

MAUI COUNTY BOARD OF ETHICS  
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS  
REGULAR MEETING

**ORIGINAL**

Held at the Corporation Counsel Conference Room, Kalana  
O Maui Building, Third Floor, 200 South High Street,  
Wailuku, Maui, Hawaii, commencing at 12:30 p.m., on  
September 10, 2008.

Reported by: Tonya McDade  
Hawaii Certified Shorthand Reporter #447  
Registered Professional Reporter  
Certified Realtime Reporter  
Certified Broadcast Captioner  
info@iwadocourtreporters.com

1 BOARD MEMBERS PRESENT:

2 Alan Kaufman, Chair

3 Nane W. Aluli, Vice-Chair

4 Jocelyn A. Bouchard, Secretary

5 C. Gretchen Guy, Member

6 Randol Leach, Member

7 Michael Westfall, Member

8 STAFF PRESENT:

9 Traci Villarosa, First Deputy Corporation Counsel

10 Kristi Ueoka, Board Secretary

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Wednesday, September 10, 2008, 12:30 p.m.)

2 \* \* \*

3 CHAIR KAUFMAN: This is the Wednesday, September  
4 10th, 2008 meeting of the Board of Ethics.

5 We have a quorum in the persons of Aluli,  
6 Bouchard, Westfall, Leach and Kaufman. And we are  
7 anticipating that Gretchen Guy will be here shortly.

8 Are all the other members excused today?

9 MS. UEOKA: Yes.

10 CHAIR KAUFMAN: Thank you very much.

11 Meeting is called to order, attendance having  
12 been taken.

13 The minutes of August 13th meeting have been  
14 circulated. Are there any additions or corrections to  
15 those minutes?

16 The Chair saw none. And, apparently, none of  
17 you have, either. So we will accept those minutes as they  
18 were submitted.

19 There is no public testimony today.

20 Under Old Business, we have the financial  
21 disclosures of Couch, Johnson and Kai Nishiki. And I will  
22 ask our Executive Secretary to comment on those.

23 MS. UEOKA: With respect to Couch's financial  
24 disclosure, we needed the annual compensation of his  
25 spouse, which has been filled in as D.

1           With respect to Johnson, we needed some  
2 clarification with regard to Item 9. And I spoke to her  
3 on August 19th, and filled in some clarification.

4           And with regard to Kai Nishiki, the Board  
5 requested a business address for her employer, which has  
6 been filled in.

7           CHAIR KAUFMAN: Very good.

8           If there are no questions about those  
9 clarifications, we will take a motion to accept those  
10 financial disclosures.

11          MEMBER WESTFALL: I have a question. And I  
12 don't know if this is the appropriate --

13          CHAIR KAUFMAN: It is appropriate, whenever  
14 there's a question.

15          MEMBER WESTFALL: Okay. When we had gotten into  
16 this discussion last time about others and nonprofits --  
17 and I think we had a cite that was in our Rules, page  
18 107-17. And I will just read it. Basically, it says  
19 gifts which are not used and which, within 30 days after  
20 receipt, are returned to the donor, or delivered to a  
21 charitable organization without being claimed as a  
22 charitable contribution for tax purposes. I guess they  
23 don't need to be included. Maybe I am just reading this  
24 too closely, but that just seems a little confusing and  
25 maybe contradictive.

1           And I am not sure if Corporation Counsel could  
2 answer my question.

3           MS. VILLAROSA: What section? I am still trying  
4 to find it.

5           MEMBER WESTFALL: Page 107-17.

6           MS. VILLAROSA: Page 107?

7           MEMBER WESTFALL: I'm sorry.

8           MEMBER LEACH: 101-17.

9           MEMBER WESTFALL: I'm sorry. 101-17, Number 9  
10 and then Number 4.

11          MS. VILLAROSA: So this is the exception, right?

12          MEMBER WESTFALL: Right. Again, you can cut me  
13 off here if I am being too nitpicky. It just seems -- and  
14 this is something we do in the trust business all the  
15 time. We have to determine ownership.

16          And I think the IRS -- without being a CPA --  
17 they sort of look at two tests. One of them is do you  
18 have control or possession, and the second is did you  
19 receive the benefit.

20          And the wording here says that this person  
21 received this, they have had control of it for 30 days.  
22 So it just seems that the language is awkward, to me,  
23 anyway.

24          CHAIR KAUFMAN: While Corporation Counsel is  
25 thinking about this terminology, I would agree that most

1 of the language in the entire manuscript in front of us  
2 is, in fact, awkward and confusing at times. And it's a  
3 good thing it's not our job to rewrite it.

4           And I think many times what we have to deal with  
5 as the Board is making sure that we thoroughly understand  
6 the language with which we are presented. So I would like  
7 to thank you for bringing up that point.

8           Corporation Counsel.

9           MS. VILLAROSA: Well, I think that -- is it the  
10 fact that the recipient has possession of it for 30 days?

11           MEMBER WESTFALL: Again, if I am being nitpicky,  
12 you can cut me off. It just seems like I have  
13 something --

14           MS. VILLAROSA: Right.

15           MEMBER WESTFALL: -- I have 30 days, then I can  
16 pick and choose who I want it to go to.

17           MS. VILLAROSA: Right.

18           MEMBER WESTFALL: That seems as though it  
19 doesn't meet the theme, if you will.

20           MS. VILLAROSA: Well, these rules, you know, can  
21 always be revised, you know, by the Board, actually. So,  
22 you know, if it's something that you feel needs to be  
23 clarified or tightened up, then, you know, our office can  
24 work with you on that.

25           But I think it was -- the 30 days in here seems

1 a reasonable period of time for the person to realize, oh,  
2 I got this gift, and, oh, yeah, I am not supposed to keep  
3 it, so I need to give it away. And so, you know, just to  
4 give that person time to do all of that. And 30 days, to  
5 me, seems a reasonable amount of time.

6 But, you know, you could require disclosure of  
7 that as well. Although, you know, I think that time  
8 period is probably a reasonable time where a person would  
9 say, you know, I didn't really benefit anything from that,  
10 I just had it, realized I shouldn't have it.

11 MEMBER WESTFALL: Okay. So you sort of answered  
12 the second question there.

13 MS. VILLAROSA: Oh, okay.

14 MEMBER WESTFALL: The other part of test is, is  
15 there any benefit.

16 MS. VILLAROSA: Right.

17 MEMBER WESTFALL: So you are saying, under that,  
18 that wouldn't --

19 MS. VILLAROSA: It depends on the facts, right.  
20 You have to really look at, well, what are we talking  
21 about. It's kind of difficult to talk about it in the  
22 abstract.

23 You know, 30 days, generally, with Government,  
24 that is a reasonable amount of time to do things.

25 But like I said, these rules are your rules, so

1 they can always be revised. You can shorten the time  
2 period. You could require disclosure of these types of  
3 gifts. It's really up to the Board.

4 MEMBER WESTFALL: Okay. That's a good answer.

5 CHAIR KAUFMAN: If the comfort level is there,  
6 then, the Chair is looking for a motion to accept these  
7 disclosures.

8 VICE-CHAIR ALULI: I will make the motion that  
9 we accept these disclosures.

10 MEMBER BOUCHARD: Second.

11 CHAIR KAUFMAN: For Couch, Johnson and Nishiki,  
12 we have a first and a second.

13 All in favor?

14 (A chorus of ayes.)

15 CHAIR KAUFMAN: Opposed?

16 (Silence.)

17 CHAIR KAUFMAN: They are all accepted.

18 There are no Communication Items, and that  
19 brings us to New Business. And we have the four financial  
20 disclosures.

21 Are there any comments?

22 We do have a comment from our Executive  
23 Secretary. No?

24 MS. UEOKA: No.

25 CHAIR KAUFMAN: In that case the Chair will make

1 one, a little off topic.

2 I just would like to encourage all of the  
3 Members to be sure to respond in a timely manner to our  
4 Executive Secretary when she is trying to add up names for  
5 quorum. Okay?

6 Having said that, are there any questions from  
7 any of the Board Members with regard to any of the  
8 financial disclosures?

9 MEMBER LEACH: Just one comment, Mr. Chair.

10 I would like to compliment our Executive  
11 Secretary because I can find out on these forms which  
12 additions she's made, to make our job easier.

13 So thank you very much.

14 CHAIR KAUFMAN: I shudder when I realize that  
15 our job has become very easy at the expense of her job  
16 becoming even more difficult. But, in fact, you are 100  
17 percent correct. And many times we do owe our Executive  
18 Secretary.

19 The Chair will share that he did not see any  
20 issues with the submissions and would entertain a motion  
21 to accept the financial disclosures.

22 MEMBER LEACH: So moved.

23 VICE-CHAIR ALULI: Second.

24 CHAIR KAUFMAN: And you have accepted the  
25 financial disclosures for which individuals, Randol?

1           MEMBER LEACH: For Basques, Kaho'ohalahala  
2 Kresge, Mateo, Vares.

3           CHAIR KAUFMAN: Thank you very much.

4           Is there a second?

5           Thank you, Jocelyn, for that second.

6           All in favor?

7           (A chorus of ayes.)

8           CHAIR KAUFMAN: Opposed?

9           (Silence.)

10          CHAIR KAUFMAN: Then they are all accepted.

11          Communication Items. I think it's wonderful  
12 that we've actually had a response to the information that  
13 we had sent out. Basically, we got back two not guiltyies.  
14 And, yes, that was in jest. But what it shows is that  
15 people are aware, when it was brought to their attention,  
16 that there was additional information that they could  
17 impart.

18          Yes?

19          MS. UEOKA: Just to share with the Board, these  
20 are the only submissions that we received in writing.  
21 However, we received several phone calls from concerned  
22 individuals regarding their financial disclosure  
23 statements, Item 9, Gifts.

24          And I assured them that it was primarily a  
25 reminder and a point for thinking about their next

1 financial disclosure statement filing. And the Board did  
2 not require any immediate action on this item.

3 But we did receive many calls.

4 CHAIR KAUFMAN: I am not surprised. There are a  
5 lot of guilty consciences out there, I am sure.

6 Under Lobbyist -- oh, those memorandums and  
7 letters, then, can just be filed that we have received  
8 from Yabuta and from Eng.

9 We have no lobbyist registrations and no  
10 announcements.

11 In that case, we are going to need a motion to  
12 move into Executive Session.

13 Randol, you haven't done it for a while.

14 MEMBER LEACH: Yes. Since I complimented our  
15 Executive Secretary, I will move into it.

16 With reference to the agenda items listed below,  
17 one or more executive meetings are anticipated.

18 In particular, the Board of Ethics anticipates  
19 it will consider the evaluation, dismissal or disciplining  
20 of an officer or employee of the County of Maui where  
21 considerations of matters affecting privacy will be  
22 involved. The Board may also consult with the Board's  
23 attorney on questions and issues pertaining to the Board's  
24 powers, duties, privileges, communities and liabilities.  
25 Therefore, pursuant to Hawaii Revised Statutes, Sections

1 92-5 (a)(2) and (4), the following items may be considered  
2 in Executive Session.

3 The Board may also convene in adjudicatory  
4 session pursuant to HRS, Section 92-6.

5 And specifically to address, under new business,  
6 financial disclosures, and to review a request for an  
7 Advisory Opinion from an employee of the Department of  
8 Water Supply regarding side business conflicts of  
9 interest.

10 CHAIR KAUFMAN: Is there a second to the motion?

11 VICE-CHAIR ALULI: Second.

12 CHAIR KAUFMAN: Thank you, Nane.

13 All in favor?

14 (A chorus of ayes.)

15 CHAIR KAUFMAN: Okay. Very good. We are now in  
16 Executive Session.

17 (Moved into Executive Session at 12:39 p.m.  
18 and back into Regular Session at 12:56 p.m.)

19 CHAIR KAUFMAN: We're now back in Regular  
20 Session.

21 Under Announcements, I again want to remind the  
22 entire Board to please pay attention to your emails. When  
23 our Executive Secretary sends an email, wanting to know if  
24 people are going to be available, if it's not responded  
25 to, we are in a position of not knowing if we are going to

1 have quorum. So I thank you all in advance for being so  
2 responsive.

3 Is there a motion to adjourn?

4 MEMBER LEACH: So moved.

5 VICE-CHAIR ALULI: Second.

6 CHAIR KAUFMAN: All in favor?

7 (A chorus of ayes.)

8 CHAIR KAUFMAN: We've got a great Board, folks.

9 (Meeting adjourned at 12:56 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

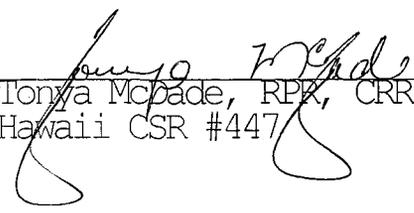
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

I, TONYA MCDADE, a Court Reporter of the State of Hawaii, do hereby certify that the proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate 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 2<sup>nd</sup> day of October, 2008.

  
Tonya Mcdade, RPR, CRR, CBC  
Hawaii CSR #447