
-07:-31:-147 also provided, however, that if the County of Maui were to
-07:-30:-148 ultimately lose the case or at any point elect to enter into a
-07:-30:-149 master settlement, the county would have to perform certain
-07:-30:-150 acts. So I would say that, you know, these certain acts that
-07:-30:-151 the county would perform is not a financial benefit to West
-07:-30:-152 Maui Preservation Association. There is no private financial
-07:-30:-153 benefit. The benefit is clean water, which I've supported
-07:-30:-154 pretty much all my life.

-07:-30:-155 The next line where it says, One such obligation was

-07:-30:-011 that the county would be required to pay the accumulated legal
-07:-29:-482 fees of -- and this part, I think he gets it wrong, it's not
-07:-29:-373 of West Maui Preservation Association, it's of the community
-07:-29:-304 briefs, one of which is West Maui Preservation Association,
-07:-29:-215 and those fees were estimated by the plaintiffs' attorney to
-07:-29:-146 be in excess of one million. So at this time I'd like to
-07:-29:-037 distribute this document from Earth Justice, which is the
-07:-28:-558 confidential settlement communication. And so they said that
-07:-28:-479 the settlement agreement from the 2015 ruling is \$1,070,451.79
-07:-28:-10 plus post judgment interest. So the settlement that we voted
-07:-28:-21 on, actually, according to this document, said that by voting
-07:-28:-12 on it, they're going to waive their attorney's fees and it
-07:-28:-53 would allow for only the out-of-pocket expenses of the
-07:-28:-14 community groups, which is \$132,306.69. So, you know, I know
-07:-27:-45 there were about 60 hours of meetings on this subject, so
-07:-27:-46 maybe -- I was -- I had to be there, not everyone had to watch
-07:-27:-17 all 60 hours, so it's -- stuff might've slipped by folks, but,
-07:-27:-18 actually, for voting on this resolution, there's a decrease in
-07:-27:-19 the amount awarded to the -- the community groups, there's
-07:-27:-20 actually a savings to the county of \$938,145.10 that the
-07:-26:-21 community groups would be out.

-07:-26:-22 So this whole page where it's talking about over a
-07:-26:-23 million doesn't even apply, because the settlement that we
-07:-26:-24 were voting on was not for a million dollars, it was for a
-07:-26:-25 significantly less amount, which is \$132,306.69. When you're

-07:-26:-191 considering the county paid special counsel over \$3 million,
-07:-26:-112 that seems kind of like a deal to me. I mean, we go into
-07:-26:-053 executive session and make deals, you know, so that's kind of
-07:-25:-584 what we do on a regular basis, I'm learning. So this whole
-07:-25:-485 thing, the last paragraph, that will, therefore, require the
-07:-25:-446 county to pay plaintiff's legal fees in excess of a million
-07:-25:-347 dollars is not a true statement.

-07:-25:-288 The sentence where it says that appeal, if
-07:-25:-229 successful, will take away many of the benefits that were
-07:-25:-140 given to the plaintiffs by the supreme court. So I just
-07:-25:-101 wanted to point out that clean water is not a private
-07:-25:-122 financial benefit for WMPA and even if it was, I'm not a part
-07:-24:-123 of WMPA, so there's no financial benefit and I'm not WMPA, so
-07:-24:-134 just clarifying that.

-07:-24:-125 Then on the last page, you know, to try to
-07:-24:-146 conjecture the reason why I voted that way doesn't explain why
-07:-24:-177 four other people voted that way as well, you know, it's like
-07:-24:-108 is everybody getting paid off with clean water? I hope so,
-07:-24:-149 you know.

-07:-24:-20 Exhibit A; true, yeah. No secret, I disclosed it.

-07:-24:021 Exhibit B; true. At this point I wanted to pause
-07:-23:-22 for any questions on the written complaint before I go into
-07:-23:-23 the County Charter Article 10 various sections, which in my
-07:-23:-24 interpretation of the written complaint stuff, doesn't really
-07:-23:-25 relate to the 10 -- 10.1, 10-4, 10-4.1.c, d, e, and 10-4.4.

-07:-23:-131 If there's any questions on just that portion of the writing
-07:-23:-042 and the answering.

-07:-23:-013 CHAIR MACARIO: Does anyone have any questions for
-07:-22:-564 Member Paltin based on what she's said so far? Or we can wait
-07:-22:-355 till the end.

-07:-22:-356 MEMBER GADARIAN: I have -- sorry. This is Sara. I
-07:-22:-327 have a technical question. The 2019 financial disclosure form
-07:-22:-158 that is on the website and is also part of the plaintiffs'
-07:-21:-519 discussion, it's -- it's shown received by the board of ethics
-07:-21:-410 January 15th, 2019, and I think that -- I'm not sure that
-07:-21:-311 that's what you were referring to.

-07:-21:-212 MS. PALTIN: That's my financial disclosure as an
-07:-21:-213 elected official.

-07:-21:-114 MEMBER GADARIAN: That's correct.

-07:-21:-115 MS. PALTIN: Yeah. And so I'm not listed on that
-07:-21:-136 financial disclosure as involved with West Maui Preservation
-07:-21:-177 Association because I had already resigned before taking
-07:-21:-148 office.

-07:-20:-119 MEMBER CURTIS: Is there a section on that where you
-07:-20:-20 represented other organizations in front of the county for the
-07:-20:-21 prior year? Isn't that the section right after?

-07:-20:-22 MEMBER GADARIAN: Yeah.

-07:-20:-23 MEMBER CURTIS: I don't have a copy of her --

-07:-20:-24 MEMBER CLAYTON: It's here.

-07:-20:-25 MEMBER GADARIAN: In 2019 it was -- sorry. This is

-07:-20:-241 Sara. It was the -- as part of the HGEA unit, she addressed
-07:-20:-142 the --

-07:-20:-123 MEMBER CURTIS: Oh, okay.

-07:-20:-104 MEMBER GADARIAN: -- the council. And as of January
-07:-20:-035 2019 she was president of the Save Honolua Coalition.

-07:-19:-516 MS. PALTIN: Yeah. I did testify before the county
-07:-19:-437 on some HGEA matters, but I had never testified before the
-07:-19:-368 county on West Maui Preservation Association matters. In the
-07:-19:-309 previous year and at that time I was no longer on the board of
-07:-19:-250 the nonprofit serving as a volunteer or any other capacity.

-07:-19:-171 CHAIR MACARIO: Is there any documentation for your
-07:-19:-142 resignation from the WMPA? I mean, I guess what I'm asking
-07:-19:-113 is: What date it was and is there any documentation of that?

-07:-19:014 MS. PALTIN: I'm not sure, I didn't go back through
-07:-18:-115 my emails. It could have been just verbal and I think, you
-07:-18:-116 know, Lance kind of is the facilitator of the board, although
-07:-18:-117 he's not a board member, and I do remember telling him.

-07:-18:-118 MEMBER CURTIS: I do believe you need to file with
-07:-18:-119 the DCCA.

-07:-18:-210 MR. MURAI: You know, one second, because this is
-07:-18:-211 being recorded, we need to remember to state our name for the
-07:-17:-212 board members. Ms. Paltin doesn't need to because it's pretty
-07:-17:-213 obvious, you know, who she is. And we need to let her finish
-07:-17:-214 her statement and then before we pose questions get the -- get
-07:-17:-215 the chair's attention first.

-07:-17:-361 MS. PALTIN: So Lance facilitated the -- the
-07:-17:-322 nonprofit and, you know, if there were any DCCA filings and
-07:-17:-253 like that, I -- I didn't file the -- the original DCCA that
-07:-17:-194 listed me as one and I didn't feel the following DCCA that
-07:-17:-145 took me off. I did let him know and he already did know when
-07:-17:-106 I won the election and then I formally told him in December,
-07:-17:-027 you know, I'm going resign before taking office. And I was no
-07:-16:-578 longer a part to any of their meetings or any of their
-07:-16:-539 business prior to entering office, so the official resignation
-07:-16:-410 date was December 31st, 2018.

-07:-16:-371 CHAIR MACARIO: And is the reason that you resigned
-07:-16:-322 because you thought that your continued involvement in that
-07:-16:-293 organization might present a conflict or were there other
-07:-16:-244 reasons for your resignation?

-07:-16:-225 MS. PALTIN: Well, the other reason was, you know,
-07:-16:-166 ten hour driving a week, still with the same Honolua
-07:-16:-137 Coalition, two young children; I didn't feel like I could
-07:-15:-168 handle all of that at -- you know, with this new role that I
-07:-15:-149 hadn't taken on before. And there were other people willing
-07:-15:-20 to step up. I would have also resigned from Save Honolua
-07:-15:-21 Coalition, but couldn't find anyone else to step up. I'm
-07:-15:-22 still looking for somebody to take it over, but, you know, the
-07:-15:-23 Save Honolua Coalition has never gotten any monies from the
-07:-15:-24 county, so I feel okay, you know. We've gotten state grants,
-07:-15:-25 never county grants, there's no intention to go after county

-07:-15:-021 funding. We're kind of a reactionary nonprofit that focuses
-07:-14:-502 on the environmental aspects of Honolua and keeping the
-07:-14:-323 community engaged. So, you know, I would -- I would step down
-07:-14:-214 from everything if I could, but there's not that much people
-07:-14:-185 willing to volunteer to serve on nonprofits, 'cause it's a lot
-07:-14:-116 of work.

-07:-14:-107 CHAIR MACARIO: Well, Save Honolua is not before us.
-07:-14:-018 Is that right, Gary?

-07:-13:-599 Yeah. So, all right, any other questions for Member
-07:-13:-450 Paltin at this stage of the proceedings? Otherwise, we'll let
-07:-13:-411 her finish.

-07:-13:-432 Go ahead, Gary.

-07:-13:-193 MR. MURAI: No, no. So, Member Paltin, I just
-07:-13:-114 wanted to understand, you know, you gave us a copy of Earth
-07:-13:-155 Justice's September 19, 2019, settlement communication and
-07:-12:-436 under the prior settlement agreement the county had with the
-07:-12:-487 plaintiffs, Earth Justice would have been paid \$1,070,000 and
-07:-12:-198 change and if the matter had been settled and the county did
-07:-12:-109 not pursue its supreme court appeal, that million dollar plus
-07:-12:-20 would be reduced to \$132,000 and change; is that correct?

-07:-12:-21 MS. PALTIN: That's my understanding of it.

-07:-12:-22 MR. MURAI: And --

-07:-12:-23 MS. PALTIN: And this is set September 19th, but
-07:-11:-24 they had set it previous times many times during the -- the
-07:-11:-25 thing, the committee meetings and stuff, but certain council

-07:-11:-411 members would keep referring to it, which might be why the
-07:-11:-352 complainer got confused. So even though they said this,
-07:-11:-273 certain council members would still be like, We're on the hook
-07:-11:-204 for a million dollars.

-07:-11:-185 MR. MURAI: Okay.

-07:-11:-186 MS. PALTIN: And so then they decided to put it in
-07:-11:-137 writing.

-07:-11:-128 MR. MURAI: Okay.

-07:-11:-119 MS. PALTIN: So that's why the --

-07:-11:-100 MR. MURAI: So turning to the \$132,000, the
-07:-11:011 compromise, the reduced amount, who would pay that to Earth
-07:-10:-122 Justice?

-07:-10:-103 MS. PALTIN: I believe it's the county.

-07:-10:-114 MR. MURAI: Okay. So at -- is there any situation
-07:-10:-125 where -- where West Maui Preservation or WMPA or any other of
-07:-10:-126 the other plaintiffs would be on the hook for attorney's fees?
-07:-10:-127 In other words, do the plaintiffs owe this money to Earth
-07:-10:-128 Justice?

-07:-10:-129 MS. PALTIN: No. My -- my understanding is that
-07:-10:-20 that's out-of-pocket expenses, it says reimbursement.

-07:-09:-21 MR. MURAI: No, no, no. Well, whether it's a
-07:-09:-22 million -- whether it's the million dollar number or whether
-07:-09:-23 it's the \$132,000 number, is there any situation where the
-07:-09:-24 plaintiffs, the organizations, would be on the hook to Earth
-07:-09:-25 Justice or is Earth Justice saying, We'll only collect money

-07:-09:-291 if we win or if we settle in -- in the plaintiffs' favor? In
-07:-09:-212 other words, let's say for the sake of discussion, the
-07:-09:-153 plaintiffs, meaning WMPA and all -- you know, Surfrider
-07:-09:-114 Foundation, they lost, would they be on the hook to Earth
-07:-09:-045 Justice for this money?

-07:-09:00 6 MS. PALTIN: That's not my understanding, no. I --
-07:-08:-547 if the -- if they weren't successful, then I believe that the
-07:-08:-498 lawyers are working pro bono on that. 'Cause this is -- the
-07:-08:-419 million dollars included attorney fees, postjudgment interest
-07:-08:-120 and all of that. So the attorneys were working similar to
-07:-08:-121 like how the attorneys are right now at the supreme court,
-07:-08:-122 because we didn't give them any extra money to get there,
-07:-08:-153 so --

-07:-08:-134 MR. MURAI: And correct me if I'm wrong, but my
-07:-08:-115 understanding is that Earth Justice itself is a -- they're a
-07:-08:-116 nonprofit agency; right? They're not like a -- they're not
-07:-07:-157 like a typical private law firm?

-07:-07:-198 MS. PALTIN: That's my understanding, but I didn't
-07:-07:-169 really research into that or anything to verify that.

-07:-07:-200 MR. MURAI: Okay. Thank you.

-07:-07:-211 CHAIR MACARIO: Go ahead.

-07:-07:-222 MEMBER WEISS: Ms. Paltin, during --

-07:-07:-233 CHAIR MACARIO: This is Dave Weiss.

-07:-07:-244 MEMBER WEISS: This is Dave Weiss. I'm sorry.

-07:-07:-255 During Mr. Davis's testimony he mentioned -- and I don't stay

-07:-07:-131 up late and watch the county meetings. He had mentioned that
-07:-07:-072 you had passed on the vote -- or two things, he concluded that
-07:-06:-563 you passed because you didn't want to vote, but you might have
-07:-06:-524 had to vote, so I want to -- a two-part question: Is that
-07:-06:-475 normal? And your side of the story why you passed, if, in
-07:-06:-396 fact, you did pass the vote?

-07:-06:-367 MS. PALTIN: Okay. We're going to have to go into
-07:-06:-278 executive session because the reason I passed was because of
-07:-06:-229 something that was disclosed to me in executive session and
-07:-06:-170 not because I felt there was a conflict of interest. The
-07:-06:-131 things -- the reasoning why I kanalua -- and I don't know if
-07:-06:-142 that's common, I kanalua maybe like two or three times and
-07:-05:-123 I've been in office 11 months, so I don't know, I mean two or
-07:-05:-114 three times in 11 months. The reason that I was hesitant was
-07:-05:-165 because of the mayor's proposed settlement that he offered to
-07:-05:-106 us in executive session. I think that's since been made
-07:-05:-127 public, but I don't know if I'm supposed to disclose it. But
-07:-05:-178 if you go and look at the mayor's proposed settlement
-07:-05:-129 agreement that he showed us in executive session, which I'm
-07:-05:-20 not supposed to disclose, well, that was the reason. And
-07:-04:-21 so --

-07:-04:-22 CHAIR MACARIO: Well, we certainly don't want you to
-07:-04:-23 disclose something that you're not allowed to disclose. I
-07:-04:-24 think you've answered the question that it -- your recusal --
-07:-04:-25 or your initial non-vote was not because of the conflict

-07:-04:-101 issue, it was because of something -- or not relating to this
-07:-04:-062 issue, at least, it was some other issue that --

-07:-04:-013 MS. PALTIN: Yes.

-07:-04:00 4 CHAIR MACARIO: -- at least has -- for now has to
-07:-03:-565 remain confidential?

-07:-03:-536 MS. PALTIN: Yeah. You guys can probably look it
-07:-03:-487 up. I think it was made public after the fact what the
-07:-03:-428 mayor's proposed settlement agreement was. And so I can tell
-07:-03:-379 you my thinking was that as a council member in this position,
-07:-03:-10 I could do what the mayor proposed to do in his executive
-07:-03:-11 session settlement agreement on my own without his help. So
-07:-03:-12 that's why at first I was thinking through my mind like, Oh,
-07:-03:-13 that sounds good. Should I -- what should I do? And then
-07:-03:-14 when it came back around to me, I was like, Just because he
-07:-02:-15 proposes it doesn't mean I can't propose it and do it myself
-07:-02:-16 next budget session. So that was the train of thought in I
-07:-02:-17 don't know if I want to vote which way and then when it came
-07:-02:-18 back around to me, that's the decision that I had in my mind,
-07:-02:-19 so I was okay to vote. I liked his proposal, but then when it
-07:-02:-20 came around that I had to make a call one way or the other, I
-07:-02:-21 said, Well, just because he proposed it doesn't preclude me
-07:-02:-22 from proposing it in the next budget session.

-07:-02:-23 And to address the \$2.5 million, I mean, we had
-07:-02:-24 already spent over that addressing the issue in the previous
-07:-01:-25 budget, this past year's budget, and there was a commitment to

-07:-01:-501 continue funding in a responsible manner to get off the -- the
-07:-01:-422 use of R1 water. And then I think the whole entire county,
-07:00:-08 3 the council and the mayor, is committed to that one way or the
-06:-59:-574 other. And you can go back and look through all the records,
-06:-59:-295 over 2.5 million has been spent on reuse. And, you know, like
-06:-59:-216 I said about my decision-making process, I personally was
-06:-59:-167 committed to addressing the problem. My family, we use the
-06:-58:-578 ocean day, every week we eat from the ocean, you know, we're
-06:-58:-529 ocean people. I paddle canoe, I surf, the kids dive. From --
-06:-58:-190 my Hawaiian family from Lahaina for hundreds of years, lineal
-06:-58:-181 descendents, they got royal patents, so, you know, it's
-06:-58:-182 just -- it has nothing to do with WMPA, I have no loyalties to
-06:-58:-183 them. My loyalty is to the ocean, to my family, to the West
-06:-58:-174 Maui people, the kids and the kaiapuni, you know, so, yeah.

-06:-57:-175 CHAIR MACARIO: Okay. Thank you.

-06:-57:-156 Donna, I was going to tell you for the record --

-06:-57:-147 MEMBER CLAYTON: I apologize. Yes.

-06:-57:-158 CHAIR MACARIO: So Member Clayton has to leave. We
-06:-57:-119 still have quorum. So for the record, Member Clayton is
-06:-57:-20 excused from the meeting.

-06:-57:-21 MEMBER CLAYTON: Thank you.

-06:-57:-22 CHAIR MACARIO: All right. Any other questions for
-06:-57:-23 Member Paltin before she continues?

-06:-57:-24 (No response.)

-06:-57:-25 CHAIR MACARIO: All right. Go ahead. To the extent

-06:-57:-071 you have anything else, go ahead.

-06:-57:-042 MS. PALTIN: Okay. So at this time I just wanted to
-06:-56:-203 go against -- speak to the specific Maui County Charter,
-06:-56:-154 Article 10, Code of Ethic provisions that is alleged that I
-06:-56:-075 violated, which is 10-1, 10-4.1.b, 10-4.1.c, 10-4.1.e, and
-06:-55:-366 10-4.4.

-06:-55:-267 So Article 10, Section 1 of the county charter
-06:-55:-158 states (as read), Elected and appointed officers and employees
-06:-55:-109 shall demonstrate by their example the highest standard of
-06:-55:-140 ethical conduct to the end that the public may justifiably
-06:-54:-171 have trust and confidence in the integrity of government. So
-06:-54:-132 there's no allegation that was made that I acted contrary to
-06:-54:-163 the trust and confidence of the public, nor the highest
-06:-54:-144 standards of ethical conduct. There's no allegation that I
-06:-54:-105 held any financial interest in the settlement provisions for
-06:-54:-166 reimbursement to the attorney of an organization in which I
-06:-54:-117 previously held an uncompensated position, WMPA.

-06:-54:-148 Article 10, Section 1 is just a policy declaration
-06:-53:-169 and does not establish standards by which public officials can
-06:-53:-200 evaluate conduct or be evaluated. Those standards are
-06:-53:-211 discussed under Article 10, Section 4. My conduct is, anyway,
-06:-53:-222 complying with the Code of Ethics and the purpose of the Code
-06:-53:-233 of Ethics is to ensure public officials' decision making is
-06:-53:-244 not tainted by corruption or self-dealing. The purpose is not
-06:-53:-255 to bar a person who once served in a volunteer, nonprofit

-06:-53:-061 position from making decisions that affect the county once
-06:-53:-022 they're elected and take office.

-06:-52:-573 So next complainant alleges that my conduct violated
-06:-52:-464 Article 10, Section 4.1.b titled Prohibitions, which states
-06:-52:-405 (as read), No officer or employee of the county shall:
-06:-52:-336 Disclose information which, by law or practice, is not
-06:-52:-297 available to the public and which the officer or employee
-06:-52:-258 acquires in the course of the officer's or employee's official
-06:-52:-189 duties or use such information for the officer's or employee's
-06:-52:-120 personal gain or for the benefit of anyone. So the
-06:-52:-091 complainant made no factual allegations that I disclosed any
-06:-52:-012 information not available to the public or used such
-06:-51:-543 information for my own personal gain for the benefit of
-06:-51:-464 anyone. The complainer filed -- failed to meet the initial
-06:-51:-445 burden of alleging sufficient facts to support a claim and
-06:-51:-396 this should be dismissed.

-06:-51:-367 And the complainer also relied on Article 10,
-06:-51:-288 Section 4.1.c, which states (as read), No officer or employee
-06:-51:-189 of the county shall: Engage in any business transaction or
-06:-51:-080 activity or have a financial interest, direct or indirect,
-06:-51:-021 which is incompatible with the proper discharge of the
-06:-50:-922 officer's or employee's official duties or which may tend to
-06:-50:-823 impair the officer's or employee's independence of judgment in
-06:-50:-744 the performance of the officer's or employee's official
-06:-50:-625 duties.

-06:-50:-401 Relatedly, Board of Ethics rules define a conflict
-06:-50:-342 of interest as follows (as read): Conflict of interest means
-06:-50:-283 a real or seemingly incompatibility between one's private
-06:-50:-154 interests and one's public or fiduciary duties. It also has
-06:-50:-095 meanings as explained in past board opinions that involve a
-06:-50:-036 two-part test and require interpretation of Section 10-4.1.c
-06:-49:-517 of the charter that no officer or employee of the county
-06:-49:-448 shall: Engage in any business transaction or activity or have
-06:-49:-369 a financial interest, direct or indirect, which is
-06:-49:-310 incompatible with the proper discharge of the officer's -- or
-06:-49:-251 which may tend to impair the officer's/employee's independence
-06:-49:-172 of judgment in the performance of the officer's or employee's
-06:-49:-103 official duties.

-06:-49:-104 Hawaii State Standards of Conduct, Hawaii Revised
-06:-48:-105 Statutes Chapter 84 also specifies that (as read), Conflicts
-06:-48:-106 of interest concern actions affecting financial interest or
-06:-48:-107 private undertakings where the official is engaged in a formal
-06:-48:-108 representative or consultant capacity. So in case law in
-06:-48:-109 Hawaii the focus of the state standards of conduct are present
-06:-48:-20 and future financial interests of the challenged officer or
-06:-48:-21 employee and not those of organizations that the employee was
-06:-48:-22 previously affiliated in a volunteer capacity.

-06:-48:-23 So the complainer does not allege that I hold a
-06:-48:-24 direct or indirect financial interest in the reimbursement of
-06:-48:-25 WMPA attorney fees consequent to the approval of the

-06:-48:-021 settlement. The council's approvement of the settlement
-06:-47:-582 actually benefited WMPA less than what was allowed for by the
-06:-47:-513 ninth circuit court -- or the 2015 ruling, I'm not sure if
-06:-47:-424 that was the ninth circuit court. And would not even
-06:-47:-385 indirectly return any financial benefit to myself.

-06:-47:-356 As the complainer rightly notes, I did serve on
-06:-47:-297 WMPA's board of directors as a nonpaid volunteer director from
-06:-47:-228 mid 2017 until December 2018 before I took office and my role
-06:-47:-159 with them was prior to my serving as a council member. So the
-06:-47:-100 complainer fails to allege, much less establish that I engaged
-06:-47:-021 in any business transaction or activity or have a financial
-06:-46:-152 interest, direct or indirect, in WMPA. The complainer's
-06:-46:-103 conclusory allegation that my prior roles with WMPA creates a
-06:-46:-104 conflict of interest is an erroneous and unsupported
-06:-46:-155 conclusion. I have no present affiliation with the
-06:-46:-126 organization, nor did I hold any affiliations during my tenure
-06:-46:-127 on the council. The complainer failed to state a violation of
-06:-46:-198 Charter Article 10, Section 4.1.c.

-06:-46:-109 Article 10, Section 4.1.e provides (as read), No
-06:-46:020 officer or employee of the county shall: Fail to disclose a
-06:-45:-221 financial interest in any matter which may be affected by an
-06:-45:-022 action of a county agency or vote on any matter affected by
-06:-45:-023 such interest. I have none and the complaint does not allege
-06:-45:-244 that I have any financial interest in Hawaii Wildlife Fund vs.
-06:-45:-255 County of Maui nor in its settlement nor do I have a financial

-06:-45:-191 interest in any of the plaintiffs. My prior volunteer service
-06:-45:-102 on WMPA board of directors before I took county office does
-06:-45:-063 not generate one because I never, ever received any financial
-06:-45:00 4 benefits from WMPA.

-06:-44:-585 The complaint alleges I violated Maui County Charter
-06:-44:-526 Article 10, Section 4.4 which provides (as read), Officers and
-06:-44:-457 full-time employees of the county shall not appear on behalf
-06:-44:-408 of or represent private interests before any county agency,
-06:-44:-359 provided that no officer or employee shall be denied the right
-06:-44:-290 to appear before any agency to petition for a redress or
-06:-44:-171 grievances caused by an official county action affecting such
-06:-44:-112 person's personal rights, privileges or property, including
-06:-43:-563 real property. So this provision is not applicable to the
-06:-43:-484 facts alleged that not appeared on behalf of or representing
-06:-43:-405 any private interests before any county agency. Having
-06:-43:-356 previously served on the WMPA board before taking office does
-06:-43:-257 not constitute appearing on behalf of or representing private
-06:-43:-188 interests before the council in my official capacity as a
-06:-43:-179 council member.

-06:-43:-20 Some statutes and conduct provide further guidance,
-06:-43:-051 Hawaii Revised Statutes, Chapter 84, Section 13 imposes
-06:-42:-22 standards for fair treatment by legislators or employees by
-06:-42:-23 prohibiting their use of their official position to secure or
-06:-42:-24 grant unwarranted privileges, exemptions, advantages,
-06:-42:-25 contracts, or treatment for oneself or others including, but

-06:-42:-111 not limited to the following:

-06:-42:-062 Seeking other employment or contract for services
-06:-41:-553 for oneself by the use or attempted use of the legislator's or
-06:-41:-424 employee's officer position.

-06:-41:-375 2. Accepting, receiving, or soliciting compensation
-06:-41:-316 or other consideration for the performance of the legislator's
-06:-41:-237 or employee's official duties or responsibilities as -- except
-06:-41:-158 as provided by law.

-06:-41:-119 Using state time, equipment, or other facilities for
-06:-41:-150 private business purpose.

-06:-41:-131 Soliciting, selling, or otherwise engaging in a
-06:-40:-162 substantial financial transaction with a subordinate or a
-06:-40:-103 person or business whom the legislator or employee inspects or
-06:-40:-144 supervises in the legislator's or employee's official
-06:-40:-145 capacity.

-06:-40:-126 The complaint does not allege that I committed any
-06:-40:-177 of these acts so as to have failed to provide fair treatment
-06:-40:-138 in my official duties, much less that I directly appeared as a
-06:-40:-169 representative of WMPA since taking office.

-06:-40:-20 And for the foregoing reasons, the complaint fails
-06:-40:-21 to allege any accusations to which I'm answerable,
-06:-39:-22 respectfully request the complaint be dismissed.

-06:-39:-23 CHAIR MACARIO: Thank you very much.

-06:-39:-24 Any other questions for Member Paltin?

-06:-39:-25 (No response.)

-06:-39:-411 CHAIR MACARIO: All right. Hearing none, do I need
-06:-39:-372 a motion to adjourn.

-06:-39:-243 (Conferring with corporate counsel.) Oh, that's a
-06:-39:-174 good point. Yes, I'm sorry.

-06:-39:-165 So based on Member Paltin's presentation and answers
-06:-39:-106 to questions, does any board member have any additional
-06:-39:-067 questions for the complainant, Mr. Davis?

-06:-38:-558 (No response.)

-06:-38:-529 CHAIR MACARIO: Okay. Hearing none, I think we can
-06:-38:-440 deliberate at this point. Do I need a motion to --

-06:-38:-381 MR. MURAI: Right. Members, now that we've --
-06:-38:-302 because there are no further questions and each side has made
-06:-38:-173 their presentation, we can entertain a motion to -- to go into
-06:-37:-134 deliberation and -- and also -- it'd be like a vote to go into
-06:-37:-115 executive session so that the board may deliberate, the board
-06:-37:-176 may ask questions of counsel regarding the board's powers,
-06:-37:-117 duties, liabilities, and that sort of thing. What we're going
-06:-37:-198 to do, then, is if we go into deliberation, we'll excuse the
-06:-37:-129 parties, and after deliberation, we will go back into regular
-06:-37:-20 session and we will vote in -- we'll conduct our voting in
-06:-36:-21 open session.

-06:-36:-22 CHAIR MACARIO: Someone --

-06:-36:-23 MEMBER GADARIAN: I move that we go into executive
-06:-36:-24 session for the purpose of discussion and deliberation on --
-06:-36:-25 on the matter.

-06:-36:-391 CHAIR MACARIO: Is there --

-06:-36:-372 MEMBER GADARIAN: And seeking counsel, legal
-06:-36:-323 counsel.

-06:-36:-304 CHAIR MACARIO: All right. Thank you, Member
-06:-36:-275 Gadarian.

-06:-36:-256 Is there a second?

-06:-36:-217 MEMBER WEISS: Dave Weiss. Second.

-06:-36:-188 CHAIR MACARIO: Okay. Any other discussion?
-06:-36:-149 (No response.)

-06:-36:-130 CHAIR MACARIO: All in favor?
-06:-36:-101 (Response.)

-06:-36:-092 CHAIR MACARIO: All opposed?
-06:-36:-063 (No response.)

-06:-36:-054 CHAIR MACARIO: Okay. That carries unanimously.
-06:-36:-015 (Gavel.) So we'll adjourn.

-06:-35:-046 (Pause in Proceedings: 1:43 p.m.-2:15 p.m.)

-05:-46:-037 CHAIR MACARIO: Okay. Let's go back on the record.
-05:-46:-018 (Gavel.) It is currently 2:15 p.m. We're back in regular
-05:-46:-009 session. The board's had an opportunity to deliberate and to
-05:-46:-020 confer with corporation counsel regarding the informal hearing
-05:-46:-011 on Complaint No. 19-06. At this time I will solicit a motion
-05:-46:-002 with regard to that complaint.

-05:-46:-023 MEMBER WEISS: Chair, I make a motion that after
-05:-45:-014 careful review of allegations 10-1; 10-4, subtext --
-05:-45:-025 subsection 1.b; 10-4, subsection 1.c; 10-4 subsection 1.e,

10-4.4, that the conclusion is that none of the allegations have risen to what the board considers ethical violations and that we conclude that Ms. Paltin did not violate the Maui County Code of Ethics as alleged.

CHAIR MACARIO: All right. Thank you, Member Weiss. Is there a second?

MEMBER CURTIS: Bill Curtis. Second.

CHAIR MACARIO: Okay. Any discussion on the motion?

(No response.)

CHAIR MACARIO: Are there any specific language or stipulations that we want to put inside the advisory opinion that will get drafted after this meeting? I just thought I would ask that question.

(No response.)

CHAIR MACARIO: All right. Hearing none, all in favor?

(Response.)

CHAIR MACARIO: All opposed?

(No response.)

CHAIR MACARIO: Okay. That carries unanimously.

MR. MURAI: All right. So, Mr. Chair, I'll prepare the order and for the benefit of the parties, the order will be drafted based upon the minutes and then it'll be reviewed and approved at the next meeting. And all parties will receive a copy after it's been prepared and approved by the

-05:-43:-521 board. And so also, Mr. Chair, I noticed that the motion was
-05:-43:-482 for a finding of no violation and I presume, then, therefore,
-05:-43:-433 the complaint is dismissed.

-05:-43:-414 CHAIR MACARIO: That's correct.

-05:-43:-395 MR. MURAI: Okay. I'll prepare the order of
-05:-43:-366 dismissal.

-05:-43:-367 CHAIR MACARIO: All right. I thank the parties for
-05:-43:-338 their time and attention and for all of the materials, it was
-05:-43:-299 very helpful.

-05:-43:-260 All right. Next item on the agenda is Old Business,
-05:-43:-171 Financial Disclosure Statements: None.

-05:-43:-122 4.b, Communication Items: None.

-05:-43:-123 4.c, Review and Approval of Advisory Opinion

-05:-42:-144 No. 19A-11 for Leilani Pulmano. Does everyone have a copy of
-05:-42:-165 that advisory opinion? It should be -- it was in our packets.
-05:-42:-186 Essentially, Gary wrote this advisory opinion, I reviewed it
-05:-42:-127 and approved it, and I recommend that we go ahead and issue it
-05:-42:-158 today. Is there a motion to that effect?

-05:-42:-179 MEMBER CURTIS: So moved. Bill.

-05:-42:-20 CHAIR MACARIO: Is there a second?

-05:-42:-21 MR. MURAI: Cory, where is the original? Okay. Why
-05:-41:-22 don't you give it to Bill first.

-05:-41:-23 CHAIR MACARIO: Well, we haven't voted on it yet,
-05:-41:-24 so --

-05:-41:-25 MR. MURAI: Oh, yeah.

-05:-41:-411 CHAIR MACARIO: Is there a second?

-05:-41:-372 MEMBER PHILLIPS: Second. Rachel.

-05:-41:-333 CHAIR MACARIO: Thank you, Rachel.

-05:-41:-314 Any discussion?

-05:-41:-275 (No response.)

-05:-41:-266 CHAIR MACARIO: Hearing none, all in favor?

-05:-41:-227 (Response.)

-05:-41:-218 CHAIR MACARIO: All opposed?

-05:-41:-199 (No response.)

-05:-41:-170 CHAIR MACARIO: Okay. That carries unanimously and

-05:-41:-141 Member Curtis has the original and we'll pass it around and

-05:-41:-122 get that signed.

-05:-41:-123 Thank you for bringing that, Cory.

-05:-41:-124 Next item on the agenda, Status and Possible

-05:-40:-125 Decision on Draft Revised Version 2 of the Maui County Board

-05:-40:-126 of Ethics Financial Disclosure Statement and Instructions For

-05:-40:-127 Calendar Year 2020. I've reviewed the updated draft, I think

-05:-40:-128 it is excellent, and I am recommending that we go ahead and

-05:-40:-129 approve it today for use in 2020. So I'll solicit a motion to

-05:-40:-200 that effect and then we'll have a discussion when we get to

-05:-40:021 that point.

-05:-39:-22 MEMBER GADARIAN: Mr. Chair, I move that we approve

-05:-39:-23 the proposed draft of the 2020 financial disclosure form. As

-05:-39:-24 the maker of the motion, I have a couple of corrections that I

-05:-39:-25 would like to include in -- in the -- in the draft. Not

-05:-39:-221 corrections, but additions or changes to the draft.

-05:-39:-132 MR. MURAI: Why don't we get a second and then once
-05:-39:00 3 we have seconded, Sara, you can go ahead and state your
-05:-38:-554 corrections, your additions.

-05:-38:-525 CHAIR MACARIO: Thank you, Gary.

-05:-38:-506 Is there -- is there a second?

-05:-38:-457 MEMBER WEISS: Dave. Second.

-05:-38:-438 CHAIR MACARIO: Okay, all right. So, Sara, just to
-05:-38:-379 make sure I clarify, when you said your motion, you just --
-05:-38:-310 you mentioned the financial disclosure statement form, but did
-05:-38:-281 not reference the instruction, are you also wanting to approve
-05:-38:-242 the instructions as well?

-05:-38:-113 MEMBER GADARIAN: We have no instructions.

-05:-38:-114 CHAIR MACARIO: Oh. I'm just going from the
-05:-38:-085 language of the agenda, it says the form and instructions --

-05:-38:-046 MR. MURAI: Oh.

-05:-38:-027 CHAIR MACARIO: -- for calendar year 2020. So
-05:-37:-188 perhaps we need to remove the reference to instructions from
-05:-37:-149 the agenda?

-05:-37:-020 MR. MURAI: You know --

-05:-37:-021 MS. VICENS: Chair, there are instructions in this
-05:-37:-022 financial disclosure statement for -- besides them disclosing
-05:-37:-023 information, there are instructions that are included.

-05:-37:-024 CHAIR MACARIO: Oh.

-05:-37:-025 MR. MURAI: Yeah.

-05:-37:-331 CHAIR MACARIO: So they're self-contained in the
-05:-37:-302 form.

-05:-37:-303 MR. MURAI: Right.

-05:-37:-284 CHAIR MACARIO: Understood. Okay.

-05:-36:-495 MEMBER GADARIAN: Oh.

-05:-36:-486 CHAIR MACARIO: That's fine.

-05:-36:-477 MEMBER GADARIAN: Oh. I see.

-05:-36:-428 CHAIR MACARIO: All right. Okay. So we're in the
-05:-36:-409 discussion phase. Sara, you mentioned you had some amendments
-05:-36:-400 or qualifications. Go ahead.

-05:-36:-401 MEMBER GADARIAN: All right. Basically, the one
-05:-36:-162 change is a matter of formatting that needs to be made between
-05:-36:-113 2019 and 2020. If you go to the -- by the time they get to
-05:-36:-124 page 3, the little box, the explanations, filer's spouse,
-05:-35:-485 joint tenants, ends up curling over to the next page, so that
-05:-35:-406 if you're looking at it, you don't have -- you have D, E, and
-05:-35:-337 F on Item 2 and, fortunately, it -- fortunately, Cory has now
-05:-35:-258 inserted where -- where it says annual amount, see letter
-05:-35:-179 codes below. So the pagination, I can see what happened is
-05:-35:-200 that when it's a larger font and there was some -- something
-05:-35:021 happened that the bottom of page 1 is too low so that by the
-05:-34:-222 time I printed it out at home, but also that's in the same one
-05:-34:-223 that was given to us in the packet.

-05:-34:-224 MS. VICENS: So, Sara, so what I'm hearing you say
-05:-34:-225 is at the bottom of the page, Item No. -- letter No. G has

-05:-34:-291 come off of the document and you would like it added back on;
-05:-34:-252 correct?

-05:-34:-243 MR. MURAI: No.

-05:-34:-234 MEMBER GADARIAN: And the same thing in the
-05:-34:-205 following pages, because I think what happens is one somehow
-05:-34:-136 ended up lower and took everything else one -- one line down.

-05:-34:-067 MS. VICENS: I understand what you're saying. I had
-05:-34:-038 noted that.

-05:-34:-019 MEMBER GADARIAN: Pagination, I guess you'd call it.

-05:-33:-140 MS. VICENS: Thank you. I have noted it.

-05:-33:-141 MR. MURAI: So this is Gary. So, sorry, you just
-05:-33:-142 want to point out the formatting, the formatting error?

-05:-33:-143 MEMBER GADARIAN: That's correct.

-05:-33:-144 MR. MURAI: Okay. So --

-05:-33:-145 MEMBER GADARIAN: Yes.

-05:-33:-146 MR. MURAI: So Cory can take care of that.

-05:-33:-147 MEMBER GADARIAN: And awarding section that I would
-05:-33:-148 suggest we get to (pause) -- okay. Item 7, we have added
-05:-10:-149 from -- the difference from 2019 is that we've put in current,
-05:-10:-20 which is good so that everybody now is just saying current as
-05:-10:-21 of the date of filing the -- the disclosure. The only current
-05:-10:-22 held -- current positions held. And then the only thing that
-05:-10:-23 I would suggest is where it says include all companies and/or
-05:-10:-24 nonprofits you are a member, that's awkward English, so I
-05:-10:-25 would delete the words you are a member, because it does

-05:-09:-571 apply -- those -- those positions apply not only to the filer,
-05:-09:-512 but to the spouse in this particular question. It's only when
-05:-09:-433 you get to Item 8 that it applies to the filer only, so I --
-05:-09:-354 if you look at Item 8, which there's no change, it says use --
-05:-09:-275 uses the word you, so if we take out you.

-05:-09:-206 MS. VICENS: So, Sara, is your recommendation that
-05:-09:-167 we remove the language --

-05:-09:-128 MEMBER GADARIAN: You.

-05:-09:-119 MS. VICENS: You are a member of --

-05:-09:-110 MEMBER GADARIAN: That is correct.

-05:-09:011 MS. VICENS: Thank you.

-05:-08:-162 CHAIR MACARIO: I think that's a good suggestion.

-05:-08:-143 Any other changes, Sara?

-05:-08:-144 MEMBER GADARIAN: No. I just have -- commenting
-05:-08:-145 that the -- the remainder of the changes are rewording and
-05:-08:-146 reorganizing Item 1, which has always been a problem with
-05:-08:-147 people filling out source of income, so there's underlined,
-05:-08:-178 rewording how people fill it out so they declare their job
-05:-08:-149 title and the nature of the organization or business that
-05:-08:-200 they're working for and source of retirement income, if
-05:-07:-211 retired, and other things that have -- that are, we hope, more
-05:-07:-212 self-explanatory so we don't have to ask questions so many
-05:-07:-213 times.

-05:-07:-214 MS. VICENS: I'm sorry, I'm not clear. Are you
-05:-07:-215 making a recommendation or are you --

-05:-07:-361 MEMBER GADARIAN: No. I'm just noting what's --

-05:-07:-312 MS. VICENS: Okay.

-05:-07:-303 MEMBER GADARIAN: For the board, actually.

-05:-07:-234 MS. VICENS: Okay.

-05:-07:-225 MEMBER GADARIAN: I'm not making any -- I'm just
-05:-07:-186 noting for the -- as -- for purposes of discussion that
-05:-07:-087 it's -- there are numerous changes I hope for the better and
-05:-07:-018 it has to do with clarifying and making it consistent with
-05:-06:-539 what the -- some of the problems and -- that we've been
-05:-06:-460 challenged.

-05:-06:-451 CHAIR MACARIO: Right. And since we're in the
-05:-06:-432 discussion phase, I -- this is probably as good an opportunity
-05:-06:-413 as any to thank you personally, Sara, for all the hard work
-05:-06:-414 you've put in on this, Cory as well and all the other members
-05:-06:-415 of the -- the special group that we selected to have this
-05:-06:-196 done. It's much appreciated and I think the form is greatly
-05:-06:-137 improved.

-05:-06:-128 So with that said, all in favor of approving this
-05:-06:-149 financial disclosure statement and instructions with the
-05:-06:020 changes noted, which are to formatting and removing those
-05:-05:-261 three -- or that phrase from Item 7, say aye.

-05:-05:-22 (Response.)

-05:-05:-23 CHAIR MACARIO: All opposed?

-05:-05:-24 (No response.)

-05:-05:-25 CHAIR MACARIO: Okay. That carries unanimously and

-05:-05:-341 we can go ahead and start using this form next year. Thank
-05:-05:-292 you again.

-05:-05:-273 MR. MURAI: Mr. Chair, if the work of the -- the
-05:-05:-234 subcommittee or the temporary interactive group is done, I
-05:-05:-185 suggest we dissolve the group.

-05:-05:-136 CHAIR MACARIO: That's a good suggestion. Do we
-05:-05:-107 need a motion or --

-05:-05:-088 MR. MURAI: Yeah.

-05:-05:-079 CHAIR MACARIO: Okay.

-05:-05:-140 MR. MURAI: A motion to dissolve the temporary
-05:-05:011 interactive group that was dealing with the financial
-05:-04:-152 disclosure statement form revisions.

-05:-04:-123 CHAIR MACARIO: You want to say so moved, Sara?

-05:-04:-144 MEMBER GADARIAN: I move to dissolve the temporary
-05:-04:-135 interactive group that was addressing possible changes in the
-05:-04:-106 financial disclosure form.

-05:-04:-167 CHAIR MACARIO: Okay. Is there a second?

-05:-04:-148 MEMBER PHILLIPS: Second. Rachel.

-05:-04:-119 CHAIR MACARIO: All right. All in favor?

-05:-04:-120 (Response.)

-05:-04:-121 CHAIR MACARIO: All opposed?

-05:-04:-122 (No response.)

-05:-04:-123 CHAIR MACARIO: Okay. That carries unanimously.

-05:-04:-124 Just organize myself here. Next item on the agenda
-05:-03:-125 is New Business, Financial Disclosure Statements. We have one

-05:-03:-491 from Mr. Jordan Molina. Is there a motion to acknowledge
-05:-03:-432 receipt of that financial disclosure?

-05:-03:-383 MEMBER WEISS: Dave. So moved.

-05:-03:-334 MEMBER GADARIAN: Second. Sara Gadarian.

-05:-03:-305 CHAIR MACARIO: Okay. And I -- we should note for
-05:-03:-276 the record that the disclosure is accompanied by a letter from
-05:-03:-217 Mr. Molina. Any discussion on the motion to approve this
-05:-03:-168 financial disclosure?

-05:-03:-109 (No response.)

-05:-03:-100 CHAIR MACARIO: Hearing none, all in favor of
-05:-03:-101 acknowledging receipt of Mr. Molina's financial disclosure say
-05:-03:002 aye.

-05:-02:-103 (Response.)

-05:-02:-114 CHAIR MACARIO: All opposed?

-05:-02:-115 (No response.)

-05:-02:-116 CHAIR MACARIO: All right. That carries
-05:-02:-117 unanimously.

-05:-02:-118 Next item, 5.b, Communication Items: None.

-05:-02:-109 5.c, Request for an Advisory Opinion No. 19A-12

-05:-02:-20 Dated October 28, 2019, From Moana Lutey, Corporation Counsel.

-05:-02:-21 And I think Ms. Lutey is here today. Is that right?
-05:-02:-22 Did I pronounce that right? I'm sorry.

-05:-02:-23 MS. LUTEY: You did.

-05:-02:-24 CHAIR MACARIO: Okay. Thank you.

-05:-02:-25 MS. LUTEY: Good job.

-05:-01:-591 CHAIR MACARIO: All right. So we also have, just
-05:-01:-562 skipping ahead here, Item 5.d on the agenda from Traci Fujita.
-05:-01:-453 Is Ms. Fujita here as well? Okay. Perfect.

-05:-01:-414 All right. So corporation counsel and I were
-05:-01:-375 talking earlier today's, it looks like Ms. Fujita's request
-05:-01:-316 and Ms. Lutey's request have at least one issue in common
-05:-01:-257 which we would like to consolidate into one for discussion
-05:-01:-218 purposes, if that's all right with both of you, since they
-05:-01:-169 seem to raise the same issue. So I think what we would like
-05:-01:-120 to do first is to address the Goodfellow Brothers element of
-05:-01:-051 the request, which on Ms. Lutey's letter is -- is that Item 1,
-05:00:-512 Gary?

-05:00:-513 MS. VICENS: Yes, Chair.

-05:00:-414 MR. MURAI: Yes.

-05:00:-415 CHAIR MACARIO: Okay. So Item 1 on Request 19A-12
-05:00:-316 and I believe for Ms. Fujita it's the only request, so 19A-14
-05:00:-217 is consolidated with 19A-12, Item 1. Do I need a motion for
-05:00:-218 that?

-05:00:-219 MR. MURAI: No.

-05:00:-120 CHAIR MACARIO: Okay. We'll just do that as a
-05:00:-121 matter of organization.

-05:00:-122 All right. So I'm not sure of the best way to
-05:00:-123 handle this.

-05:00:-024 MR. MURAI: Bill had a question.

-05:00:-025 CHAIR MACARIO: Oh, sorry. Go ahead, Bill.

-05:00:-01 1 MEMBER CURTIS: Just for disclosure purposes, I
-04:-59:-572 don't think it will affect my judgment, but I was an employee
-04:-59:-513 of Goodfellow Brothers in 1995 to 1996.

-04:-59:-464 CHAIR MACARIO: Okay. Thank you. And you have no
-04:-59:-445 further connection to that company?

-04:-59:-426 MEMBER CURTIS: No.

-04:-59:-417 CHAIR MACARIO: All right. And we just addressed
-04:-59:-388 this earlier in response to another agenda item, I'm assuming
-04:-59:-299 that your past connection to Goodfellow Brothers will not
-04:-59:-240 affect your ability too address the issue without bias or
-04:-59:-201 prejudice?

-04:-59:-202 MEMBER CURTIS: Correct.

-04:-59:-193 CHAIR MACARIO: All right. Great. I don't see any
-04:-59:-134 reason that you would need to recuse. Thank you, Bill.

-04:-59:-195 Gary, do you have a suggestion on how we deal with
-04:-59:-146 this? Since we've consolidated that one issue, should I ask
-04:-58:-177 both individuals to kind of explain what their concerns are?

-04:-58:-168 MR. MURAI: Yeah. We can ask Moana and Traci to --
-04:-58:-169 to step up to the table and -- or you want to do -- go to the
-04:-58:-20 podium?

-04:-58:-21 MS. VICENS: Yeah. If they both -- if you can step
-04:-58:-22 to the podium and state your name as you speak.

-04:-58:-23 CHAIR MACARIO: Yeah, I should -- I should have
-04:-58:-24 mentioned that. We don't have a court reporter here today, so
-04:-58:-25 we're being recorded by an audio device and I think the

-04:-58:-161 nearest one is at the podium for you guys.

-04:-58:-132 MR. MURAI: So before you speak, state your name so
-04:-58:-093 the court reporter will recognize your voice and -- yeah.

-04:-58:-044 CHAIR MACARIO: Go ahead.

-04:-58:-035 MR. MURAI: Go ahead, Moana.

-04:-58:00 6 CHAIR MACARIO: Yes, please.

-04:-57:-527 MS. LUTEY: Thank you. I'm Moana Lutey.

-04:-57:-478 CHAIR MACARIO: Okay. So we're on the issue about
-04:-57:-449 the Goodfellow Brothers invitation and I know that you've
-04:-57:-410 submitted, obviously, a letter stating your question. Do you
-04:-57:-411 have any additional concerns or questions that aren't set
-04:-57:-432 forth in the letter?

-04:-57:-413 MS. LUTEY: I don't.

-04:-57:-414 CHAIR MACARIO: Okay. How about you, Ms. Fujita?
-04:-57:-415 It's the same issue. If you could identify yourself as well.

-04:-57:-416 MS. FUJITA: Traci Fujita. I have nothing further
-04:-57:-417 to add.

-04:-57:00 18 CHAIR MACARIO: Okay. So, Members, do you have
-04:-56:-419 questions for either Moana or Traci about this Goodfellow
-04:-56:-420 Brothers invitation, the holiday party?

-04:-56:-421 Why don't we start with you, Rachel, and you can --
-04:-56:-422 if you don't have any, you can just let us know.

-04:-56:-423 MEMBER PHILLIPS: No questions.

-04:-56:-424 CHAIR MACARIO: Okay. What about you, Dave?

-04:-56:-425 MEMBER WEISS: No.

-04:-56:-281

CHAIR MACARIO: No? Okay.

-04:-56:-262

Sara, do you have any questions?

-04:-56:-213

MEMBER GADARIAN: No.

-04:-56:-134

CHAIR MACARIO: Okay. How about you, Bill?

-04:-56:-055

MEMBER CURTIS: Just the state guideline that we

-04:-56:-016

were considering to adopt or use as guidance from the state

-04:-55:-547

board of ethics committee, they do have as a general

-04:-55:-508

guideline, you typically prohibit gifts by contractors, just

-04:-55:-419

so you're aware. This is the state, not the county. Can I --

-04:-55:-170

that might be --

-04:-55:-141

CHAIR MACARIO: Yeah, so --

-04:-55:-122

MEMBER CURTIS: -- something we would want to factor

-04:-55:-123

in our decision.

-04:-55:-144

CHAIR MACARIO: All right. Thank you.

-04:-55:-165

So for the benefit of you both, in preparing for

-04:-55:-116

this meeting today we obtained certain information and

-04:-55:-117

guidance from other ethics agencies, which, obviously, aren't

-04:-55:-128

directly applicable to us, but may provide guidance on how

-04:-55:-119

they deal with these situations, so that's what Member Curtis

-04:-55:-20

is referring to.

-04:-55:021

My main -- my main question for you both is: If I

-04:-54:-22

were a member of the public, to me, I would have a hard time

-04:-54:-23

understanding why Goodfellow Brothers would be inviting

-04:-54:-24

corporation counsel and a member of the office -- the director

-04:-54:-25

of office of council services to a holiday party unless there

-04:-54:-291 was some implied, if not express expectation that you both
-04:-54:-222 might act differently when matters come before you regarding
-04:-54:-183 those agencies. How would you both respond to that? Why
-04:-54:-124 don't -- why don't we start with Moana, please.

-04:-54:-055 MS. LUTEY: Oh, thank you. This is Moana Lutey.
-04:-54:-026 That was part of my concern and that's why I've sent it down.
-04:-53:-577 I've been an attorney in this office for 18 years and this is
-04:-53:-538 my first invite. I've suddenly become very popular. And that
-04:-53:-489 was my concern, I -- honestly, my inclination was initially to
-04:-53:-420 turn it down, but my concern is that what I've noticed in the
-04:-53:-361 past in other types of invitations I've gotten, because this
-04:-53:-322 isn't the first, as you can see from my list, is that if -- if
-04:-53:-283 they invite me and I turn it down, then they go to my first
-04:-53:-194 deputy, he turns it down, and then it just sort of keeps
-04:-53:-125 working its way down. So I would like sort of a -- an idea of
-04:-53:-106 where that line would be. Initially my inclination was to
-04:-53:-137 tell the entire office none of this, but the variety of
-04:-52:-178 invitations that I currently receive are vast, so that's why I
-04:-52:-129 came down here to just seek guidance on that.

-04:-52:-20 CHAIR MACARIO: Okay. Yeah, that's helpful.

-04:-52:-21 And, Traci, do you have any response to the -- to my
-04:-52:-22 question about how this might be perceived if -- by the
-04:-52:-23 public?

-04:-52:-24 MS. FUJITA: Well, I'm not sure, you know, how it
-04:-52:-25 might be perceived by the public. I think a lot of people,

-04:-52:-251 including both friends and family, don't really know what I do
-04:-52:-172 here at the county, so I'm not sure if they even know what I
-04:-52:-113 do. But I was appointed in May, so fairly recently, this is
-04:-52:-024 the first social invitation that I've received, so I did want
-04:-51:-555 to get guidance on it because I wasn't sure going forward, you
-04:-51:-496 know, if there are other invitations, you know, what -- what's
-04:-51:-457 appropriate for this position. You know, contractor -- they
-04:-51:-358 don't come before the office of council services, we don't
-04:-51:-319 have any construction contracts or anything, so I'm not -- and
-04:-51:-250 we don't -- and myself and all of my staff, we have no -- like
-04:-51:-191 no policy-making or decision-making authority over anything.
-04:-51:-152 Those are all -- all of those decisions are done by the
-04:-51:-113 council members. So the only -- for me as a director, the
-04:-51:-114 only policy decisions that I have are internal with my office,
-04:-50:-155 management of my office, how our office functions and work
-04:-50:-146 scheduling, you know, that sort of thing.

-04:-50:-147 CHAIR MACARIO: Yeah.

-04:-50:-148 MS. FUJITA: I don't really deal with the -- the
-04:-50:-149 public too much.

-04:-50:-20 CHAIR MACARIO: Okay. I do think it would be -- I
-04:-50:-21 mean, I think we all have a pretty good idea of what Moana
-04:-50:-22 does. I'm not personally sure what the director of council --
-04:-50:-23 the director of the office of council services does. Can you
-04:-50:-24 just give us a short --

-04:-50:-25 MS. FUJITA: Yeah.

-04:-50:-101 CHAIR MACARIO: -- summary of what your job role is.

-04:-50:-042 MS. FUJITA: Yeah. I did include a copy of my
-04:-49:-553 position description in my materials, 'cause I thought that
-04:-49:-434 that might be helpful.

-04:-49:-415 MEMBER GADARIAN: Yes.

-04:-49:-416 CHAIR MACARIO: Great.

-04:-49:-397 MS. FUJITA: But it's basically a management
-04:-49:-338 position. I oversee about 25 staff in three different
-04:-49:-269 sections. We have a research section that includes
-04:-49:-200 legislative analysts and legislative attorneys; we have a
-04:-49:-161 secretarial section; and then we have a support section. So
-04:-49:-112 that's basically the scope of my -- you know, my duties, is
-04:-49:-053 managing the 25 staff members, their work assignments, office
-04:-48:-164 procedures, office policies, and that sort of thing.

-04:-48:-115 CHAIR MACARIO: The office of council services is
-04:-48:-066 essentially an office designed to provide resources and work
-04:-48:-017 on behalf of council members; is that right?

-04:-48:-168 MS. FUJITA: Right.

-04:-48:-149 CHAIR MACARIO: Okay.

-04:-48:-20 MS. FUJITA: So we provide services to all nine
-04:-48:-21 council members, all eight committees of the council, so our
-04:-48:-02 staff is not -- we have different assignments, but they're not
-04:-48:-23 affiliated with any staff member -- I mean, council member,
-04:-48:-04 because we -- we work for all, all nine members.

-04:-48:-05 CHAIR MACARIO: Okay. Yeah, that's helpful.

-04:-47:-501 MEMBER CURTIS: So, Chair.

-04:-47:-452 CHAIR MACARIO: Yeah.

-04:-47:-443 MEMBER CURTIS: This is not specific to Goodfellow
-04:-47:-414 Brothers, but just in general, when accepting a gift like
-04:-47:-305 that, this -- is there a benefit to the county that's going to
-04:-47:-236 be realized by you attending this event? Having never
-04:-47:-187 attended, you might not know. But that's kind of one of the
-04:-47:-128 things they look at is, you know, are you going there just for
-04:-47:-089 your personal gain or is there some type of benefit by
-04:-47:-030 attending the event that would accrue to the county and
-04:-46:-011 that's --

-04:-46:-062 MR. MURAI: Chair, if I may. This is Gary. In past
-04:-46:-033 requests for advisory opinions before this board, sometimes
-04:-46:-064 the board will look at whether the county derives a benefit if
-04:-46:-025 the county officer or employee attends a function. So, for
-04:-46:-016 example, in the past, this board has opined that -- for
-04:-46:-037 example, some folks may remember the fire chief came before
-04:-46:-018 the board and asked whether he may accept an offer from the
-04:-46:-029 manufacturer of a fire truck to go to North Dakota to inspect
-04:-46:-020 the truck to make sure it's being built to county specs. And
-04:-46:-021 what the board said yeah. While it's a gift, it's of
-04:-46:-062 significant value, but we find that the benefit to the county
-04:-46:-023 or benefit to the fire department in being able to make sure
-04:-45:-024 that the truck is being built to their specifications is a
-04:-45:-025 benefit to the county that outweighs any concern about, you

-04:-45:-491 know, the recipient receiving some unwarranted benefit.

-04:-45:-442 So, Moana and Traci, you see where we're going with
-04:-45:-403 that question? In other words, does your attendance some --
-04:-45:-344 in other ways benefit the county that exceed any personal
-04:-45:-305 benefit to yourself?

-04:-45:-226 MS. FUJITA: This is Traci Fujita. Generally
-04:-45:-167 whenever I'm in the public and I introduce, I try to use it as
-04:-45:-108 an opportunity to educate the public on what we do, what our
-04:-45:-059 office does. And a lot of times, you know, the public's not
-04:-45:010 familiar with the legislative process and how council makes
-04:-44:-151 its decisions or, you know, how the council functions, so I'll
-04:-44:-102 get asked those types of questions, so I try to use those
-04:-44:-163 opportunities to provide some education to the public. I've
-04:-44:-114 never been to this event, so I don't know how much like
-04:-44:-115 networking opportunities there are at it, but that -- I guess
-04:-44:-126 that would be the only thing I could think of, is, you know,
-04:-44:-147 being sort of like a representative, I guess, of the office of
-04:-44:-158 council services and letting people know that I'm available,
-04:-44:-139 that they're -- you know, if they want to contact me for
-04:-44:-20 information or if they have questions. I'm always giving out
-04:-44:-21 my business cards, you know, so people can always call me if
-04:-43:-22 they have any questions about things and that sort of thing,
-04:-43:-23 but that's -- I guess that's the only thing I can really think
-04:-43:-24 of that might be a benefit to the county for this, for this
-04:-43:-25 event.

-04:-43:-411 CHAIR MACARIO: Okay. Thank you. Yeah, I mean,
-04:-43:-382 I'm -- I'm a little bit similar pathetic to Goodfellow
-04:-43:-333 Brothers in this situation, 'cause, you know, I'm an attorney,
-04:-43:-294 I belong to a law firm, I know we do things like this all the
-04:-43:-255 time. We try and get potential clients, you network, you do
-04:-43:-216 whatever you do, you hold parties and you invite people in the
-04:-43:-167 hopes of getting future business in a lot of ways. I don't
-04:-43:-128 know that that's their motivation here, but I do expect that
-04:-43:-079 that is at least part of it and so I'll just throw that out
-04:-43:-020 there for commentary. The rule, obviously, asks -- or
-04:-42:-161 prohibits accepting any gift which directly or indirectly can
-04:-42:-102 be reasonably inferred to have been intended to influence the
-04:-42:-043 officer or employee in their performance of their official
-04:-42:-014 duties, so that's the framework that we're operating under
-04:-42:-005 here.

-04:-42:-186 Does anyone else have any questions for Moana or
-04:-42:-147 Traci?

-04:-42:-108 MEMBER GADARIAN: Yes, I do.

-04:-42:-169 To either of you, as far as you know on this, if
-04:-42:-020 we're looking specifically at this holiday party, as far as
-04:-42:021 you know, are other -- others on your staff either above you
-04:-41:-022 or below you also have received invitations in your
-04:-41:-023 department? That's my question.

-04:-41:-024 MS. FUJITA: This is Traci Fujita. I don't know who
-04:-41:-025 else has received an invitation. I found out today that --

-04:-41:-241 that Moana received one, but that's the only one I know of.

-04:-41:-202 CHAIR MACARIO: Oh. So you both submitted your
-04:-41:-063 requests independently and had no idea?

-04:-41:-024 MS. FUJITA: Yeah.

-04:-40:-575 CHAIR MACARIO: That's funny. Well, kudos to both
-04:-40:-546 of you for doing that.

-04:-40:-497 MS. FUJITA: Thank you.

-04:-40:-398 CHAIR MACARIO: I should have said that from the
-04:-40:-369 beginning.

-04:-40:-350 MEMBER GADARIAN: Yes.

-04:-40:-321 MS. LUTEY: This is Moana Lutey. I don't believe
-04:-40:-272 anyone else in my office has got what I did, so it was only
-04:-40:-183 me. I know that there were other county heads, departmental
-04:-40:-134 heads that have because some of them emailed me and said, Hey,
-04:-40:-085 do you want to go together? And I'm like, I don't normally go
-04:-39:-56 to things like this and I've submitted a -- an advisory
-04:-39:-17 opinion request to the board just to let them know that I was
-04:-39:-168 concerned about the perception of it.

-04:-39:-159 CHAIR MACARIO: Yeah.

-04:-39:-20 MS. LUTEY: So, yeah.

-04:-39:-21 CHAIR MACARIO: So, Gary, since this issue has been
-04:-39:-22 consolidated, do you have a suggestion on what we should do
-04:-39:-23 next?

-04:-39:-24 MR. MURAI: Well, you know, looking at -- well, so
-04:-39:-25 Ms. Fujita's request has been addressed.

-04:-39:-121

CHAIR MACARIO: Right.

-04:-39:-112

-04:-39:-083

MR. MURAI: I realize the board hasn't, you know, opined on it yet, because -- as regards Goodfellow Brothers Christmas party. The rest of them that Ms. Lutey had spelled out are -- with the exception of the massage, are all dinners or dinner parties, so maybe we can discuss those, all of the dinner invitations as a group.

-04:-39:00 4

-04:-38:-515

-04:-38:-456

-04:-38:-377

-04:-38:-358

CHAIR MACARIO: Yeah.

-04:-38:-349

-04:-38:-310

MR. MURAI: And -- or you could just talk about the massage first and get that out of the way.

-04:-38:-251

-04:-38:-222

MEMBER GADARIAN: I'm sorry, but I must have shuffled. I can't find the other one.

-04:-38:-203

CHAIR MACARIO: What is it you're looking for, Sara?

-04:-38:-184

MEMBER GADARIAN: 19A-12.

-04:-38:-145

MR. MURAI: You mean -- is that the --

-04:-38:-116

MEMBER CURTIS: Two pages.

-04:-38:-107

MR. MURAI: Is it this one?

-04:-38:-158

CHAIR MACARIO: This one? Yeah. Go ahead.

-04:-38:-129

MEMBER GADARIAN: No. That one I have. I'm sorry.

-04:-37:-20

CHAIR MACARIO: Oh.

-04:-37:-251

MEMBER GADARIAN: This is 14.

-04:-37:-22

CHAIR MACARIO: Right.

-04:-37:-23

MR. MURAI: We're doing both of them together.

-04:-37:-24

MEMBER GADARIAN: Yes. Okay. 12 again. I'm sorry.

-04:-37:-25

CHAIR MACARIO: Okay.

-04:-37:-331

MR. MURAI: You can hold on to that.

-04:-37:-302

MEMBER GADARIAN: This is 12? All right. Ah, okay.

-04:-37:-223

Thank you. It's more -- a number of events, correct, for

-04:-37:-154

Moana Lutey?

-04:-37:-135

CHAIR MACARIO: Just for the board's benefit, I --

-04:-37:-106

personally, I don't think it's realistic for us to do this

-04:-37:-067

today, but I would really much -- I would very much like to

-04:-37:-018

create something similar to what the Hawaii State Ethics

-04:-36:-569

Commission has done, some sort of guide on how to respond to

-04:-36:-420

these sorts of requests so that they can be made available to

-04:-36:-411

county officers and employees going forward. 'Cause I think,

-04:-36:-412

you know, the code -- or the charter says one thing, but how

-04:-36:-373

to apply it in practice is the challenge for a lot of folks.

-04:-36:-314

But I really do think that this state ethics commission

-04:-36:-265

pamphlet that I think Member Curtis found originally in

-04:-36:-176

response to another similar issue that came up before, I think

-04:-36:-137

it was the Kemper basketball tournament tickets, we used -- we

-04:-36:-138

found this to be particularly helpful and I -- I do think that

-04:-35:-119

it's helpful to us and it's something we should consider in

-04:-35:-020

resolving these issues.

-04:-35:-021

Bill, do you have any thoughts on it? I know you

-04:-35:-022

found it initially.

-04:-35:-023

MEMBER CURTIS: And it -- and it was a recent -- the

-04:-35:-024

state recently came up with it because they had the same

-04:-35:-025

challenges, I think, and this was issued in 2017 and I just

-04:-35:-211 happened to stumble across it.

-04:-35:-192 CHAIR MACARIO: Yeah. So just -- just for your
-04:-35:-163 benefit, the state came out with this thing. The first
-04:-35:-124 question they ask is: Who's offering the gift to you? And
-04:-35:-045 then it goes into a category of individuals and entities. And
-04:-34:-586 then Question 2: Consider the kind of gift that's being
-04:-34:-547 offered and whether it's a benefit to the -- in this case the
-04:-34:-508 state, in our case it would be the county? And then it has,
-04:-34:-469 you know, like a flowchart diagram of how you should respond
-04:-34:-400 or suggested responses in specific situations.

-04:-34:-361 So in this case, based on what I'm seeing, the offer
-04:-34:-302 is from, at least in the case of Goodfellow, a private entity,
-04:-34:-263 a for-profit organization, right, that may or may not, but
-04:-34:-164 probably does have some hope that this will generate either
-04:-34:-115 favorable laws or favorable treatment from the county. And so
-04:-34:-076 to me the big question is whether the county receives a
-04:-34:-027 benefit from county officials attending the event. And I
-04:-33:-518 agree with Traci that there is an educational component to
-04:-33:-469 this and that that is valuable, but the audience at an event
-04:-33:-400 like this is limited to this particular entity and anybody
-04:-33:-361 else they may have invited. It's not really a public setting
-04:-33:-322 as such, so I think that's an important thing to consider.

-04:-33:-283 And I don't want to push you guys any particular
-04:-33:-244 direction, but I'm sort of -- based on what I see in the state
-04:-33:-205 ethics thing and just sort of the feeling, it seems to me the

-04:-33:-111 sort of thing that may be prohibited by 10-4.1.a.

-04:-32:-402 So my original question to you, Gary, was: Do we do
-04:-32:-353 a motion on the individual thing, since this is consolidated,
-04:-32:-294 or do we want to hash it all out? I don't want to make Traci
-04:-32:-215 stick around for all the other issues unless we have to.

-04:-32:-146 MR. MURAI: Well, I tell you what, if -- Ms. Fujita,
-04:-32:-037 if you -- we're pau, you know, discussing the Goodfellow
-04:-31:-588 Brothers Christmas dinner thing. If you -- and now we're
-04:-31:-549 going to go deal with the rest of Moana's list. If you need
-04:-31:-490 to leave, you can go ahead and we'll call you and let you know
-04:-31:-451 what the board decides. If you want, you can stick around,
-04:-31:-412 that's entirely up to you. So, anyway, if you want to -- if
-04:-31:-363 you need to excuse yourself, that's fine; if not, you're
-04:-31:-314 welcome to stay.

-04:-31:-295 MEMBER GADARIAN: I'm sorry. So is there a motion
-04:-31:-276 on the floor that --

-04:-31:-257 CHAIR MACARIO: There isn't yet.

-04:-31:-228 MR. MURAI: Not yet. We're not done.

-04:-31:-189 MEMBER GADARIAN: Discussing still?

-04:-31:-20 MR. MURAI: We're still in discussion.

-04:-31:-21 CHAIR MACARIO: Well, we're not even in discussion.

-04:-31:-22 MR. MURAI: I'm sorry.

-04:-31:-23 CHAIR MACARIO: We're still in the question-and-
-04:-31:-24 answer period.

-04:-31:-25 MR. MURAI: Yeah, that's right.

-04:-31:-011 MEMBER GADARIAN: Question and answer, yes.

-04:-30:-562 CHAIR MACARIO: Yeah. So what I'm -- what I'm
-04:-30:-503 really asking counsel, though, is whether we need to do a
-04:-30:-454 motion on the Goodfellow Brothers one first since those are
-04:-30:-375 the ones that are --

-04:-30:-356 MR. MURAI: Oh, okay.

-04:-30:-347 CHAIR MACARIO: -- consolidated?

-04:-30:-308 MR. MURAI: That's up to -- that's up to you, Chair,
-04:-30:-219 your call.

-04:-30:-200 CHAIR MACARIO: That's what I'd like to do if we can
-04:-30:-141 rather than do all the gifts.

-04:-30:-102 MR. MURAI: Okay.

-04:-30:-093 CHAIR MACARIO: Or all the dinner ones together.

-04:-30:-044 MR. MURAI: Okay. And before that, Members, why
-04:-29:-085 don't we do this: I would suggest to you -- and when you
-04:-29:-056 review all of these requests, we remember -- or we keep in
-04:-29:-007 mind the elements of the Code of Ethics regarding gifts and
-04:-29:-068 which says that no officer or employee of the county shall
-04:-29:-029 solicit or -- solicit, accept, or receive any gift, directly
-04:-29:-020 or indirectly, whether in the form of money, service, loan,
-04:-29:-021 travel, entertainment, hospitality, thing, or promise, or in
-04:-29:-022 any other form, under circumstances in which it can be
-04:-29:-023 reasonably inferred that the gift is intended to influence the
-04:-29:-024 county employee in the performance of their duties or is
-04:-29:-025 intended to -- intended as a reward for official action taken

-04:-29:-041 by the officer or employee. So I think those are the key
-04:-28:-572 elements there, intended to influence or reward under
-04:-28:-533 circumstances that can be reasonably inferred. So reasonable
-04:-28:-454 inference, circumstances that can -- it can be inferred that
-04:-28:-415 it's a gift -- I mean, it's meant to reward or to influence.

-04:-28:-326 MEMBER WEISS: Like on a -- not necessarily it would
-04:-28:-257 influence the attendees, but it's always meant to -- to, you
-04:-28:-188 know, conjure some influence. It doesn't necessarily mean
-04:-28:-129 it's going to be accepted or make any -- have any effect on
-04:-28:-110 the attendees, but certainly they're spending the money for
-04:-28:-111 something and it's -- I'm sure it's intended to influence.

-04:-27:-112 MEMBER GADARIAN: You're talking about the company
-04:-27:-113 or person giving the gift?

-04:-27:-114 MEMBER WEISS: Any time you --

-04:-27:-115 MEMBER GADARIAN: It's inferred that -- or it's
-04:-27:-116 inferred that the giving of the gift is intended to influence,
-04:-27:-117 you said?

-04:-27:-118 MEMBER WEISS: Yeah. I'm saying that the intention
-04:-27:-119 from the sponsor is to provide -- is to influence in some way.
-04:-27:-120 It doesn't mean that the attendees become influenced or, you
-04:-27:-121 know, will try and -- either become influenced or accept --
-04:-27:-122 you know, become favorable to that company. I just think
-04:-27:023 that, you know, when you spend that kind of money, either
-04:-26:-124 they're trying to get -- you know, inviting either the county
-04:-26:-125 employees or anybody else, except for their own employees,

-04:-26:-471 it's to provide a reward or some type of influence.

-04:-26:-412 CHAIR MACARIO: Yeah. And so the co-provision is a
-04:-26:-363 prohibition to solicit, accept, or receive any such gifts. So
-04:-26:-314 I think if we -- if we decide that this is a gift and that
-04:-26:-255 it's intended, either directly or indirectly, to influence the
-04:-26:-206 officer or employee, then I think we have to find that it's
-04:-26:-117 prohibited. That's my own feeling. So what do you guys
-04:-26:-018 think?

-04:-25:-599 MEMBER GADARIAN: Okay. The only problem is that
-04:-25:-460 the wording influence the officer or employee in the
-04:-25:-421 performance of that officer or employee's official duties, so
-04:-25:-452 there's where it gets narrow in a -- but on the other hand,
-04:-25:-433 where someone gives the head of a department -- someone gives
-04:-25:-424 the head of the department a gift and they don't share it, I
-04:-24:-465 think the common practice of a lot of these things where they
-04:-24:-426 get a gift basket and whatever comes in in the holiday time,
-04:-24:-467 if they share it with the -- with the department that they're
-04:-24:-408 under, then it's not declared as a gift as such, but --

-04:-24:-419 CHAIR MACARIO: Well, to me, this is fairly similar
-04:-24:-20 to the basketball tickets last year.

-04:-24:-221 MEMBER CURTIS: Yeah. This is an event that appears
-04:-24:-22 on many of our disclosures in the past, so if we're going
-04:-24:-23 to -- before we just acknowledge it and accept it, if we're
-04:-24:-24 going to --

-04:-24:-25 MEMBER GADARIAN: End it.

-04:-24:-081 MEMBER CURTIS: -- come up with a new opinion, I
-04:-24:-052 think we should -- the board does that to more than just the
-04:-23:-563 two.

-04:-23:-524 CHAIR MACARIO: Well, I think that's Moana's intent.

-04:-23:-495 MEMBER CURTIS: Yeah.

-04:-23:-466 CHAIR MACARIO: I think she wants to be able to
-04:-23:-437 distribute this more widely, depending on what we do.

-04:-23:-358 MR. MURAI: Yeah. Members -- Gary. In response to
-04:-23:-309 Member Curtis's comment, of course, this opinion will be --
-04:-23:-220 you know, is -- is being heard in open session and will be a
-04:-23:-171 public opinion that anyone can access. And earlier members
-04:-23:-132 were talking about how the state ethics commission is able to
-04:-23:-083 produce brochures and, you know, guidance, nothing stops the
-04:-23:-034 board from rendering an advisory opinion today and then later
-04:-22:-585 on saying, you know what, maybe we need to issue our own
-04:-22:-536 separate guidance that may have -- may be broader, more
-04:-22:-487 comprehensive, or address other issues. You know, one comment
-04:-22:-448 that I had was what Member Gadarian had just mentioned when
-04:-22:-399 she said, Well, what if someone brings a gift basket that
-04:-22:-340 someone shares with the rest of the staff, that's -- that's
-04:-22:-291 the gift of aloha analysis; right?

-04:-22:-272 MEMBER GADARIAN: Yes.

-04:-22:-263 MR. MURAI: And so what we -- what the board may not
-04:-22:-214 want to do is make the gift restriction so limited that we
-04:-22:-165 foreclose, you know, the offering or acceptance of any gift,

-04:-22:-101 because even that -- that brochure produced by the state
-04:-22:-052 ethics commission still acknowledges and recognizes gifts of
-04:-22:-013 aloha, the cultural significance of it and the pitfalls of
-04:-21:-544 refusing a gift of aloha.

-04:-21:-515 CHAIR MACARIO: True.

-04:-21:-506 MR. MURAI: So it's not as though today's opinion is
-04:-21:-447 the be all and end all or the last word that the -- that the
-04:-21:-408 board may have on the subject of gifts. You do have in front
-04:-21:-359 of you requests for guidance on specific gifts and you -- it's
-04:-21:-280 your duty to provide guidance with regard to those gifts, but
-04:-21:-221 as I mentioned earlier, if there are other concerns or issues
-04:-21:-182 about gifts as a whole, the board can certainly generate other
-04:-21:-143 guidance for county officers and employees.

-04:-21:014 MEMBER GADARIAN: So if we're addressing
-04:-20:-175 specifically the Goodfellow Brothers, should we concentrate on
-04:-20:-116 that and then go to the next?

-04:-20:-107 CHAIR MACARIO: That's what I'd like to do. Do you
-04:-20:-118 have a motion to make on that issue, Sara? Or anyone, I don't
-04:-20:-139 mean -- I don't mean to focus on you.

-04:-20:-20 MEMBER GADARIAN: Yes. All right. Yes, I would. I
-04:-20:-21 make a motion that we advise -- give an advisory opinion that
-04:-20:-22 the potential gift reference to the director of council
-04:-19:-23 services is to decline to accept for the reason that it -- a
-04:-19:-24 personal holiday party is perceived by the public to be
-04:-19:-25 personal entertainment and not having to do with county

-04:-19:-111 purposes, no matter what her position would be. That it's
-04:-19:00 2 intended to generally influence the county employee to look
-04:-18:-493 upon this contractor in a more favorable light, but it is
-04:-18:-404 definitely only personal entertainment, there's no county
-04:-18:-365 business going on and it's not a -- I don't know how to
-04:-18:-316 describe it.

-04:-18:-307 CHAIR MACARIO: Let me see -- let me see if I --

-04:-18:-268 MEMBER GADARIAN: It's discussing -- go ahead.

-04:-18:-249 CHAIR MACARIO: -- can restate that. Is it
-04:-18:-210 essentially the motion that we recommend declining the
-04:-18:-161 invitation to the Goodfellow Brothers event because it is in
-04:-18:-172 violation of 10-4.1.a?

-04:-18:013 MEMBER GADARIAN: And it has to do with perception
-04:-17:-174 of the public.

-04:-17:-175 CHAIR MACARIO: Okay. Is there -- thank you, Sara.
-04:-17:-136 Is there a second?

-04:-17:-127 MEMBER WEISS: Dave. Second.

-04:-17:-118 CHAIR MACARIO: Okay. Any further discussion?

-04:-17:-149 MEMBER WEISS: I was just going to mention one of
-04:-17:-20 these items, for example, if you go to a convention and
-04:-17:-21 there's a lunch and there might be a sign saying sponsored by
-04:-17:-22 XYZ law firm or -- that that doesn't really rise to the level
-04:-17:-23 of a personal invitation to a party such as at the Grand
-04:-17:-24 Wailea.

-04:-17:-25 CHAIR MACARIO: Yeah.

-04:-17:-071 MEMBER WEISS: But a lot of times you don't even
-04:-17:-032 know who they are, it's just, you know, chicken and vegetables
-04:-16:-563 like --

-04:-16:-564 CHAIR MACARIO: Yeah. To me, this is fairly
-04:-16:-525 analogous to the basketball thing, right, 'cause it was --
-04:-16:-466 those tickets were only invited to a select few, right, people
-04:-16:-387 in the council, people in the mayor's office. This is a
-04:-16:-358 similar situation. I think we've already heard from them that
-04:-16:-309 as far as they know, they're the only ones in their respective
-04:-16:-190 departments that received the invitation, so it's not
-04:-16:-151 available to just everybody. And we've already decided that
-04:-16:-112 basketball tickets are considered gifts that should be
-04:-16:-053 declined and so I think this decision will be consistent with
-04:-16:-014 that.

-04:-15:-015 Did you have something you wanted to add, Bill?

-04:-15:-016 MEMBER CURTIS: The distinction the state makes and
-04:-15:-017 we may follow is if it's a specific company or consultant or
-04:-15:-018 vendor, then it's generally not -- it's generally prohibited,
-04:-15:-019 but if it's coming from a nonprofit or a trade association or
-04:-15:-020 where you get multiply entities, that's -- that's the more
-04:-15:-021 appropriate vehicle for offering these, 'cause you're not --
-04:-15:-022 it's not one specific company that's -- that you're able to
-04:-15:-023 show that it may be an association.

-04:-15:-024 MR. MURAI: So you're saying that if it was a
-04:-14:-025 contractor's association party --

-04:-14:-531 MEMBER CURTIS: Then it might be -- yeah, it
-04:-14:-502 would -- yeah.

-04:-14:-483 MR. MURAI: -- worth \$200, the contractors
-04:-14:-434 association would be acceptable.

-04:-14:-415 MEMBER CURTIS: More -- it would more likely be
-04:-14:-396 acceptable based on what the state --

-04:-14:-357 MR. MURAI: Well, keep in mind, we are applying the
-04:-14:-318 Maui County Code of Ethics.

-04:-14:-279 MEMBER CURTIS: Yes, yes.

-04:-14:-260 MR. MURAI: While there may be some analogous
-04:-14:-191 arguments or analysis, we still need to circle back to the
-04:-14:-142 language of our code.

-04:-14:-193 CHAIR MACARIO: Okay. Any further discussion?

-04:-14:-154 (No response.)

-04:-14:-145 CHAIR MACARIO: So all in -- I don't know. Do we
-04:-14:016 need to vote now? I guess we probably do, since there's this
-04:-13:-157 motion.

-04:-13:-158 MR. MURAI: Yeah.

-04:-13:-119 CHAIR MACARIO: All in favor of including in our
-04:-13:-20 advisory opinion or opinions, however it ends up, a
-04:-13:-21 recommendation that the invitation to the Goodfellow Brothers
-04:-13:-22 holiday party be declined, say aye.

-04:-13:-23 (Response.)

-04:-13:-24 CHAIR MACARIO: All opposed?

-04:-13:-25 (No response.)

-04:-13:-261 CHAIR MACARIO: Okay. That carries unanimously.
-04:-13:-222 Now I think we can move on to the other items in
-04:-13:-163 Moana's request. As Gary pointed out, most of these are
-04:-13:-104 luncheons, dinner invitations, with the exception of a
-04:-13:00 5 massage, so -- let me just look at this again. Luncheon,
-04:-12:-026 luncheon, dinner, massage, and then the last one, 6, is a
-04:-11:-557 nonprofit organization. Is that right? The rest appear to be
-04:-11:-468 private entities. So at least to me, we can either break this
-04:-11:-369 up into the lunches and entertainment options and then treat
-04:-11:-10 the massage separately, as Gary suggested, but 6 is a little
-04:-11:-11 bit different based on our last discussion. It is a nonprofit
-04:-11:-12 entity, so we might want to consider that as well.

-04:-11:-163 Okay. Does anyone have any questions for Moana
-04:-11:-134 about Items 2 through 6 on her -- in her letter?

-04:-11:-135 (No Response.)

-04:-11:-116 CHAIR MACARIO: I will, if nobody else does. So,
-04:-10:-157 Moana, you had -- you had a sort of sense as to the way No. 1
-04:-10:-118 should go.

-04:-10:-119 MS. LUTEY: Yes.

-04:-10:-120 CHAIR MACARIO: Do you have a similar sense -- I
-04:-10:-121 don't know if you have it in front of you, but as to the way
-04:-10:-122 we might interpret the other requests?

-04:-10:-123 MS. LUTEY: This is Moana. I -- in terms of
-04:-10:-124 massage, yes. The one thing I just wanted to clarify for the
-04:-10:-125 massage, that this is one of the trickle down, the remaining

-04:-10:-161 on these are what I was describing earlier where I'll get the
-04:-10:-112 invite, I decline it, then it just keeps working its way down
-04:-10:-043 through my office and that's why I would like some guidelines
-04:-09:-584 on this.

-04:-09:-585 In terms of the meals that we're talking about, it's
-04:-09:-546 sort of a mix, sometimes it's vendors of ours like our
-04:-09:-497 insurance carrier or broker, and then sometimes it's a law
-04:-09:-448 firm that we're friends with because they also represent other
-04:-09:-389 municipalities, but not us and they'll invite us, so it's sort
-04:-09:-330 of varied in that respect. But all of these have that effect
-04:-09:-281 that we discussed earlier.

-04:-09:-252 The message I have no issue with, that was from one
-04:-09:-213 of our brokers, I think it was valued around \$200, that went
-04:-09:-164 all the way down the chain to risk who was at a conference. I
-04:-09:-115 had an issue with it, but at the time I was not corporation
-04:-09:-176 counsel. And so based on your earlier analysis, I think that
-04:-09:017 one is cleaner, although it's a vendor as opposed to a
-04:-08:-158 nonaffiliated private entity. But I think the discussion
-04:-08:-169 would be very similar.

-04:-08:-20 MR. MURAI: I need to disclose that in my office I'm
-04:-08:-21 so far down the food chain that none of these have trickled
-04:-08:-22 down to me.

-04:-08:-23 (Laughter.)

-04:-08:-24 MS. LUTEY: Yet.

-04:-08:-25 (Laughter.)

-04:-08:-231 MS. LUTEY: The next message is going to Gary.

-04:-08:-182 CHAIR MACARIO: He needs it.

-04:-08:-163 All right. So can you explain a little bit about
-04:-08:-054 who these insurance representatives are and the broker and if
-04:-08:00 5 they're the same person or different?

-04:-07:-576 MS. LUTEY: They're different. So basically what
-04:-07:-547 happens is we have a broker that gets us our insurance
-04:-07:-508 policies and we pay them a commission, so they get a
-04:-07:-469 commission off of it and it's substantial because we're
-04:-07:-420 talking multimillion dollar policies for this county. Then we
-04:-07:-341 have insurance carriers and we have multiple layers.
-04:-07:-302 Typically, our interactions with our first layer, that's up to
-04:-07:-263 about 5 million, our deductible is 500,000, so that's normally
-04:-07:-184 who will come out. They'll come out about maybe once or twice
-04:-07:-175 a year, it depends on what's going on, sit with us, go through
-04:-07:-116 all of our claims that are pending because what's happening is
-04:-06:-117 if they're going to rebid the following year, they need to see
-04:-06:-118 what we have and also see what they need coverage on, whether
-04:-06:-109 we've given them notice. It's a long and very painful
-04:-06:-100 process. But while they're here, these meetings can go on
-04:-06:-21 from eight o'clock in the morning till seven o'clock at night
-04:-06:-22 and then they'll do the, Hey, do you want to have lunch? Do
-04:-06:-23 you want to have dinner? And most times, honestly, I decline.
-04:-06:-24 It's -- I need a break. It's hard to have this discussion for
-04:-06:-25 ten hours in a day, so I normally decline those because if you

-04:-06:-121 go to lunch or dinner, you're talking about, you know, that;
-04:-06:-042 right? We're not -- this is a business transactional
-04:-05:-593 relationship, we're not -- I don't want to say we're not
-04:-05:-544 friends, but that's really what it is, this isn't social for
-04:-05:-485 us. So a lot of times I'll decline it and then someone else
-04:-05:-436 gets dragged off instead of me, which may next be Gary, but --
-04:-05:-367 but that's that realm. It can be either a broker or the
-04:-05:-318 insurance company. Insurance company's making direct profit
-04:-05:-259 from us, we're actually paying them for our policies, the
-04:-05:-140 broker's getting a commission, a significant commission.

-04:-05:-101 CHAIR MACARIO: Yeah. So if someone were to ask you
-04:-05:-172 what the benefit to the county would be in having one of the
-04:-05:013 county representatives receive lunches, dinners, things of
-04:-04:-154 that nature from insurance representatives, how would you
-04:-04:-105 describe that? Is there a benefit to the county?

-04:-04:-146 MS. LUTEY: I think that because these normally turn
-04:-04:-127 into working meals, that we're just taking care of business
-04:-04:-178 during the lunch or the dinner or both, if that's how long
-04:-04:-139 this goes, so that's the difference.

-04:-04:-20 CHAIR MACARIO: Okay.

-04:-04:-21 MS. LUTEY: And that's where I --

-04:-04:-22 CHAIR MACARIO: And that would be distinguishable
-04:-04:-23 from the previous one we discussed because there is some
-04:-04:-24 county business being discussed --

-04:-04:-25 MS. LUTEY: Right.

-04:-04:-131 CHAIR MACARIO: -- and potential benefit to the
-04:-04:-102 county, is that what you're saying?

-04:-04:-063 MS. LUTEY: Right.

-04:-04:-044 CHAIR MACARIO: Yeah.

-04:-04:-035 MS. LUTEY: Because we're working out whatever it
-04:-03:-586 is.

-04:-03:-587 CHAIR MACARIO: Okay. So these aren't luncheons or
-04:-03:-558 dinners offered after you make a business deal or something
-04:-03:-469 like that that's, you know, Oh, here, thanks for continuing to
-04:-03:-410 do business with us, go have lunch on us. It's a working
-04:-03:-381 lunch, is that what you mean?

-04:-03:-352 MS. LUTEY: A lot -- most times it's going to be a
-04:-03:-303 working lunch. If it's our insurance carrier, it's a working
-04:-03:-244 lunch because we need to go over what claims we have existing.
-04:-03:-185 If it's our broker, it's not a working lunch.

-04:-03:-136 CHAIR MACARIO: Okay. The broker would be
-04:-03:-107 distinguishable, then?

-04:-03:-088 MS. LUTEY: Yes. Because they will come into those
-04:-03:-059 insurance meetings with us because they have found this
-04:-03:-020 insurance provider for us, so they have their relationship for
-04:-02:-021 notice requirements -- I don't want to get too deep into that
-04:-02:-002 rabbit hole. But if they're taking us to lunch, we're --
-04:-02:-003 we're talking about really boring things, but -- because we
-04:-02:-024 all know each other and it's not claim specific. Our
-04:-02:-025 insurance carrier, it's claim specific, they need to know what

-04:-02:-241 these cases are about and we have a list. But the broker, no.

-04:-02:-202 CHAIR MACARIO: Okay. And the broker is the one
-04:-02:-163 that gives you the massage?

-04:-02:-134 MS. LUTEY: Yes.

-04:-02:-085 CHAIR MACARIO: And at least one dinner; right?

-04:-01:-596 MS. LUTEY: They do dinners. I haven't gone to
-04:-01:-517 dinner. The other thing that they do, and I think I have it
-04:-01:-488 in here, is they'll purchase -- yeah, No. 4, they'll purchase
-04:00:-47 9 tables at various events. So one time it was for the
-04:00:-410 hospital, the last time I think it was Hale Makua was the
-04:00:-311 beneficial, they're fund-raising events. So they'll buy these
-04:00:-312 tables, I have no idea what they cost, I would imagine
-04:00:-213 thousands of dollars, and then they'll invite me and my
-04:00:-214 fiancée. I have declined those and then you get that trickle
-04:00:-115 down, Well, let's see if -- that type of thing. And those are
-04:00:-016 not working, but those are tables they've purchased, they
-03:-59:-137 invite a number of their clients, and then you -- I don't know
-03:-59:-118 if they make money off of the people that go by bidding on
-03:-59:-469 auction items, I have no idea because I've never gone.

-03:-59:-20 CHAIR MACARIO: Yeah. But it can be reasonably
-03:-59:-21 inferred in that situation that the broker is making this
-03:-59:-22 offer for the purpose of rewarding continued business with the
-03:-59:-23 county?

-03:-59:-24 MS. LUTEY: They also look upon (inaudible).

-03:-59:-25 CHAIR MACARIO: Okay. Any other questions from

-03:-59:-121 Moana?

-03:-59:-082 MEMBER WEISS: I find it interesting when it's a
-03:-59:-033 nonprofit, 'cause if a nonprofit has a fund-raiser, it's to
-03:-58:-554 raise funds, but if they have it at a hotel or a golf course,
-03:-58:-495 you know, country club, they have to pay something.

-03:-58:-446 MS. LUTEY: Right.

-03:-58:-427 MEMBER WEISS: They come out of pocket paying for --
-03:-58:-368 per head or -- so they have to be trying to gain favor
-03:-58:-299 somehow. Not --

-03:-58:-200 MS. LUTEY: Yeah.

-03:-58:-181 MEMBER WEISS: No disrespect.

-03:-58:-142 MS. LUTEY: No.

-03:-58:-183 MR. MURAI: May I make a comment?

-03:-58:-154 CHAIR MACARIO: Yes, of course.

-03:-58:-135 MR. MURAI: You know what, I think there might be
-03:-57:-196 some confusion or I may be confused here. This is Gary. But
-03:-57:-157 when you said you're attending a nonprofit event, a fund-
-03:-57:-188 raiser event for a nonprofit agency, it's not the nonprofit
-03:-57:-139 that's offering you the ticket, right, it's the -- like, for
-03:-57:-200 example, I went to a Humane Society fund dinner, fund-raising
-03:-57:-221 dinner, and I was invited by someone who bought a table. The
-03:-57:-222 table might've cost, I don't know, \$1,500, \$2,000, and you
-03:-57:-223 know, a friend of mine says, Hey, you know, I bought this,
-03:-57:-244 but, you know, they got me for a table of ten, you know,
-03:-57:-225 here's a couple of tickets, I need to fill the table.

-03:-57:-071 MEMBER WEISS: I read this one also as being invited
-03:-57:-012 by the nonprofit.

-03:-56:-593 MR. MURAI: So maybe, Moana, you can clarify.

-03:-56:-554 MS. LUTEY: I've had both. Number 6 is separate,
-03:-56:-505 that's where the nonprofit invited me specifically. But I had
-03:-56:-446 the situation where our insurance broker invited me to two
-03:-56:-407 separate events, both were fund-raisers for a nonprofit, but
-03:-56:-348 the tables were purchased by the broker.

-03:-56:-289 MEMBER WEISS: Right. And the nonprofit is making
-03:-56:-250 money?

-03:-56:-241 MS. LUTEY: Right.

-03:-56:-232 MEMBER WEISS: I picked it up where the nonprofit
-03:-56:-203 invited you, so it sounds like it's from the public or the
-03:-56:-134 nonprofit organization?

-03:-56:-195 MS. LUTEY: Yeah, the fund-raiser.

-03:-56:-166 MEMBER GADARIAN: And the insurance broker has
-03:-56:-117 business with your office?

-03:-55:-148 MS. LUTEY: Right. They're getting commissions from
-03:-55:-109 us for finding our insurance carriers.

-03:-55:-20 MEMBER WEISS: But that is, again, supporting a
-03:-55:-21 nonprofit; right? The nonprofit that's doing the fund-raiser
-03:-55:-22 is gaining, you know, revenue from that table. I just got
-03:-55:-23 kind of hung up on the nonprofit -- the American Heart
-03:-55:-24 Association inviting you where that table's costing them money
-03:-55:-25 and that seat is costing them money so there's some profit for

-03:-55:-021 somebody that they -- maybe it's the same, we've had, you
-03:-54:-522 know, county executives there and very much like Goodfellow
-03:-54:-463 might. I mean, maybe -- you're not going to be influenced by
-03:-54:-394 them, but they could say, Hey, you know, we had these great --
-03:-54:-345 we had the corp. counsel and the mayor there, they're using
-03:-54:-286 that. But the nonprofit is kind of what hung me up, because
-03:-54:-237 that is actually costing them fees. Whoever's serving the
-03:-54:-168 food's charging them, they're just paying -- or charging three
-03:-54:-099 times as much for that plate as it's costing them 'cause
-03:-54:-050 that's the way, you know, they raise funds.

-03:-54:011 MEMBER GADARIAN: But it's an individual who has
-03:-53:-162 purchased these tickets that -- a business who has purchased
-03:-53:-113 the ticket and that business is doing business with you?

-03:-53:-164 MS. LUTEY: Right.

-03:-53:-155 MEMBER WEISS: The non -- I just got hung up on --
-03:-53:-116 by the actual nonprofit inviting her to a fund-raiser when
-03:-53:-117 they're putting it out, so I --

-03:-53:-128 MR. MURAI: You know what -- and I don't want to
-03:-53:-129 muddy the water. This is Gary again. I don't want to muddy
-03:-53:-20 the water, but there are so many different permutations of how
-03:-53:-21 people get invited --

-03:-53:-22 MEMBER WEISS: Right.

-03:-53:-23 MR. MURAI: -- to these things. So when -- Dave, as
-03:-53:-24 I was listening to you, I remembered, you know, I sit on a
-03:-52:-25 nonprofit board and when we did our fund-raising event,

-03:-52:-501 someone said, You know what, okay, I'll buy a table, but I'm
-03:-52:-432 not going to attend, so, you know what, why don't you take
-03:-52:-383 those ten tickets and give them away to your staff so other
-03:-52:-334 folks can attend. You know, it's possible that, you know,
-03:-52:-285 people may just tell the nonprofit agency, Here's my donation,
-03:-52:-216 you guys decide who to invite and fill that table.

-03:-52:-137 MEMBER WEISS: Yeah.

-03:-52:-138 MR. MURAI: Yeah. 'Cause that's -- that's happened.
-03:-52:-089 So, again, I guess my -- the point I'm trying to make is
-03:-52:-140 there's all kinds of different -- you know, so maybe what the
-03:-52:011 board needs to do is follow the money, you know, look at
-03:-51:-172 who -- you know, who's ultimately paying and the relationship
-03:-51:-143 between the donor and the county employee. Unless that gets
-03:-51:-144 to be too cumbersome.

-02:-08:-165 MEMBER CURTIS: But we do prohibit the gifts
-02:-07:-196 directly or indirectly.

-02:-07:-167 CHAIR MACARIO: Correct. So would it be helpful to
-02:-07:-198 take these in order, just kind of go through them one by one?
-02:-07:-199 We've already answered one.

-02:-07:-200 Number 2 is lunch for Moana and a coworker following
-02:-07:-211 a meeting with her insurance representative. Would this be
-02:-07:-212 the working meeting?

-02:-07:-213 MS. LUTEY: If we've completed the meeting, then,
-02:-06:-214 no, this would just be --

-02:-06:-215 MEMBER GADARIAN: An award following the --

-02:-06:-441 MS. LUTEY: Right.

-02:-06:-422 CHAIR MACARIO: Yeah.

-02:-06:-403 MS. LUTEY: Yeah. We're done with that, let's go.

-02:-06:-364 You want to eat?

-02:-06:-285 MR. MURAI: At \$40 a head or 40 for --

-02:-06:-226 MS. LUTEY: Combined.

-02:-06:-197 MR. MURAI: Yeah.

-02:-06:-188 MS. LUTEY: I mean, normally, honestly, 'cause the

-02:-06:-129 only restaurant in Wailuku is 808, that's where you're going

-02:-05:-160 to go if you're going.

-02:-05:-141 MR. MURAI: Be careful, Moana, this is public

-02:-05:-112 record, so you don't want, you know, competing --

-02:-05:-153 MS. LUTEY: Oh, I'm not saying I went.

-02:-05:-114 (Laughter.)

-02:-05:-165 MR. MURAI: But you don't want competing restaurants

-02:-05:-126 to --

-02:-05:-107 MS. LUTEY: Oh.

-02:-05:-188 MR. MURAI: -- say, Hey, 808's not the only --

-02:-05:-119 MS. LUTEY: Yeah.

-02:-05:-200 MR. MURAI: -- the only decent restaurant in

-02:-05:-261 Wailuku.

-02:-05:-262 MS. LUTEY: Yeah. Well, for sitting, for sitting

-02:-05:-223 down service, it is, right, 'cause otherwise you've got Subway

-02:-05:-264 or McDonald's.

-02:-05:-245 CHAIR MACARIO: Sure.

-02:-04:-311 MS. LUTEY: And I think the average plate there is
-02:-04:-282 like 12 bucks or something like that.

-02:-04:-263 CHAIR MACARIO: That's the thing that makes this
-02:-04:-234 hard. I mean, obviously --

-02:-04:-195 MS. LUTEY: Right.

-02:-04:-186 CHAIR MACARIO: -- \$40 doesn't sound like very much,
-02:-04:-107 right, so --

-02:-04:-028 MEMBER WEISS: I imagine it's like \$13 a head, you
-02:-03:-579 know.

-02:-03:-170 CHAIR MACARIO: Is this for two people or --

-02:-03:-111 MS. LUTEY: That's for both.

-02:-03:-112 MR. MURAI: But, you know --

-02:-03:-113 CHAIR MACARIO: Yeah.

-02:-03:-114 MR. MURAI: That's true, the -- the sum may be --

-02:-03:-115 MEMBER GADARIAN: It doesn't matter the value of the
-02:-03:-116 lunch, it could be --

-02:-03:-117 MR. MURAI: Right. The -- our Code of Ethics does
-02:-03:-118 not list a dollar value, which is what's problematic for most
-02:-03:-119 employees, they don't know where the line is drawn. So what
-02:-03:-120 we need to do is look at the language, which says, you know,
-02:-03:-121 can reasonably be inferred to be intended to influence or
-02:-03:-122 reward. And so even -- under that analysis, even a -- even a
-02:-03:023 \$3 cup of coffee can be intended to influence or reward, so
-02:-02:-124 that's why it's difficult to draw a line with a dollar amount.
-02:-02:-125 You know, if you look at other -- you know, other counties and

-02:-02:-411 the state, some of them will come up with a dollar amount, no
-02:-02:-372 more than \$25 or there was a state statute that says they may
-02:-02:-293 not accept gifts if it's more than \$200 regardless of the
-02:-02:-234 intent or purpose. So what we're looking at is the intention
-02:-02:-125 of the donor and whether it's meant to influence or reward,
-02:-02:-046 so --

-02:-02:-027 CHAIR MACARIO: Yeah. In this case, if it's not a
-02:-01:-598 working lunch and it's following the meeting, to me, it seems
-02:-01:-519 intended to influence or reward. What do you guys think?

-02:-01:-470 MEMBER GADARIAN: I agree.

-02:-01:-441 MEMBER CURTIS: Or it can be construed.

-02:-01:-412 CHAIR MACARIO: It could be inferred that, yeah,
-02:-01:-393 definitely. Okay.

-02:-01:-374 So No. 3, luncheon or dinner hosted by a law firm
-02:-01:-315 that represents municipalities across the country, but has
-02:-01:-266 never been retained by the County of Maui in attending an
-02:-01:-177 industry conference. How does -- how does that come about,
-02:-01:-138 Mona? How is it that -- that you get an invitation from a law
-02:-01:-109 firm that's never been retained by the County of Maui?

-02:-01:-020 MS. LUTEY: Conferences. So we sign up for
-02:00:-521 conferences, the most popular that I go to is an International
-02:00:-422 Municipal Lawyers Association conference, it's hosted twice a
-02:00:-423 year. And prior to us going, once we sign up, our information
-02:00:-324 seems to be disseminated and then I'll get all types of
-02:00:-325 invitations, walking tours to see systems or, you know, fun

-02:00:-11 1 things like that, and then I'll also get typically lunch or
-02:00:-05 2 dinner requests from various law firms or -- and sometimes
-01:-59:-583 they're not law firms, it's just entities that sell parts for
-01:-59:-534 like, say, septic systems or whatever it is, that they -- that
-01:-59:-485 may or may not be operating out of our state. So we have a
-01:-59:-416 wide variety of invites or I do currently at these types of
-01:-59:-357 conferences.

-01:-59:-348 CHAIR MACARIO: Well, what do you guys think? That
-01:-59:-309 seems to me to be reasonably inferred to reward or influence.

-01:-59:-240 MEMBER WEISS: On the other hand, too, though,
-01:-59:-201 they're at a conference, they've got to eat, you know. And
-01:-59:-142 I've been to many conferences where there will be -- we'll get
-01:-59:-063 something in the email, so-and-so that you've never heard of
-01:-59:-024 is hosting this dinner, we just show up and eat and go. Maybe
-01:-58:-135 there's a -- like I said, there's a sign when you walk in.
-01:-58:-066 But, you know, on the other hand, you save the county --
-01:-58:-027 whatever it'd cost them for meals you're saving the county
-01:-58:-158 whatever was going to be expenses, so -- for me, for my
-01:-58:-099 perspective, at a big convention, stuff happens all the time
-01:-58:-020 that's -- you know, you may not even ever know who's, you
-01:-58:-021 know, picking up the tab.

-01:-58:-022 CHAIR MACARIO: Well --

-01:-58:-023 MEMBER WEISS: 'Cause they're generally larger -- I
-01:-58:-024 mean, it's just like you and three other people, it's
-01:-57:-025 generally like a large event.

-01:-57:-501 MS. LUTEY: The last invitation I got went out to
-01:-57:-462 about probably 50 people and it was at a steakhouse off
-01:-57:-413 premises after the conference, so the conference went to say
-01:-57:-364 four o'clock that day and the dinner was at 6:00.

-01:-57:-305 CHAIR MACARIO: And so if you had gone to that
-01:-57:-286 thing, would it have saved the county money, you wouldn't have
-01:-57:-217 had to eat somewhere else?

-01:-57:-208 MS. LUTEY: Well, I get per diem and it's set by
-01:-57:-159 county code, all of us do if we travel.

-01:-57:-110 CHAIR MACARIO: Yeah.

-01:-57:-111 MS. LUTEY: And so from my per diem amount, which I
-01:-57:-162 think it's like 85 bucks or something a day or -- and then I
-01:-56:-163 have to take a certain amount off of that for my hotel, so in
-01:-56:-144 pocket you get about, I'd say, about 40 to \$50 a day for
-01:-56:-175 meals. It would save me money from my per diem if I chose to
-01:-56:-116 eat at a steakhouse because that's going to cost me around 50
-01:-56:-137 bucks.

-01:-56:-168 MEMBER CURTIS: But you wouldn't deduct that from
-01:-56:-129 your per diem, you'd still accept your per diem?

-01:-56:-20 MS. LUTEY: I would get my per diem, right. I'd
-01:-56:-21 have to pay for it out of pocket.

-01:-56:-22 MEMBER WEISS: Yeah. It's not that you expense your
-01:-56:-23 meals, so you just get a per diem and --

-01:-55:-24 MS. LUTEY: Right. And that's it. Eat where you
-01:-55:-25 want, choose wisely.

-01:-55:-391 CHAIR MACARIO: What's your reaction to that, Dave?

-01:-55:-352 MEMBER WEISS: I was more picturing a hotel ballroom
-01:-55:-303 where it's easy to get stuck in.

-01:-55:-254 MS. LUTEY: We get those too.

-01:-55:-225 MEMBER WEISS: Chicken and vegetables, but -- yeah.
-01:-55:-156 I was just imagining expensing each meal like we do in the
-01:-55:-057 private sector.

-01:-55:-058 MS. LUTEY: Oh, no, in government --

-01:-54:-579 MEMBER WEISS: That, to me, doesn't rise to the
-01:-54:-420 level of what we discussed earlier, personally.

-01:-54:-411 CHAIR MACARIO: Yeah. What do you think, Rachel?

-01:-54:-402 MEMBER PHILLIPS: I guess it's really hard to draw
-01:-54:-323 the line because there's just so many differences between
-01:-54:-244 everything, so I feel sometimes it's easier to just not try to
-01:-54:-155 differentiate too much because then you start thinking too --
-01:-54:-086 too hard.

-01:-54:-077 CHAIR MACARIO: It gets too complicated, yeah.

-01:-54:-048 MEMBER PHILLIPS: Yeah. So I would be more inclined
-01:-54:-019 just to say that probably none of these is appropriate and
-01:-53:-020 just keep it simple.

-01:-53:-021 CHAIR MACARIO: Yeah. I mean, to me, we want to be
-01:-53:-002 able to establish that there's a benefit to the county, that
-01:-53:-003 this isn't just a reward or some sort of personal gift, and
-01:-53:-004 I'm not seeing that on -- on a lot of these.

-01:-53:-025 MS. LUTEY: If I could just add one thing on the --

-01:-53:-191 not to make it more complicated, but for the firm that invites
-01:-53:-142 the municipal attorneys and they also do municipal law, in our
-01:-53:-063 injection well case that was just heard by the U.S. Supreme
-01:-52:-584 Court last week, that firm had written -- they've done
-01:-52:-525 briefing pro bono, so for free for the county in that matter,
-01:-52:-436 and then later filed an amicus brief also, so there's that.
-01:-52:-367 We've never hired them, we've never paid them, but it's sort
-01:-52:-308 of -- municipal law is very different. It's rare to find a
-01:-52:-249 firm that does it, but they do all across the country, and so
-01:-52:-190 we've formed sort of a friendship, basically, with them on
-01:-52:-111 this. So they were a little different, I think, from other
-01:-52:-052 firms that are maybe a little more aggressive in recruiting,
-01:-51:-473 because that didn't seem to be incentive here. But I don't
-01:-51:-414 want to muck this up too much, but there -- this relationship
-01:-51:-455 has been ongoing for about eight years.

-01:-51:-386 MEMBER CURTIS: And it was a benefit to the county,
-01:-51:-357 that's --

-01:-51:-318 MS. LUTEY: Well, they've done the amicus briefs and
-01:-51:-279 they've also done the briefs for free for us. I mean, not
-01:-51:-220 that we -- I don't know exactly how -- I mean, it's convoluted
-01:-51:-261 process, so the NWA, which is National Water Association, had
-01:-51:-062 spoken to this firm and this firm who does all these types of
-01:-51:023 issues said, You know what, we'll brief it for you -- for you
-01:-50:-224 because this area of law is so complicated that we have
-01:-50:-025 special counsel, so they -- to do that in-house would be

-01:-50:-421 almost impossible because the laws are so convoluted. But I
-01:-50:-352 don't want to keep mixing that up for you, I just wanted to
-01:-50:-273 add that in so you sort of understand the dynamics of how it
-01:-50:-214 works with some firms. There's other firms that might invite
-01:-50:-155 us to dinner that we've never had dealings with, but are
-01:-50:-106 looking to get business from us. But with -- and I'm not
-01:-50:-047 saying that this particular firm isn't, it's just we have a
-01:-49:-598 different relationship, in a sense.

-01:-49:-529 CHAIR MACARIO: Well, I kind of see a difference
-01:-49:-490 between 3 and the others. What about the rest of you? 'Cause
-01:-49:-421 I see a benefit to the county for No. 3, for sure.

-01:-49:-342 MEMBER WEISS: I agree.

-01:-49:-263 MEMBER CURTIS: I mean, maybe we can keep the
-01:-49:-214 language that simple.

-01:-49:-115 MR. MURAI: Yeah. And you know what, folks, because
-01:-49:-166 Moana has given us specific events, I think we should just
-01:-49:-187 opine on these specific events with -- based on each set of
-01:-49:-138 facts. Now, I know that what Moana had also said was that
-01:-48:-419 she's hopeful that the opinion can be helpful to other
-01:-48:-240 department -- you know, department heads and elected
-01:-48:-211 officials. We may not be able to do that with this one,
-01:-48:-222 because all of these examples are so fact specific. But what
-01:-48:-213 this really does is it just tells us that it -- I think it
-01:-48:-244 will motivate us to create something that would be more useful
-01:-48:-265 to everyone, such as, you know, that -- that guidelines --

-01:-48:00 1 those guidelines that the state ethics commission produces,
-01:-47:-542 so --

-01:-47:-533 CHAIR MACARIO: Maybe we can make that the subject
-01:-47:-504 of a future meeting.

-01:-47:-485 MR. MURAI: Right, yeah.

-01:-47:-476 CHAIR MACARIO: And just kind of confine our review
-01:-47:-427 today to the four corners of this.

-01:-47:-348 MR. MURAI: Right. And make clear that this opinion
-01:-47:-259 is based on specific facts.

-01:-47:-230 CHAIR MACARIO: Right.

-01:-47:-221 MR. MURAI: And while it may be useful, you know,
-01:-47:-132 every case can be different.

-01:-47:-103 CHAIR MACARIO: Okay. We've been going for some
-01:-47:-174 time, so let me try and see if I can summarize where I think
-01:-47:-115 we're going and then I'll ask someone to make a motion to that
-01:-46:-466 effect. It looks like we've already decided No. 1 should be
-01:-46:-417 rejected; 2, 4, 5, and 6 should be declined; and 3 may be
-01:-46:-328 acceptable. That's my read of where we're going with this.
-01:-46:-249 Does anybody want to make a motion to that effect?

-01:-46:-20 MEMBER GADARIAN: So moved.

-01:-46:-21 CHAIR MACARIO: Perfect. Is there a second?

-01:-46:-22 MEMBER WEISS: Second. Dave.

-01:-46:-23 CHAIR MACARIO: Okay. Any further discussion?

-01:-46:-24 Gary, you're going to have the pleasure of writing
-01:-46:-25 this, do you have enough information.

-01:-46:-031 MR. MURAI: I have enough information and I think,
-01:-45:-592 as I said earlier, when I draft this, the draft will include
-01:-45:-533 the -- I guess the qualification that these are very fact
-01:-45:-474 specific and -- well, this doesn't need to be in the opinion,
-01:-45:-375 but it's the board's intention to address this more
-01:-45:-326 comprehensively on another day.

-01:-45:-297 CHAIR MACARIO: Yeah. Can I -- I'll try and -- next
-01:-45:-258 month we'll see if I can -- if there's enough time to add that
-01:-45:-149 to the agenda. Okay.

-01:-45:-100 So any further discussion?

-01:-45:-071 (No response.)

-01:-45:-072 CHAIR MACARIO: All in favor?

-01:-45:-053 (Response.)

-01:-45:-034 CHAIR MACARIO: All opposed?

-01:-44:-055 (No response.)

-01:-44:-056 CHAIR MACARIO: Okay. That carries unanimously.

-01:-44:-017 Thank you, Moana.

-01:-44:-008 MS. LUTEY: Thank you.

-01:-44:-009 CHAIR MACARIO: So you probably know this, but the
-01:-44:-000 written opinion will be approved next month.

-01:-44:-021 MS. LUTEY: Great. Thank you.

-01:-44:-022 CHAIR MACARIO: Would anyone like to take a break
-01:-44:-023 before we continue, or do you want to just --

-01:-44:-024 MR. MURAI: How much more --

-01:-44:-025 CHAIR MACARIO: You want to push through? I kind of

-01:-44:-091 do too.

-01:-44:-072 MR. MURAI: Yeah, me too.

-01:-44:-053 CHAIR MACARIO: But I want to be sensitive to others
-01:-44:-014 as well, so --

-01:-43:-575 MEMBER CURTIS: Quick question.

-01:-43:-566 CHAIR MACARIO: Sure.

-01:-43:-547 MEMBER CURTIS: When you went to the state board,
-01:-43:-498 did you discuss whether we could plagiarize this with someone?

-01:-43:-409 MEMBER WEISS: I think in the spirit of cooperation.

-01:-43:-360 CHAIR MACARIO: They definitely --

-01:-43:-341 MEMBER CURTIS: They would accept our modifying --

-01:-43:-292 CHAIR MACARIO: I don't know if we want to use the
-01:-43:-233 word plagiarize, but we will probably --

-01:-43:-194 MEMBER WEISS: Use it as a guideline.

-01:-43:-175 CHAIR MACARIO: A guideline, use it as a guideline.

-01:-43:-116 MEMBER CURTIS: And they would have no objection to
-01:-43:-167 that.

-01:-43:-178 CHAIR MACARIO: I doubt that.

-01:-43:-169 MEMBER CURTIS: Okay.

-01:-43:-20 CHAIR MACARIO: All right. So next item on the
-01:-43:-21 agenda is Lobbyist Registration for Scott Nowak. This is item
-01:-42:-22 5.e. Is there a motion to acknowledge receipt of the lobbyist
-01:-42:-23 registration for Mr. Nowak?

-01:-42:-24 MEMBER WEISS: Dave. So moved.

-01:-42:-25 MEMBER CURTIS: Bill.

-01:-42:-331 MEMBER GADARIAN: Sara. Second.

-01:-42:-282 CHAIR MACARIO: Okay. Any discussion?

-01:-42:-253 (No response.)

-01:-42:-244 CHAIR MACARIO: Hearing none, all in favor, say aye.

-01:-42:-195 (Response.)

-01:-42:-186 CHAIR MACARIO: All opposed?

-01:-42:-157 (No response.)

-01:-42:-148 CHAIR MACARIO: Okay. That carries unanimously.

-01:-42:-129 Next item, 6, Announcements: 2020 Board of Ethics

-01:-42:-140 Calendar With Meeting Dates, Time and Location. Is that --

-01:-41:-131 MR. MURAI: Napua.

-01:-41:-112 CHAIR MACARIO: Oh, that's the next one. Let's go

-01:-41:-143 on to that.

-01:-41:-144 MR. MURAI: It's in the materials.

-01:-41:-135 CHAIR MACARIO: Yeah. It's this. It's basically an

-01:-41:-136 excel sheet, it looks like. So these are our meetings for

-01:-41:-147 next year.

-01:-41:-118 When -- when do Sara and I --

-01:-41:-129 MR. MURAI: March 15th, I believe --

-01:-41:-20 CHAIR MACARIO: March. Okay.

-01:-41:-21 MR. MURAI: -- will be cut off, so --

-01:-41:-22 CHAIR MACARIO: So we'll be here for the March 11th

-01:-41:-23 meeting and then all the future ones we'll hopefully have some

-01:-41:-24 new candidates. So, yeah, the purpose of this agenda item is

-01:-41:025 just to announce that these are the meeting dates and times.

-01:-40:-551 If anybody has any concerns, let us know, but these are the
-01:-40:-492 typical -- I think it's the second -- the first or second
-01:-40:-453 Wednesday of every month.

-01:-40:-414 Okay. So the next item is 6.b, resignation of
-01:-40:-315 Napua. This probably comes as no surprise, but she wasn't
-01:-40:-276 able to attend regularly and announced her resignation.

-01:-40:-207 So is there somebody else being considered, do you
-01:-40:-168 know?

-01:-40:-159 MS. VICENS: I have no idea what's happening.

-01:-40:-130 CHAIR MACARIO: Oh, okay. Well, hopefully -- it's
-01:-40:-111 the GET committee that accepts these and discusses it, right,
-01:-40:-112 so hopefully that will be happening. So up -- at the moment
-01:-39:-113 we've can got eight members and that's why quorum is going to
-01:-39:-114 be challenging for a bit, at least until we get someone else.

-01:-39:-115 Item 7, Next Meeting Date: December 11th.

-01:-39:-116 MEMBER GADARIAN: I have a question. So does this
-01:-39:-117 go back to the mayor with -- or is this effective once we
-01:-39:-118 receive this?

-01:-39:-119 CHAIR MACARIO: No. Sorry. No, she's already
-01:-39:-120 resigned.

-01:-39:-121 MR. MURAI: She's already resigned. The mayor --
-01:-39:-122 the mayor gets it first and then the mayor copied us with it.

-01:-39:-123 MEMBER CURTIS: Okay. So they're aware.

-01:-39:-124 MEMBER GADARIAN: So this is just a notice.

-01:-38:-125 CHAIR MACARIO: Actually, I think in this case she

-01:-38:-571 emailed us first.

-01:-38:-542 MR. MURAI: Oh.

-01:-38:-523 CHAIR MACARIO: And I think Cory provided it to --

-01:-38:-484 MR. MURAI: Oh, okay.

-01:-38:-465 CHAIR MACARIO: -- Gladys; is that right?

-01:-38:-426 MS. VICENS: That is correct.

-01:-38:-407 CHAIR MACARIO: Yeah.

-01:-38:-388 MS. VICENS: Napua contacted chair, we forwarded it

-01:-38:-329 on to the office of the mayor, they accepted it and are in the

-01:-38:-280 process of approving it.

-01:-38:-211 CHAIR MACARIO: So who knows how long it will take,

-01:-38:-192 but --

-01:-38:-183 MEMBER GADARIAN: We don't need to formally --

-01:-38:-164 CHAIR MACARIO: We don't need to do anything.

-01:-38:-135 MEMBER GADARIAN: -- accept it?

-01:-38:-106 CHAIR MACARIO: Nope, nope.

-01:-38:-107 MEMBER GADARIAN: We just received it.

-01:-38:-108 CHAIR MACARIO: Really, this is just -- it's under

-01:-38:-109 the Announcements category.

-01:-38:020 MEMBER GADARIAN: Yes.

-01:-37:-211 CHAIR MACARIO: So it's just announcing to all of

-01:-37:-202 you --

-01:-37:-203 MEMBER GADARIAN: Yeah.

-01:-37:-204 CHAIR MACARIO: -- that this is happening.

-01:-37:-205 MEMBER GADARIAN: Okay.

-01:-37:-501 CHAIR MACARIO: Okay. Next meeting is December 11th
-01:-37:-462 here in this conference room.

-01:-37:-373 Is there a motion to adjourn regular session and
-01:-37:-324 finish the rest of our executive session agenda for the day?

-01:-37:-255 MEMBER CURTIS: This is Bill. So moved.

-01:-37:-206 CHAIR MACARIO: Is there a second?

-01:-37:-197 MEMBER WEISS: Dave. Second.

-01:-37:-138 CHAIR MACARIO: Okay. All in favor?

-01:-37:-109 (Response.)

-01:-37:-090 CHAIR MACARIO: All opposed?

-01:-37:-061 (No response.)

-01:-37:-042 CHAIR MACARIO: Carries unanimously. (Gavel.)

-01:-36:-033 (Pause in proceedings: 3:35 p.m.-3:42 p.m.)

-01:-25:-014 CHAIR MACARIO: We are back in regular session. Is
-01:-25:-015 there a motion to --

-01:-25:-016 MEMBER GADARIAN: The time is three --

-01:-25:-017 MR. MURAI: 3:42.

-01:-25:-018 CHAIR MACARIO: Oh, 3:42. Thank you.

-01:-25:-019 Is there a motion to ratify all decisions made in
-01:-25:-020 executive session?

-01:-25:-021 MEMBER GADARIAN: So move.

-01:-25:-022 CHAIR MACARIO: Second?

-01:-25:-023 MEMBER GADARIAN: Sara.

-01:-25:-024 CHAIR MACARIO: Is there a second?

-01:-25:-025 MEMBER WEISS: Dave. Second.

-01:-25:-011 CHAIR MACARIO: Okay. All in favor, say aye.
-01:-24:-562 (Response.)
-01:-24:-553 CHAIR MACARIO: All opposed?
-01:-24:-524 (No response.)
-01:-24:-515 CHAIR MACARIO: That carries unanimously.
-01:-24:-486 And, finally, is there a motion to adjourn our
-01:-24:-417 meeting for the day?
-01:-24:-388 MEMBER WEISS: Chair, I make a motion we adjourn our
-01:-24:-339 meeting for today.
-01:-24:-310 CHAIR MACARIO: Thank you. Is there a second?
-01:-24:-281 Please.
-01:-24:-252 MEMBER CURTIS: I don't know.
-01:-24:-233 MEMBER GADARIAN: Rachel, say something.
-01:-24:-184 MEMBER PHILLIPS: Second.
-01:-24:-155 CHAIR MACARIO: All right. I'm not even going to
-01:-24:-126 ask for discussion on that. All in favor?
-01:-24:-117 (Response.)
-01:-24:-118 CHAIR MACARIO: All opposed?
-01:-24:-119 (No response.)
-01:-24:-120 CHAIR MACARIO: Carries unanimously. And our
-01:-24:021 meeting is now completed at 3:43 p.m. Thank you all for what
-01:-23:-22 was a very long meeting. I appreciate it.
-02:-39:-23 (The proceedings were adjourned at 3:43 p.m.)

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C E R T I F I C A T E

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

I, Sandra J. Gran, Certified Shorthand Reporter for the State of Hawaii, hereby certify that on November 13, 2019, at 12:32 p.m. the proceedings was taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

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

DATED this 1st day of December, 2019, in Maui, Hawaii.



Sandra J. Gran, RPR
Hawaii CSR 424