

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
Wednesday, October 8, 2008.

REPORTED BY: CAMMIE GILLETT, RPR, CSR #438

ATTENDANCE

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BOARD MEMBERS PRESENT:

- Alan Kaufman, Chair
- Nane W. Aluli, Vice-Chair
- Randol Leach, Member
- Rebecca Woods, Member
- Marti Wukelic, Member

STAFF PRESENT:

- Traci Fujita Villarosa, First Deputy Corporation Counsel
- Kristi Lyn Ueoka, Board Secretary

1 TRANSCRIPT OF PROCEEDINGS

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3 CHAIR KAUFMAN: Well, I'll call the meeting to
4 order. And today is the 8th day of the 10th month of the
5 second millennium -- the 8th year of the second millennium.
6 And I'm glad to see everybody here and in a good mood.

7 For attendance, we will note that we have Leach and
8 Woods, Wukelic, Aluli and Kaufman.

9 Are the other individuals excused?

10 MS. UEOKA: Yes. I have Joceylyn Bouchard, Sheri
11 Daniels, Gretchen Guy and Michael Westfall all excused.

12 CHAIR KAUFMAN: In that case, we'll go to the
13 minutes of the September 10th meeting.

14 Were there any additions or corrections to the
15 transcript of the meeting of last month?

16 (No response.)

17 CHAIR KAUFMAN: Your Chair found none. And
18 obviously, no one else has.

19 MEMBER WOODS: I wasn't here. I read them, though.

20 CHAIR KAUFMAN: And you didn't find the typos that
21 were there, good. Okay. So the minutes will be accepted as
22 submitted.

23 There is no Public Testimony today. And under Old
24 Business and New Business, there is none. And there are no
25 announcements.

1 We do have an Announcement.

2 MS. UEOKA: We actually have Item D, as in dog,
3 under New Business.

4 CHAIR KAUFMAN: Okay. Gosh, thank you for keeping
5 me on track. We have a discussion regarding the nonfiling
6 of a financial disclosure statement by a candidate for the
7 Maui County Council.

8 MS. UEOKA: I will give a report. We have only one
9 person who is deficient in his filing for his nomination
10 papers. And that's Wayne Nishiki. And I guess I want a
11 discussion because I need some guidance as to what we want
12 to do. I spoke -- to give you background.

13 I spoke to him three times on the telephone. The
14 first time I spoke to him, he requested that I send him a
15 financial disclosure statement in the mail. And I did
16 because he needed an extra copy. Then I spoke to him twice
17 after that.

18 CHAIR KAUFMAN: Was that sent certified?

19 MS. UEOKA: No. But when I did speak to him next,
20 he did say he got it, he was going to turn it in, but he
21 just couldn't make it down here. Then in between, I left
22 him messages. I left three voicemail messages on his
23 telephone.

24 Usually, at this point, we would issue a warning
25 letter for noncompliance of filing. But that will threaten

1 the possibility of the filing the of a complaint action
2 against him. It's up for discussion by the Board. The
3 rules give you guidance.

4 CHAIR KAUFMAN: Would you refer -- or would you
5 like to read for us the rules, please.

6 MS. UEOKA: Section 04-101-37 of our rules
7 regarding late filings. "The Board may issue or cause to be
8 issued a letter of reminder to any person whose financial
9 disclosure or annual financial disclosure update has not
10 been filed by the deadline set by these rules. The letter
11 of reminder shall include a request that the person file
12 promptly. The deadline is 15 days after filing of his
13 nomination papers."

14 VICE-CHAIR ALULI: And he's already filed; right?

15 MS. UEOKA: And he has filed his nomination papers
16 as of July 15th, 2008. And had he lost in the --

17 VICE-CHAIR ALULI: Primary.

18 MS. UEOKA: Primary, right, this issue would be
19 moot. But he is passing on through to the general. So at
20 this point for our Board and Commission Members who weren't
21 filing, we would send a first warning letter saying please
22 comply by this date or else the Board will take further
23 action. Then we send a secondary letter if we get no
24 response that's sent by certified mail. And if they don't
25 respond to the second letter, then usually we proceed to a

1 complaint action.

2 VICE-CHAIR ALULI: Can I.

3 CHAIR KAUFMAN: Please.

4 VICE-CHAIR ALULI: Is he the only candidate that
5 hasn't complied?

6 MS. UEOKA: Yes.

7 VICE-CHAIR ALULI: May I make a recommendation?

8 CHAIR KAUFMAN: I would love to get the individual
9 opinions of the members of the Board, yes.

10 VICE-CHAIR ALULI: I think we should absolutely
11 send him a letter. If he's the only one out of the entire
12 group that hasn't complied, I think we should send a letter.

13 MEMBER WOODS: I agree.

14 CHAIR KAUFMAN: There's two agrees.

15 MEMBER WUKELIC: Particularly, if it fits in the
16 procedure that we've followed up until this point.

17 VICE-CHAIR ALULI: No question.

18 CHAIR KAUFMAN: Randol.

19 MEMBER LEACH: I agree.

20 CHAIR KAUFMAN: It occurs to your Chair, we would
21 be remiss to do anything other than to send a letter to
22 Mr. Nishiki notifying him of the fact that he is in
23 violation.

24 The one point, as your Chair, I'd like to make is I
25 don't think it matters if one individual or ten individuals

1 have done this. Whether it was one or two or three, we
2 would be remiss in our duties not to send each of the
3 individuals so involved the letter that we're going to need
4 to generate. And we need to do this very quickly.

5 I believe absentee ballots have just been sent. I
6 know I got mine in the mail today. And I think there's a
7 duty to the electorate to let them know who they're voting
8 for or the fact that Mr. Nishiki is in violation.

9 So yes, we do need to write the letter. We need to
10 do it in a timely matter. Similarly, do we have a form
11 letter that has been sent in the past?

12 MS. UEOKA: Yes.

13 CHAIR KAUFMAN: I see. Have we had a form letter
14 for a candidate in an election prior to this event?

15 MS. UEOKA: Not recently.

16 CORPORATION COUNSEL: But the letter should be the
17 same.

18 MS. UEOKA: Yeah, the letter should be the same
19 regardless whether it's a board or commissioner a
20 director-elected official or just a candidate for office.

21 CHAIR KAUFMAN: Okay.

22 MS. UEOKA: We normally in the letter state they
23 must comply by a certain date. But what we could do for
24 this too is try and make the cut-off shorter so that I could
25 send a second letter.

1 CHAIR KAUFMAN: Thank you to getting where my
2 thoughts are going.

3 Would it be possible to obtain a copy of the form
4 that has been sent prior for the review of the Board members
5 at this time?

6 MS. UEOKA: Sure, if you don't mind waiting two
7 minutes.

8 CHAIR KAUFMAN: We're happy to. Absent telephones
9 ringing.

10 MEMBER LEACH: Question, Chair. Or really two
11 questions. One, should we notified the County Clerk that --
12 you know, a heads-up that the letter is going out? And two,
13 hypothetical question. If the candidate doesn't respond,
14 I'm just curious what the legal ramifications are of him
15 running?

16 CORPORATION COUNSEL: Of him running. Well, that
17 part, I'm not sure. Because the -- as you know, the Code of
18 Ethics is a separate -- it's a separate set of rules and
19 regulations.

20 But I guess the first question whether you should
21 notify the County Clerk, I think at this point, it would be
22 premature. Maybe when you get to that point of -- well,
23 even then, I guess we'd have to look and see what
24 implication it has if somebody was found to be in violation
25 of the Code of Ethics, what implication that has to them

1 running. That part, I'm not certain. But that would be
2 further on down. This would be assuming he ignored your two
3 warnings.

4 CHAIR KAUFMAN: I'm so glad we have such a
5 wonderful Board. Remember, one of our three favorites words
6 is hypotheticals. But what we want to deal with at this
7 meeting is what the situation is as it currently exists. If
8 a letter is in fact going to go out, I think it would
9 behoove us to look at the form letter that's been used in
10 the past under similar circumstances.

11 Just because the individual's name is one we're
12 very familiar with and just because he's running for office
13 doesn't make the warning any different. But we want to make
14 sure that this will, in fact, fit the situation which we
15 need to address. So everyone have a look at the letter.

16 MS. UEOKA: I've given a sample of first warning
17 letter and the second warning letter.

18 MEMBER WUKELIC: Just to clarify, Kristi, this is
19 not the communication that you've already sent him?

20 MS. UEOKA: Yes, this is not the communication --
21 I've sent no written communication to Mr. Nishiki at this
22 point. All of my dealings have been by telephone.

23 MEMBER WUKELIC: Well, what were we talking about
24 registered mail earlier?

25 CHAIR KAUFMAN: Well, that was my point, just to

1 make sure there was a record that Mr. Nishiki had received
2 the form.

3 MS. UEOKA: Just to clarify for the Board,
4 mr. Nishiki is not belligerent or angry in any way. He
5 comes across as merely forgetful and busy. Not that that's
6 an excuse. But it's just, he knows that I'm after him to
7 get this done. But I guess he does not come to town that
8 often. But he's not -- every time I speak to him, he's not
9 angry, he's just "oh, yeah."

10 So just to give you a climate of what my telephone
11 conversations are, he does acknowledge that I have spoken to
12 him in the past, he does acknowledge that he has received a
13 second copy of it in the mail.

14 CHAIR KAUFMAN: I appreciate that Mr. Nishiki is
15 not mad at you for calling. And I'm just somewhat -- I'm
16 looking for the right adjective here.

17 VICE-CHAIR ALULI: Dismayed or frustrated.

18 CHAIR KAUFMAN: That someone with his years of
19 political experience would not have dealt with this in a
20 timely manner.

21 MEMBER LEACH: Mr. Chair, I have another question.

22 CHAIR KAUFMAN: Please, Randol.

23 MEMBER LEACH: I'm trying to understand if he files
24 his financial disclosure, do we have to accept or approve it
25 before a certain date? Or is it just the filing of the

1 form?

2 CORPORATION COUNSEL: I don't know if it's in your
3 rules. Do we have a deadline?

4 CHAIR KAUFMAN: Let me try. We obviously only
5 review financial disclosures at our monthly meetings. So
6 whatever date it's filed, it would be reviewed at the next
7 meeting. We wouldn't hold a special meeting to review it.
8 And it would be highly unlikely that we would find material
9 in there that would make him ineligible to run for office or
10 create a situation where he would not be able to hold
11 office.

12 But the fact is he has not done the specific
13 requirements that are demanded of him by virtue of the
14 position which he is trying to be elected to. Our
15 responsibility is to give him warning. And that is what our
16 responsibility is. This Board does not have a
17 responsibility to do anything more than that at this point
18 in time.

19 But I would love to hear what Corporation Counsel
20 has to say.

21 CORPORATION COUNSEL: I would just have to refer to
22 the rules. I'm not sure if you set internal deadlines for
23 that? No. So it's basically just a person needs to submit
24 by a certain date.

25 MEMBER LEACH: It could be incomplete or just a

1 signed form, that would be suffice? That would be okay for
2 filing?

3 CORPORATION COUNSEL: No, it should be complete.

4 You mean the form they submit to you?

5 MEMBER LEACH: Yes, that's what I'm asking.

6 CORPORATION COUNSEL: Yes, it needs to be complete.

7 MS. UEOKA: I can interject here. What we've done
8 with some of our other nominee people, they have never
9 filled out a financial disclosure statement. So they fill
10 it in. We receive it. So it's technically filed by a
11 certain date. But you know how I call them to try to make
12 sure they fills in Items 2, 3, 4 10.

13 So then at that point, it was considered filed on
14 the date that we actually received it. But I try and get
15 all the information and then bring it to the Board for
16 review. So the main concern is that nothing was filed at
17 all for Mr. Nishiki.

18 VICE-CHAIR ALULI: Question, Chair. So at this
19 point, the only issue, then, is the filing of the financial
20 disclosure, and that's it?

21 MS. UEOKA: Yes.

22 VICE-CHAIR ALULI: Whether it's right, wrong,
23 incomplete or otherwise really isn't the issue, then?

24 MS. UEOKA: We just need something from
25 Mr. Nishiki.

1 CHAIR KAUFMAN: The question I would have for
2 Corporation Counsel and the Executive Secretary, it looks
3 like we will be sending him a very short letter. Because
4 the number of paragraphs in the July 8 letter used as a
5 sample would simply not apply. And the time frames would
6 have to be tailored for the specific instance.

7 Because as they're set forth in here -- as soon as
8 possible, but no later than -- I think it would be
9 appropriate, given the number of phone calls that have been
10 made, to set a very short time span to have a response and
11 perhaps to mention what potential ramifications there would
12 be for not submitting on time, if there are any.

13 CORPORATION COUNSEL: I would also add in just to
14 document the phone calls that were made. You would probably
15 add that in as well.

16 CHAIR KAUFMAN: Excellent. I'm certainly glad I
17 didn't overlook this totally.

18 MS. UEOKA: I can get this out as soon as tomorrow
19 morning in the mail or possibly this afternoon -- well,
20 actually, maybe not this afternoon. Tomorrow morning's
21 mail, I could finish the letter. But when do we want him to
22 respond by, a deadline? Today is the 8th, Wednesday.

23 CHAIR KAUFMAN: It would seem to me that a week,
24 just for a time frame, should be adequate. He's had months
25 to do this. And he's either going to do it or not. So he

1 might as well receive the letter and act on it immediately.
2 So I would think a week. I don't know how the rest of the
3 Board feels, but I'd welcome your suggestions.

4 VICE-CHAIR ALULI: I think a week is reasonable.

5 MEMBER WUKELIC: I think it's fine.

6 CHAIR KAUFMAN: Randol?

7 MEMBER LEACH: Yeah, that's good.

8 MS. UEOKA: So a week from tomorrow, next Thursday?

9 CHAIR KAUFMAN: A week from tomorrow.

10 MS. UEOKA: And if there's no response, I would
11 like to have permission to send a second notice before the
12 next meeting. If he doesn't respond by next week, then I
13 think we should probably proceed to the second warning.

14 CHAIR KAUFMAN: I would think that is totally
15 applicable.

16 MEMBER WUKELIC: So are we saying a week, it must
17 be received by or postmarked by? Because my only thing
18 would be to wait maybe one more day to send the letter, the
19 second letter.

20 CHAIR KAUFMAN: So wait a week and a day?

21 MEMBER WUKELIC: Something like that, a week and
22 two days.

23 MS. UEOKA: Well, why don't I say if I don't
24 receive it by Monday of the following week --

25 CHAIR KAUFMAN: You can say in your --

1 MS. UEOKA: I mean like an internal deadline.
2 Basically, if I don't receive it by the following Monday,
3 then I would send out the second written warning by the
4 following Monday.

5 CHAIR KAUFMAN: Right. Because if he has done it,
6 then the second letter won't mean anything anyway.

7 MEMBER WUKELIC: Absolutely.

8 CHAIR KAUFMAN: That way, he'll receive it
9 basically in time for the week.

10 MS. UEOKA: What kind of deadline do you want for
11 the second letter, another week?

12 CHAIR KAUFMAN: I'd be that generous. Yes, I would
13 be. Would the whole Board be that generous?

14 VICE-CHAIR ALULI: I'd say on the second letter,
15 make it three days. No. Mr. Nishiki is the kind of guy
16 that would drive it out forever.

17 CHAIR KAUFMAN: Let's not let our personal opinions
18 enter into this conversation, Mr. Vice-Chair.

19 MS. UEOKA: Excuse me, Chair. What I can do with
20 the review of Corporation Counsel, I'll draft the letter --
21 redraft the letter, have Traci take a look at it. And if
22 the Board doesn't mind if I just send the copy to Alan via
23 e-mail to say okay, I just to sent it out. Since this is
24 pretty much a form letter, we're just taking some paragraphs
25 out.

1 CHAIR KAUFMAN: I think that would be adequate if
2 the rest of the Board is happy with that.

3 MEMBER WOODS: I'm very happy.

4 CHAIR KAUFMAN: Well, we --

5 MEMBER LEACH: You mean an original, not a fax? If
6 he asks, "Can I fax this back over" --

7 MS. UEOKA: Yes, it needs to be an original. And
8 I've actually told him that he needs to either mail it to me
9 or he needs to drop it off if he's down here on the third
10 floor.

11 CHAIR KAUFMAN: Well, I'm going to work on the
12 assumption that the form will be received just as soon as
13 this meeting is over. But I think we've got a good plan
14 here. We will send basically the standard letter, tailored
15 to the particular circumstances, with a follow-up letter,
16 using a one-week time frame for both. And we don't have to
17 worry about the hypotheticals. But that will postpone any
18 decision until our November meeting.

19 When is election day?

20 CORPORATION COUNSEL: The 4th.

21 CHAIR KAUFMAN: Of November?

22 MEMBER WUKELIC: November.

23 CHAIR KAUFMAN: So it would take place after.

24 Okay, I'm fine with that.

25 MEMBER LEACH: One question. Is the letter going

1 out certified or just regular mail?

2 MS. UEOKA: The first letter we normally send by
3 regular mail. And the second letter we normally send
4 certified.

5 MEMBER LEACH: Okay. That sounds good.

6 VICE-CHAIR ALULI: I've got a question, Mr. Chair.
7 If Mr. Nishiki does not comply, what are the consequences?

8 MS. UEOKA: Well, when he doesn't comply -- and --
9 well, if he actually gets elected -- because if he doesn't
10 get elected in November, this issue kind of becomes a little
11 moot.

12 VICE-CHAIR ALULI: Correct.

13 MS. UEOKA: But if he does get elected, then we
14 would be able to send this off for a complaint hearing. We
15 would issue a letter to him -- the Board of Ethics would
16 have to vote to initiate a complaint proceeding against him
17 for failure to submit a financial disclosure form as
18 required by the Charter. And then we would invite him to
19 come and attend this.

20 VICE-CHAIR ALULI: So it does not eliminate him
21 from being a candidate, then?

22 MS. UEOKA: No. But because his information is up
23 for public scrutiny, it may cause complications for him.

24 CHAIR KAUFMAN: I'd suggest that the minutes of the
25 regular session are public record.

1 MS. UEOKA: Right. So if someone were to request
2 these minutes of this current session, they could see that
3 as well.

4 MEMBER LEACH: My question earlier was is it the
5 Board's responsibility if the disclosure is not received,
6 that the County Clerk is made aware of that before the
7 election?

8 MS. UEOKA: The County Clerk is aware that we have
9 not received it, the financial disclosure statement.
10 Because after every meeting, once we've accepted the
11 financial disclosures, I usually send copies of all the
12 accepted financial disclosure statements with a chart of
13 when the nominations were filed, when we received the
14 financial disclosure statement, when the Board accepted it,
15 and when I delivered it to the County Clerk.

16 MEMBER LEACH: You're so efficient.

17 MS. UEOKA: And this also goes for the directors
18 and deputy directors as well. I do these charts for the
19 County Clerk's office so that they can see, too. See my
20 little gray line that we did not receive.

21 MEMBER LEACH: That answers the question. Thank
22 you.

23 CHAIR KAUFMAN: Okay. So we have had a discussion.
24 And our Executive Secretary has been directed by the Chair
25 with unanimous backing with the rest of the Board with

1 regard to the appropriate action to take.

2 There are no Announcements. We are now ready for a
3 motion to move into Executive Session.

4 MEMBER WOODS: I move that we move into Executive
5 Session.

6 CHAIR KAUFMAN: Rebecca.

7 MEMBER WOODS: Okay. With reference to the agenda
8 items listed below, one or more executive meetings are
9 anticipated. In particular, the Board of Ethics anticipates
10 it will consider the evaluation, dismissal or disciplining
11 of an officer or employee of the County of Maui where
12 considerations of matters affecting privacy will be
13 involved.

14 The Board may also consult with the Board's
15 attorney on questions and issues pertaining to the Board's
16 powers, duties, privileges, immunities and liabilities.
17 Therefore, pursuant to Hawaii Revised Statutes, HRS Sections
18 92-5(a) 2 and 4, the following items may be considered in
19 executive session. The Board may also convene in
20 Adjudicatory Session pursuant to HRS Section 92-6.

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

22 MEMBER WUKELIC: I second it.

23 CHAIR KAUFMAN: All this favor.

24 (Round of ayes.)

25 (At which time, the Board moved into

1 Executive Session.)

2 CHAIR KAUFMAN: We are now back in regular session,
3 and the door is now unlocked. And is there a motion to
4 adjourn out of Regular Session?

5 MEMBER WUKELIC: I so move.

6 CHAIR KAUFMAN: Thank you, Marti.

7 VICE-CHAIR ALULI: I'll second.

8 CHAIR KAUFMAN: Thank you again. All in favor.

9 (Round of ayes.)

10 CHAIR KAUFMAN: We are now all done for today.

11 (Meeting concluded at 1:10 p.m.)

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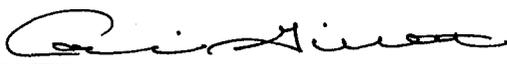
County of Maui)

) ss.

State of Hawaii)

I, CAMMIE GILLETT, a Certified Shorthand Reporter
in and for the State of Hawaii, do hereby certify that the
foregoing pages comprise a full, true and correct transcript
of the proceedings had in connection with the above-entitled
matter.

Dated this 22 day of October 2008.


CAMMIE GILLETT, RPR, CSR No. 438