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BOARD OF ETHICS

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COUNTY OF MAUI, STATE OF HAWAII

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REGULAR MEETING

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15 Held at the Planning Conference Room, Kalana Pakui

16 Building, Wailuku, Maui, Hawaii, commencing at 12:30 p.m.

17 on October 12, 2005.

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25 REPORTED BY: LYNANN NICELY, RPR/RMR/CSR #354

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1           A P P E A R A N C E S

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4 VICE CHAIR: BARRY C. HELLE

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6 MEMBERS: TAMIO W. IWADO

7           JIM A. STEWART

8           HARRIETTE L. HOLT

9           ALAN KAUFMAN

10          RANDOL LEACH

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12 DEPUTY CORPORATION COUNSEL: JOHN KIM

13 BOARD SECRETARY: LISA KAHUHU

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1           ACTING CHAIR HELE: I would like to call to  
2           order the meeting for Wednesday, October 12th, 2005,  
3           the Maui County Board of Ethics.

4           The first thing on the agenda would be to  
5           approve or disapprove the minutes of September 7th.  
6           Do I hear any motion on our previous minutes?

7           MEMBER HOLT: I so move.

8           MEMBER IWADO: Second.

9           ACTING CHAIR HELE: All in favor of accepting  
10          the minutes of the Regular Session from September 7,  
11          2005, say aye.

12          [Chorus of ayes.]

13          Old business. We do have a correspondence on a  
14          financial disclosure from Eric Yamashige, who is the  
15          Deputy Director of the Department of Water Supply.  
16          And in review, the question regarding this was his  
17          financial interest in his previous employer, Ronald  
18          Fukumoto Engineering.

19          I would accept any motion on whether to accept  
20          his financial disclosure based on his

21 correspondence.

22 MEMBER HOLT: Is there any way we can ask that

23 he not get any financial -- that he doesn't get any

24 money as a result of these projects which are now

25 with the Department of Water Supply? Seems to me

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1 that if he is, you know, involved in them and the  
2 company is doing the work, if he's a recipient of  
3 money, it is a conflict in my mind.

4 ACTING CHAIR HELE: Any other comments in  
5 regard to that? It seems that the -- I would assume  
6 the contracts that were -- that are in question here  
7 on these two projects were in place prior to his  
8 taking the water department position.

9 MEMBER HOLT: Can we ask for more information?

10 ACTING CHAIR HELE: I would think so, yeah.

11 MEMBER HOLT: Ask for information to your  
12 question as to whether these contracts were in  
13 effect before he became involved with the Department  
14 of Water Supply and whether he will get any monetary  
15 advantages as a result of these particular projects.

16 ACTING CHAIR HELE: Okay. Either compensation  
17 in the form of an actual payment or as part of his  
18 sale of his interest in the company.

19 MEMBER HOLT: That would be my concern.

20 ACTING CHAIR HELE: Okay. Any comments from

21 the board in that regard?

22 MEMBER KAUFMAN: I'll share a comment. As I

23 read this, it's my understanding that this is his

24 former employer and any compensation he would have

25 received for the work done would have been before

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1 his current position, so I don't see an issue there  
2 and I don't know that it needs further pursuit. He  
3 has enumerated the projects where he has worked on.  
4 I don't know if that's enough to address your  
5 concerns, but it seems to me that they are addressed  
6 just simply by his disclosure.

7 MEMBER HOLT: I do notice in his letter he  
8 says, "We were in the process of liquidating my  
9 interest in the firm and anticipate completion of  
10 that effort by the end of the year." So the  
11 question to me would be is he going to get any  
12 compensation by the end of the year or as a result  
13 of his being a member of this firm because they  
14 haven't liquidated his interest yet.

15 ACTING CHAIR HELE: Seems to me that his -- the  
16 compensation that he would get would be for the sale  
17 of his stock holding in the company as opposed to,  
18 you know, doing any work on an hourly basis as such.  
19 So I don't know whether it really matters whether  
20 these contracts are on -- these contracts would be

21 looked at as assets of the company. But if the  
22 companies were in place prior to his accepting the  
23 job, I don't see where that's going to have an  
24 impact.

25 MEMBER HOLT: Well, supposing the contracts are

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1 in effect and he's getting this interest at the end  
2 of the year but the contracts result, and I have no  
3 idea, 50 percent of the amount that this company is  
4 making, is he going to get -- because it's  
5 50 percent, he's going to get an additional  
6 compensation liquidating his interest?

7 I would like to have him lay out what he thinks  
8 the result would be before we allow him to -- before  
9 we say it's an okay deal. If I were in a company  
10 and they were liquidating my interest, I would want  
11 to be sure that I was paid for every part of the  
12 contract that was in place so long as I was employed  
13 by that company.

14 ACTING CHAIR HELE: Okay. Any other comments?  
15 Any feelings on this?

16 MEMBER HOLT: I would like to make a motion  
17 that we ask him for further information about those  
18 particular questions.

19 MEMBER KAUFMAN: I'll second that motion.

20 ACTING CHAIR HELE: I don't think it's going to

21 hurt us to ask for further information, it's a  
22 financial disclosure, there is no deadline, so to  
23 speak. So can we request that a letter be sent to  
24 Eric Yamashige requesting further details of the  
25 impact of -- how would you want to word that,

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1 Harriet? Do you want to repeat that one more time?

2 MEMBER HOLT: I would like to ask whether his  
3 transaction which is being liquidated by the end of  
4 the year would include any value which has resulted  
5 from the two projects and subdivision building  
6 permits which were -- that he was involved with when  
7 he was with the Department of Water Supply. These  
8 are consultant contracts, he says. Does that seem  
9 clear?

10 ACTING CHAIR HELE: Yeah.

11 MEMBER KAUFMAN: Could we also in that letter  
12 ask that he provide us with the date of completion  
13 of his liquidation of the assets with the company?

14 ACTING CHAIR HELE: Okay.

15 MEMBER HOLT: I accept that as an amendment to  
16 my motion.

17 ACTING CHAIR HELE: Okay. I guess at this  
18 point all in favor of the motion and the amendment,  
19 say aye.

20 [Chorus of ayes.]

21           ACTING CHAIR HELE: All right.  
22           And moving on, we have no other communication  
23 items.  
24           New business. Financial disclosures, there are  
25 none. And at this point we're going to deviate a

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1 little bit from the agenda that we were all  
2 provided. There is an item that has been covered so  
3 far in Executive Session and which is in regards to  
4 corporation counsel and the feeling is that that  
5 should be moved to open session. So at this point  
6 we'll actually move to what would be Old Business  
7 and 3B in Executive Session and take that in the  
8 open session. And this is the request for an  
9 informal advisory opinion from the Department of  
10 Corporation Counsel regarding pro bono work. And I  
11 understand we have a guest here today which is Moya  
12 Davenport Gray. So I think the first thing would be  
13 to ask her to come up and address the board.

14 CORPORATION COUNSEL KIM: Mr. Chair, before we  
15 do that, we also have Pat O'Toole, Deputy  
16 Corporation Counsel from Hawaii County who will be  
17 advising the board.

18 MEMBER HOLT: We're going to have enough people  
19 here to vote on this request for -- to allow the  
20 corp counsel to do work with -- volunteer their

21 services because I used to do work with volunteer  
22 legal services, I know Moya Gray, and I would like  
23 to be excused from deliberations. Do we have enough  
24 people to make a vote without me?  
25 ACTING CHAIR HELE: We still would have a

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1 quorum. So that's okay, Harriet.

2 MEMBER HOLT: I do want to be excused because I  
3 know her very well.

4 ACTING CHAIR HELE: Mr. Moto.

5 MR. MOTO: Good afternoon, Mr. Chairman and  
6 members of the Board of Ethics. My name is Brian  
7 Moto, I'm the Corporation Counsel for the County of  
8 Maui. Thank you for placing this item on your  
9 agenda. Thank you for the work that you've done to  
10 date on this matter.

11 Let me state for the record that I do consent  
12 to and I do thank the board for addressing this  
13 matter in open session. There is no reason for it  
14 to be in closed session. Thank you on that point.

15 Mr. Chairman, just to recap, earlier in the  
16 summertime on July 6, 2005, I wrote a letter  
17 addressed to the chair of the board, Ms. Belsom,  
18 asking for an advisory opinion regarding pro bono  
19 services. And in that particular letter, I talked  
20 about the Court Annexed Arbitration Program, or

21 CAAP. And in that letter, I described to the board  
22 how Judge Joseph E. Cardoza, who is the acting  
23 arbitration judge for the circuit court of the  
24 Second Circuit, wrote letters to attorneys, all of  
25 the attorneys, I believe, in the Department of

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1 Corporation Counsel, including myself, regarding the  
2 possibility of the attorneys participating in the  
3 CAAP program. I won't spend too much time  
4 discussing the letter, I'm sure you've all read it  
5 and discussed the CAAP program and how it works.

6 My understanding is that you are in the process  
7 of developing a written response on the CAAP pro  
8 bono matter. My intention is that once I receive  
9 your formal decision, your advice, I will share that  
10 opinion with Judge Cardoza, who is awaiting a  
11 response from me. I've already told Judge Cardoza  
12 that after receiving his letter, that I intended to  
13 go to this board to seek your advice and guidance  
14 and so he is waiting for my response.

15 Now, what has happened in the meantime,  
16 Mr. Chairman, is that I was contacted by Ms. Moya  
17 Davenport Gray. In fact, we met each other at a  
18 recent conference on the Big Island for municipal  
19 attorneys. And on these occasions, Ms. Gray, who is  
20 the executive director of the Volunteer Legal

21 Services Hawaii, described her organization, talked  
22 about its programs for the indigent and working poor  
23 in Hawaii. And in these conversations,  
24 Ms. Davenport inquired about the possibility of  
25 having Department of Corporation Counsel attorneys

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1 participate in DLSH legal clinics.

2 Because it just so happened that my previous  
3 communication to you was on your agenda regarding  
4 pro bono, I thought that I should bring this up  
5 along with it so that it could be addressed at the  
6 same time since they both deal with pro bono  
7 services, although to be sure in different contexts.

8 I'm very happy to tell you that Ms. Gray is  
9 here today, she's in the front row and is prepared  
10 and willing to address this board and to answer any  
11 questions that you may have regarding Volunteer  
12 Legal Services Hawaii. That concludes my  
13 introductory remarks.

14 ACTING CHAIR HELE: Does anybody have any  
15 questions for Mr. Moto? Brian, the scope of work  
16 from what Ms. Gray will talk to us about and the  
17 scope of work that you originally presented, what is  
18 the specific difference between the two?

19 MR. MOTO: The CAAP program is administered by  
20 the circuit court and is a separate program,

21 different from the one that Ms. Gray is going to  
22 address. They are similar in that they both involve  
23 attorneys in our office volunteering their time and  
24 work in the respective programs.

25 ACTING CHAIR HELE: No further questions.

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1 Ms. Gray, would you like to join us?

2 MS. GRAY: Thank you. Thank you very much for  
3 having me here. I really appreciate the  
4 opportunity. And I would like to disclose that  
5 Harriet and I shared law offices many years ago and  
6 she was also on the board of DLSH. Thank you,  
7 Harriet, for your disclosures.

8 I have some pieces of information that I would  
9 like to pass out, if I might, two different packets.  
10 And I'll get into them later, but if you don't mind  
11 I'll just explain what they are.

12 The federal government, Department of Justice,  
13 has a pro bono policy. And I believe you have two  
14 pieces: One, the policy, which is posted on their  
15 website, as well as frequently asked questions  
16 regarding their policy, also posted on the website.  
17 I won't go into detail about them, but I would like  
18 to start off with the difference between CAAP and  
19 DLSH.

20 We're not a government agency. We were created

21 in 1981 by the Young Lawyers Division of the Hawaii  
22 Bar Association. At that point in time we were not  
23 a unified bar. Today we are, and it's now called  
24 HSBA, Hawaii State Bar Association.  
25 We were created to provide free legal services

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1 to people who couldn't afford to pay lawyer's fees.  
2 At that time Legal Aid existed, but they were not  
3 getting very much funding from the federal  
4 government. And so Hawaii's lawyers decided to step  
5 up to the plate and start happening out, which they  
6 did.

7 In the 24 years, we've grown, we're shrunk. I  
8 stepped in a year and a half ago. At that point in  
9 time we lost half a million dollars of grant money  
10 from both the state and the national governments and  
11 I needed to do some retooling. What I did was to  
12 firm up our Honolulu base while still serving  
13 clients in every area of the state. The way we did  
14 that was to call upon Oahu attorneys. After getting  
15 a little more stable, what I decided to do was start  
16 investing in lawyers in each community so that every  
17 single lawyer would have an opportunity to really  
18 invest their own time and effort back into their  
19 community, and so started off with that effort.

20 The County of Hawaii jumped right on to the

21 bandwagon and they went to their Board of Ethics and  
22 talked with them about our program and got an  
23 opinion that says that it was acceptable for them to  
24 do it. And I believe you have that opinion. If  
25 not, I can give it to you. The idea being that we

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1 need to invest back into our communities, and  
2 lawyers in particular have an ethical obligation, an  
3 aspirational goal, if you will, to contribute  
4 50 hours a year pro bono services back into their  
5 community. They can do it a lot of different ways.  
6 But that's the essence of our professional  
7 obligation back to the community.

8 Volunteer Legal Services provides a lot of  
9 different ways in which lawyers can do that. One of  
10 the ways is through our neighborhood legal clinics.  
11 And we've asked the County of Maui to join with the  
12 County of Hawaii in staffing the neighborhood legal  
13 clinics. What we do -- and I'm also here to sort of  
14 firm up the facilities here -- is to hold a monthly  
15 clinic for people who qualify for our services.  
16 They will get to meet a lawyer for 30 minutes, talk  
17 with them about their issues and their problems.

18 The lawyer, if it's a private lawyer, has a lot  
19 of different opportunities. They can take the case,  
20 they can do a brief service, they can simply do

21 advice and counsel. County attorneys probably could  
22 do similar things. But the essence of this is the  
23 service back to the client who cannot afford an  
24 attorney.  
25 What happens from there is either the problem

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1 is solved right then and there, 30 minutes, person  
2 feels comfortable with what they have been told, can  
3 go away, their problem is resolved. Or they need  
4 further representation, in which case the case comes  
5 back to me, I go out into the community and I look  
6 for somebody who is willing to take the case on for  
7 the whole case time and on a pro bono basis.

8 The lawyer at the neighborhood legal clinic  
9 serves as my lawyer for purposes of interviewing the  
10 client and for assessing the case on what its needs  
11 really are. So very, very limited amount of  
12 involvement on the part of the lawyer.

13 For DLSH, it's very good. For the lawyer it's  
14 also very good because it's a very short amount of  
15 time, gets them involved in the community, people  
16 feel really good for having been able to speak with  
17 a lawyer. So that's it in a nutshell.

18 We have a lot of other programs. We go out and  
19 help pregnant teens and their families, we talk to  
20 them about their legal rights and responsibilities.

21           We have on Oahu a homeless legal support  
22           program, we go to the transitional shelters and talk  
23           about consumer education, landlord/tenant and labor  
24           laws and so forth. We have a tax assistance clinic  
25           and we try to do a nonprofit program at the same

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1 time. So we've got a really wide span of programs  
2 that we provide.

3 But the essence of the proposal today is to  
4 look at two issues that commonly come up. And the  
5 reason that you have the federal government policy  
6 before you is that they have already addressed these  
7 issues. The issue is, one, is there a conflict of  
8 interest for a county attorney to go outside of the  
9 county job and provide some service to the  
10 community? Federal government has said no, there is  
11 no conflict of interest so long as you do one, two,  
12 and three, and that's laid out in their policy. The  
13 primary responsibility is not to do anything that  
14 conflicts with your actual work. The second primary  
15 responsibility is not to take a criminal case  
16 because you do represent the government, so those  
17 two would be conflicts of interest. And if the  
18 attorney stayed away from it, then fine, pro bono is  
19 not a problem for the federal government.

20 By the way, DLSH does not take any criminal

21 cases, so that's not really an issue for us. The  
22 issues would come up with whether or not the  
23 particular lawyer has part of his or her job that is  
24 involved in the case before them. The way we handle  
25 these conflicts of interest is to provide to the

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1 lawyer a short description of the case in every  
2 single case so that the attorney is well prepared  
3 before they come into that appointment. Once the  
4 attorney reviews the case, they will see that there  
5 is or isn't a conflict, in which case we replace the  
6 person if there happens to be a conflict. So we  
7 avoid conflict at all points in the process.

8 The other issue that's before you is whether or  
9 not diminutus or a small amount of county property  
10 violates the ethics laws. At the federal government  
11 what they said was a reasonable use of federal  
12 property for pro bono purposes was acceptable. And  
13 the reason it was acceptable was because it was the  
14 federal government's policy -- and this is set out  
15 in the policy -- to encourage people to invest  
16 themselves back into the community and to continue  
17 their government public service back into the  
18 community through pro bono work, so that there  
19 really wasn't a break between the government policy  
20 of helping low income indigent working poor people,

21 the customer, the taxpayer, however you describe  
22 them, and the policy of pro bono.

23 But more importantly, none of the work done for  
24 pro bono is to -- is going to benefit the person  
25 providing the work. It's not a private contract,

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1       there is no compensation, it's not a business, it's  
2       all done on terms of public service. And so the  
3       issue of whether there is personal use of county  
4       property goes away simply because it isn't a private  
5       business, there is no conflict with the taxpayer in  
6       that case.

7           And that's it in a nutshell. And I'd be happy  
8       to answer any of your questions. I know that I just  
9       sort of breezed through that, but I would be happy  
10      to answer any of your questions.

11        ACTING CHAIR HELE: Thank you. Anybody have  
12      any questions?

13        MEMBER LEACH: Is the private sector  
14      contributing to your --

15        MS. GRAY: Oh, yes.

16        MEMBER LEACH: I want to understand the reason  
17      we want the public attorneys or the government  
18      attorneys is to help your -- your supply -- okay.  
19      And right now there is not enough from the private  
20      sector or is there a need to tap into --

21 MS. GRAY: There is people that perceive that  
22 there is never enough from the private sector. But  
23 I really like to believe that my brethren will  
24 contribute. There is an issue. I have to go out  
25 there and beat on the drums every day and go out

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1       there.

2           I really am quite amazed that the County of  
3       Hawaii has gone as far as they have gone to invest  
4       in their community. After the municipal conflicts  
5       that we had last month, I got a call about how  
6       government attorneys and government employees can  
7       together volunteer in their community. It's the  
8       same concept. Once leadership decides to do this,  
9       the rest of the community really begins to keep  
10      pace.

11          So I'm really hoping you folks will step up and  
12      say yes, this is a really good thing for the County  
13      of Maui because without that, it would be very  
14      difficult for me to get private lawyers to come.

15      Not everyone is retired, not everyone can do it. My  
16      job is to make it as easy as possible for those who  
17      --

18          ACTING CHAIR HELE: Any other questions,  
19      comments?

20          MEMBER IWADO: How many attorneys are we

21 talking about?

22 MS. GRAY: In the State of Hawaii --

23 MEMBER IWADO: Government.

24 MS. GRAY: Government attorneys? How many do

25 we have? Twelve.

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1 MEMBER IWADO: That is a lot of hours.

2 MS. GRAY: That's corp counsel. The clinics  
3 would be once a month. They last from about 4:30 to  
4 7:00 or 7:30, off hours, basically. We're not going  
5 to hold it in county buildings. We've got the  
6 Family Support Services of Maui to help us with the  
7 facility. And so there really will be very little  
8 use of any county property. We will provide the  
9 lawyers with sheets of paper that indicate what the  
10 case is. We would probably provide it by e-mail or  
11 by fax, the quickest way possible, and that would be  
12 the extent of it.

13 No, I forgot. There might be cases when  
14 somebody would have to use legal materials so  
15 Westlaw or Lexus. Federal government says if you  
16 use Westlaw, which you may do, just mark it pro bono  
17 so it's very clear that this is for the good of the  
18 public -- "pro bono" meaning good of the public.

19 Yes, sir.

20 MEMBER STEWART: Just a clarification. The

21 time that these proposed attorneys might volunteer  
22 at the clinics, that would be on their own time  
23 after hours or is it while they're also on county  
24 payroll time? Do they overlap?  
25 MS. GRAY: When do you end your day, 4:30?

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1 MR. MOTO: Mr. Chair, Brian Moto. If the  
2 clinics are scheduled as described, 4:30, that would  
3 be after official business hours. Our official  
4 business hours will from 7L45 to 4:30. Having said  
5 that, I will point out that there probably might be  
6 some incidental activities by the volunteer during  
7 -- it's possible that they might have to make phone  
8 calls in order to confirm details regarding the  
9 clinic, et cetera. So there might be some  
10 incidental use and time during work hours related to  
11 the pro bono activity.

12 MEMBER STEWART: The reason I say 4:30 is  
13 because we anticipate our clinic facilitator to open  
14 the clinic at 4:30 and start receiving people. But  
15 the first appointment would not start until 5:00 and  
16 it would end about 7:00 or 7:30. We anticipate that  
17 once we start the clinics, this will grow and  
18 hopefully we'll be able to get private attorneys in  
19 as well to really staff it.

20 ACTING CHAIR HELE: Prior to taking some action

21 here, we have our visiting counsel from the Big  
22 Island has some experience in this, too, so it would  
23 be beneficial for us to hear what she has to say.

24 MS. O'TOOLE: Yeah, I have participated in the  
25 clinic and I think most of our attorneys signed up

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1 and I'll just say what happened in terms of my --  
2 the one time I went. It started at 5:00, so it was  
3 after work. And as far as during the county time, I  
4 believe I received a couple of e-mails and a fax,  
5 like two pages, describing what the case was going  
6 to be and who the clients were. I think I did not  
7 have to do any legal research because I kind of knew  
8 that area. So we try to not do something if we  
9 don't know anything about it at all.

10 So, you know, I would say there was minimal  
11 county time spent on it and then my own time in the  
12 evening to go down and do it.

13 MS. GRAY: Thank you. By the way, really  
14 appreciate that.

15 ACTING CHAIR HELE: Any other questions  
16 regarding this? I know Brian mentioned that he had  
17 a previous request based on his letter from Judge  
18 Cardoza. So are we to assume that we actually could  
19 be taking action on the two requests simultaneously  
20 today?

21 MS. KAHUHU: Yes, I believe so.

22 ACTING CHAIR HELE: I just wanted to

23 clarification on that. Having said that, does

24 anybody want to make a motion in regards to this

25 request?

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1           MEMBER IWADO: The motion would be to -- would  
2 it be to approve the two previous requests?

3           ACTING CHAIR HELE: This one and the previous  
4 one based on Judge Cardoza's letter to Brian Moto,  
5 yes.

6           MEMBER IWADO: And would it be to go along with  
7 the policy, the guidelines of the federal -- or is  
8 that necessary?

9           ACTING CHAIR HELE: I don't know if it would be  
10 necessary to go into detail on the motion at this  
11 point. I think basically what we would want to do  
12 is spell out what we as a board think we would  
13 approve it based on what criteria or we would  
14 disapprove it based on our feelings. I think the  
15 feeling probably would be to approve it based on  
16 certain criteria and just spell out what those  
17 stipulations would be such as, you know, not during  
18 county time and, you know, I think the key word is  
19 diminutus in there.

20           I don't know if anybody wants to put that into

21 words. Do you want to take a shot at it, Jim?

22 MEMBER STEWART: I just want a stipulation to

23 state that for it to be true pro bono work or a

24 volunteer position, that it should be done on that

25 person 's own time. Because otherwise you start

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1 encroaching into a 3:30 departure, 3:00, then it  
2 becomes a taxpayer funded volunteer position. So  
3 small stipulation, just one that states that the pro  
4 bono work is actually done on non-county time.  
5 That's all. I think otherwise it's a 24 year old  
6 organization with good work and I would see no  
7 reason whatsoever to -- I would want to support its  
8 cause in allowing these -- and agreeing with the  
9 position of both the letters, Mr. Moto's and the  
10 other one.

11 MS. O'TOOLE: That would be for both programs,  
12 the CAAP program and legal services.

13 MEMBER STEWART: Correct.

14 ACTING CHAIR HELE: That was pretty much  
15 spelled out in the way that it was spelled out in  
16 the Big Island's opinion on that?

17 MS. O'TOOLE: The Big Island's opinion is on  
18 the volunteer legal services program, not on the  
19 CAAP program. But I see from the transcript of your  
20 prior hearing on the CAAP program that you did

21 specify that it would be on their own time.

22 ACTING CHAIR HELE: Okay. Any further

23 discussion on that before we take a vote?

24 MEMBER IWADO: What is the motion? Just that

25 one stipulation?

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1           ACTING CHAIR HELE: One stipulation that it be  
2           on their own time.

3           MEMBER KAUFMAN: Can I read what I think the  
4           motion is?

5           ACTING CHAIR HELE: Yeah, please.

6           MEMBER KAUFMAN: The opinion of the Board of  
7           Ethics is that providing pro bono services to CAAP  
8           and Volunteer Legal Services is not in conflict with  
9           the County Code of Ethics as long as the work is not  
10          done on county time with only diminutus use of  
11          county facilities.

12          ACTING CHAIR HELE: Very good.

13          MEMBER KAUFMAN: Somebody has got to do it.

14          ACTING CHAIR HELE: We appreciate that. All in  
15          favor of the motion as read by Mr. Kaufman, say aye.

16          [Chorus of ayes.]

17          MEMBER HOLT: Can the record just say that I  
18          abstained because of my connection? Thank you.

19          ACTING CHAIR HELE: Okay. Very good. Thank  
20          you very much for your time.

21 MS. GRAY: Thank you all very much for your  
22 commitment to pro bono and helping your community.

23 ACTING CHAIR HELE: I'm sure Brian will get  
24 everybody out there.

25 MR. MOTO: Thank you, Mr. Chairman and members.

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1 Your decision is important. I do thank Department  
2 of Corporation Counsel for coming from Hawaii for  
3 your legal assistance and I look forward to your  
4 written opinion.

5 ACTING CHAIR HELE: We do thank our  
6 distinguished guest from the Big Island.

7 The next thing on our agenda is communication  
8 item, the letter dated September 19th from Senator  
9 Les Ihara regarding request for electronic version  
10 of the minutes and public interest fee waiver.

11 This is basically a letter from the senator.  
12 He had requested copies of our minutes from previous  
13 meetings and was quoted a fee of 25 cents per page  
14 to copy those and he's asking for, one, to either  
15 have that fee waived or I guess his preference would  
16 be to have the minutes sent to him via e-mail.  
17 Maybe Lisa, I mean, first of all, I assume it's  
18 possible to send it via e-mail as an attachment of  
19 some sort?

20 MS. KAHUHU: We don't receive the electronic

21 minutes, we just get the hard copies. But I've  
22 already sent them the minutes that they requested  
23 and we sent a bill. So basically it would be  
24 whether you approved his fee waiver request or not,  
25 which is -- John can explain a little bit more for

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1 you about that.

2 ACTING CHAIR HELE: Is that really our call to  
3 waive fees? I don't know.

4 MR. KIM: It's the board's minutes.

5 MEMBER KAUFMAN: Does it include the executive  
6 session as well as the open session?

7 MS. KAHUHU: No. Regular session only.

8 ACTING CHAIR HELE: So it's a matter of a few  
9 pages a month. Maybe if you know, Lisa, was his  
10 request ongoing or was it just for those specific  
11 months?

12 MS. KAHUHU: The months were specific. I don't  
13 know -- I believe he's starting this watch dog  
14 committee and he will probably request more in the  
15 future. But at this point they had specifically I  
16 believe it was about five months, which with the  
17 miniscript was a total of maybe \$3.50 or something.

18 CORPORATION COUNSEL KIM: But I believe it will  
19 be ongoing from his last communication with the  
20 office. Initially they wanted the minutes and then

21 I got an e-mail saying what happened to the -- I  
22 mean, they wanted the agendas. What happened to the  
23 minute? I said, you know, what I understand is you  
24 asked for the minutes, you got to pay for it. And  
25 there was -- put it down in writing, and basically

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1 that's what I told him.

2 MEMBER KAUFMAN: I've got a question addressing  
3 that. The requirement that they be paid for, does  
4 that date back into preelectronic age?

5 CORPORATION COUNSEL KIM: Yeah.

6 MEMBER KAUFMAN: Is it really relevant any  
7 longer with electronic communications to have  
8 payment?

9 CORPORATION COUNSEL KIM: Yes, it is.

10 MEMBER KAUFMAN: Please elaborate.

11 CORPORATION COUNSEL KIM: Well, in order to  
12 store it electronically, you need a disc -- we don't  
13 have a separate database where it's just floating  
14 out there in space. It will take up some disc space  
15 and some server. But in this case, because the  
16 minutes are generated from a separate entity, we  
17 would have to find a place to store these discs and  
18 then download it and ship it over.

19 MEMBER KAUFMAN: If there is real costs  
20 involved, are the current fees an accurate

21 reflection of the real cost for the electronic

22 distribution?

23 CORPORATION COUNSEL KIM: We have been limited

24 to statute to no more than 25 cents per page. But I

25 revisited that statute, now it's no more than five

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1 cents a page. So it might have to be changed, it  
2 says no more than five cents a page under the  
3 current code section 92-21, I believe

4 MEMBER STEWART: Just a thought. The issue at  
5 hand is a fee versus no fee, not really negotiating  
6 the fee. My understanding with the mayor's office  
7 is that county matters like we pay permanent fees in  
8 our business and they go up in accordance with the  
9 cost of doing business, that all things are supposed  
10 to equal the cost of whatever is it is the person  
11 requires from the county. So if it is five cents, I  
12 don't know that we have the right to give it away  
13 for free. It's the taxpayer's paper and copier. So  
14 we may lower the fee, which is going to make this a  
15 25 cent, 30 cent endeavor, but I do think the county  
16 is supposed to operate at least in principle at a  
17 break even.

18 MR. KIM: There is an exception in the law --  
19 and usually it's between government agencies -- that  
20 there be no fee charged. For example, as a

21 prosecutor or as corporation counsel, when I ask for  
22 copies of police reports from our own division, I  
23 don't get charged. But as a courtesy usually from  
24 state agency to county agency, we don't get charged.  
25 So if you want to waive it, that's fine.

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1           ACTING CHAIR HELE: So in this regards we could  
2           be waiving it based on the fact that it's being sent  
3           to a member of the state senate. What he does to it  
4           as far as turning it over to his watchdog group,  
5           that's his call once he's in receipt of it.

6           CORPORATION COUNSEL KIM: That's correct. But  
7           it is -- as you know under our state statute, it is  
8           a public record, your minutes as well as your  
9           agenda.

10          MEMBER HOLT: Maybe we could avoid giving him  
11          special treatment by sending it to the state senate,  
12          state capital, and he can pick up his copy at the  
13          Senate office.

14          CORPORATION COUNSEL KIM: We wouldn't send it  
15          anywhere. The only other way to avoid this is to  
16          actually publish it on our website. We do -- I  
17          believe we publish the agendas. And the Big Island  
18          publishes their minutes. I don't know if it's on a  
19          timely basis. But we have 30 days to publish those  
20          minutes. But if we can download and get our

21 webmaster on it under our -- under the Board of  
22 Ethics' website, you know, the minutes could appear  
23 in PDF file.

24 MEMBER KAUFMAN: I would like to say I really  
25 like that alternative in that I believe in

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1 transparency in government and even at five cents a  
2 page, a fee is an obstacle to the ease of the  
3 transmission of information. So if we can put this  
4 on the website, then I think that's a good way to  
5 make it available.

6 CORPORATION COUNSEL KIM: We would have to get  
7 in touch with MIS --

8 MS. KAHUHU: The possibility is there. It's  
9 just like doing the agendas when we post our agendas  
10 on the web. But I'm not sure what -- being that  
11 it's Iwado's who prepares the transcript and then --

12 CORPORATION COUNSEL KIM: Like a copyright  
13 infringement?

14 MS. KAHUHU: Yeah.

15 THE REPORTER: Well, they happily sell a disk  
16 for five dollars, and most of the boards that is  
17 part of the order is they want the disk.

18 MS. KAHUHU: Then we just have to check into  
19 any kind of copyright stuff. Because actually the  
20 transcripts say not to copy either, you know.

21 CORPORATION COUNSEL KIM: If there is a  
22 copyright on this item and there may be under state  
23 statute, we would have to get permission from Iwado  
24 or the court reporter who actually took it down.  
25 Because the copying fee directly to -- usually comes

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1 straight from the court reporter. I know that from  
2 practicing criminal law, we can't reproduce  
3 transcripts unless we get permission or they go  
4 directly to the court reporter. And the court  
5 reporter -- I understand they're protected by  
6 statute and this is their way to make their  
7 overhead.

8 ACTING CHAIR HELE: So the fact that -- the  
9 fact that they're doing the recording on contract  
10 from the county doesn't mean that the county owns  
11 the transcript.

12 CORPORATION COUNSEL KIM: We own the record.  
13 It is a public record. We would probably be able to  
14 publish it. I mean by statute. I don't know --

15 THE REPORTER: Ms. Iwado would have to give you  
16 the definite answer on that, but I think that the  
17 Board of Water Supply minutes are published on their  
18 website.

19 So I think it's a different -- in a legal case  
20 when we could be selling a copy to another party in

21 the case, yes, they can't just share it. But in  
22 this case for a board meeting like this, I think  
23 it's different.

24 ACTING CHAIR HELE: Could we have that checked  
25 into to find out what our full options are? So I

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1     guess at this point we defer Senator Ihara's request  
2     until next time?

3           MEMBER KAUFMAN: Can we communicate with them  
4     and let him know what we're looking into?

5           ACTING CHAIR HELE: I think it would be okay.  
6     You could ask corporation counsel just to draft a  
7     letter saying that we're looking into different  
8     options on what our options are to provide it to him  
9     to avoid costs -- or reduced cost. And we'll get  
10    back to him following next month's meetings

11          MS. KAHUHU: Mr. Chairman, can I make a  
12    comment? We've already provided the minutes to him,  
13    so. And I've provided him with an invoice also.  
14    But it's just -- and then he came back with the  
15    request to have the fee waived.

16          ACTING CHAIR HELE: But it's probably still  
17    good to look into in anticipation of him coming back  
18    wanting further minutes for his ongoing project.

19          MEMBER IWADO: In the future, I think it's a  
20    really good idea, like Alan says, to get it on the

21 website.

22 CORPORATION COUNSEL KIM: We could follow the  
23 lead from Hawaii County.

24 MS. KAHUHU: The only obstacle is finding out  
25 if we're authorized to do that. Then it's no

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1 problem, you just -- I'll start buying the disk.

2 ACTING CHAIR HELE: I think Kauai County -- I'm  
3 not sure about the Board of Ethics, but I know like  
4 the planning commission, their minutes are on the  
5 website very quickly. I think it is a good idea.  
6 It just means we're all open for more scrutiny of  
7 what we say here, but that's okay. So we will defer  
8 that.

9 The next item is the High Road. I don't recall  
10 that one in here. Lisa, could you help me out on  
11 that one?

12 MS. KAHUHU: The high Road is just a State  
13 Ethics Commission newsletter. And it's basically --  
14 we get them every three months or so and it's only  
15 -- I provide them for the board when it seems that  
16 there might be something of interest and it's  
17 basically just listed on our agenda as an item in  
18 case anybody would like to discuss anything.

19 ACTING CHAIR HELE: Okay. So that's just there  
20 for our own --

21 MS. KAHUHU: Yeah.

22 ACTING CHAIR HELE: And then the next item on

23 here, Item C, there is a discussion of the proposed

24 new wording for the moving into executive session.

25 The last time new verbiage was provided to us to

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1 properly and more clearly state exactly what we're  
2 trying to do when we close out a regular session  
3 into an executive session.

4 CORPORATION COUNSEL KIM: Basically under our  
5 consent decree in Smith vs. Apana, we had training  
6 from I think Professor Van Dyke. And regarding the  
7 agenda, as you can see they're pretty specific and  
8 not in broad or general terms.

9 And you notice when there is no new business,  
10 it says "none" instead of just saying financial  
11 disclosures. But each one is delineated so that or  
12 in such detail that a member of the public reading  
13 it would know.

14 Now, when you're moving into executive session,  
15 our minutes -- our agenda, excuse me, have are very  
16 specific. Therefore I felt it necessary that we  
17 also reflect -- the motion reflects what the board  
18 was going to do in executive session. Like, for  
19 example, in this case for today's hearing, instead  
20 of reading that paragraph under subsection B, a

21 member could simply state I move that the board goes  
22 into executive session to discuss the financial  
23 disclosure as reflected in the agenda, Item 3A, as  
24 well as review and approve the advisory opinion  
25 05-A-7 and also other financial disclosures. That

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1 would be it. Be more specific. Because this covers  
2 a whole broad range and there may not be a business  
3 item that you would be discussing even though you've  
4 already stated.

5 MEMBER STEWART: As long as this new language  
6 means that we never have to say the word  
7 "adjudicatory" again, I'm for it.

8 ACTING CHAIR HELE: Well, I think this is a  
9 good rule, I think it gets a little more specific  
10 and it's also just more clear. So I don't know if  
11 we need to take -- do we need to take a motion to  
12 approve that we change this format or is this just a  
13 procedural --

14 CORPORATION COUNSEL KIM: This is a procedure  
15 matter that doesn't need action by the board. It's  
16 just that I thought I'd bring this to your  
17 attention. The other reason being Senator Ihara is  
18 watching. [Laughter]. The other reason being is at  
19 our Municipal County Attorneys meeting, our third  
20 annual in Waikoloa, Les Kwondo, the head of Hawaii

21 Office of Information Practices, did say one of his  
22 items would be in agenda matters coming this year to  
23 actually look at the agendas to make sure that the  
24 boards and commissions were actually found those  
25 agenda items.

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1           So I believe the law -- there was an issue with  
2 going into executive session and minutes of the  
3 executive sessions. You notice the law the way it's  
4 written, they don't like that too much, secret  
5 government. As Dr. Kaufman says, he like the  
6 transparency of government. But when there are  
7 confidential issues or personal issues that need to  
8 be discussed, like issues with your attorney, you'd  
9 have that option.

10           ACTING CHAIR HELE: Well, considering the fact  
11 that we're at the end of the regular session, who  
12 would like to be the first person to utilize this  
13 new format and move us into executive session?

14           CORPORATION COUNSEL KIM: I think Mr. Stewart  
15 has --

16           MEMBER STEWART: I'll take that on. Pursuant  
17 to Hawaii Revised Statutes Section 92-5(a)2 and (4),  
18 and 92-6, I move that the Board of Ethics go into  
19 executive session to discuss the following matters:  
20 Financial disclosure of various board and commission

21 members and remove and approval of an advisory  
22 opinion of a Department of Public Works and  
23 Environmental Management employee regarding possible  
24 performance of private fees conflicts of interest.  
25 ACTING CHAIR HELE: Do we have a second?

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1 MEMBER HOLT: Second.

2 ACTING CHAIR HELE: All in favor?

3 [Chorus of ayes.]

4 [Executive Session convened.]

5 ACTING CHAIR HELE: Let the record show that

6 we're back in regular session. And having nothing

7 else for the agenda, I would accept a motion to

8 adjourn this today's meeting of the Board of Ethics.

9 MEMBER STEWART: I move that we adjourn.

10 MEMBER KAUFMAN: Second.

11 ACTING CHAIR HELE: Okay. All in favor?

12 [Chorus of ayes.]

13 ACTING CHAIR HELE: Thank you very much.

14 (Concluded at 1:28 p.m. )

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1                    C E R T I F I C A T E

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3 STATE OF HAWAII    )

4                    ) SS.

5 COUNTY OF MAUI    )

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8           I, LYNANN NICELY, RPR, Notary Public for the State  
of Hawaii, certify:

9           That on the 12th of October, 2005, the meeting  
minutes were taken by me in machine shorthand and were  
10 thereafter reduced to print under my supervision by means  
of computer-assisted transcription; that the foregoing  
11 represents, to my best ability, a true and accurate  
transcript of the proceedings had in the foregoing  
12 matter.

          I further certify that I am not attorney for  
13 any of the parties hereto, nor in any way interested in  
the outcome of the cause named in the caption. Dated  
14 this 19th day of October, 2005.

15

16                   \_\_\_\_\_

17                   NOTARY PUBLIC, State of Hawaii

18                   My commission expires: 1/24/2006

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