

Dean Toyofuku
Chair

Mia Shiraishi
Vice Chair

Susan Burriss
Secretary

Members:
Ryan de la Pena
Maureen Tabura
Mary Tudela

**COUNTY OF KAUA'I BOARD OF ETHICS
NOTICE OF MEETING AND AGENDA**

Friday, May 17, 2019
1:00 p.m. or shortly thereafter
Mo'ikeha Building, Liquor Conference Room 3
4444 Rice Street, Līhu'e, HI 96766

CALL TO ORDER

APPROVAL OF MINUTES

Open Session Minutes of April 12, 2019

COMMUNICATION

BOE 2019-14

Possible conflict of interest dated May 6, 2019 from Arryl
Kaneshiro relating to Agenda Item C 2019-108, Legal document.

REQUEST FOR AN ADVISORY OPINION

None

BUSINESS

BOE 2019-04

Substantive Disclosures information.

BOE 2018-17

Explicit recommendation on the steps to be taken at the Charter
level and the administrative level to improve the **existing**
countywide disclosure requirement coupled with a fine schedule
for non-compliance

BOE 2019-08

Review Advisory Opinions RAO 13-006 and RAO 18-004.

DISCLOSURES

Employees

1. Kaaina Hull – Planning Director
2. Todd Raybuck – Police Chief
3. James Forrest – Deputy County Attorney

An Equal Opportunity Employer

Volunteers
4. Beth Tokioka – Civil Service Commission

EXECUTIVE SESSION

Pursuant to Hawai'i Revised Statutes §92-4, §92-5 (a) (2) and (4), §92-6 (a) (b), the purpose of this Executive Session is to consider the evaluation, dismissal or discipline of an employee or officer of the County in which charges have been alleged against an employee or officer where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held; and to consult with the Board's legal counsel on issues pertaining to the Board's and the County's powers, duties, privileges, immunities, and /or liabilities as they may relate to this item, deliberate and take such action as appropriate.

ES-003: BOE 2019-14 Letter dated March 1, 2019 requesting the Board of Ethics to initiate an investigation into an allegation of an employee or officer of the County.

RETURN TO OPEN SESSION

ANNOUNCEMENTS

Next Meeting: Friday, June 21, 2019 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room 3

ADJOURNMENT

NOTICE OF EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). Discussions held in Executive Session are closed to the public.

cc: Deputy County Attorney Maryann Sasaki

PUBLIC COMMENTS and TESTIMONY

Persons wishing to offer comments are encouraged to submit written testimony at least 24 hours prior to the meeting indicating:

1. Your name and if applicable, your position/title and organization you are representing;
2. The agenda item that you are providing comments on; and
3. Whether you will be testifying in person or submitting written comments only.
4. If you are unable to submit your testimony at least 24 hours prior to the meeting, please provide 10 copies of your written testimony at the meeting clearly indicating the name of the testifier; and

While every effort will be made to copy, organize and collate all testimony received, materials received on the day of the meeting or improperly identified may be distributed to the members after the meeting is concluded.

The length of time allocated to persons wishing to present verbal testimony may be limited at the discretion of the chairperson or presiding member.

Send written testimony to:

Board of Ethics

Office of Boards & Commissions

4444 Rice Street, Suite 150

Līhu‘e, HI 96766

Phone: (808) 241-4881 Fax: (808) 241-5127

SPECIAL ASSISTANCE

If you need an ASL Interpreter, materials in an alternate format, or other auxiliary aid support, or an interpreter for a language other than English, please contact Anela Segreti at (808) 241-4917 or asegreti@kauai.gov at least seven calendar days prior to the meeting.

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission:		BOARD OF ETHICS	Meeting Date	April 12, 2019
Location	Mo'ikeha Building, Liquor Conference Room 3		Start of Meeting: 1:00 p.m.	End of Meeting: 2:47 p.m.
Present	Chair Dean Toyofuku, Vice Chair Mia Shiraishi, Secretary Susan Burriss. Member: Mary Tudela, Ryan de la Pena, Maureen Tabura Also: Deputy County Attorney Maryann Sasaki. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti.			
Excused				
Absent				
SUBJECT	DISCUSSION		ACTION	
Call To Order			Chair Toyofuku called the meeting to order at 1:00p.m. with six members present which constituted a quorum.	
Approval of Minutes	<u>Open Session Minutes of March 15, 2019</u> Ms. Burriss corrected spelling of her name in three places, and time for end of meeting on page 1 to 2:40pm. Chari Toyofuku corrected on page 1 BOE 2019-04, Chair Toyofuku read Charter section should be 20.05, D4.		Ms. Tudela moved to accept the minutes of March 15, 2019 as corrected, seconded by Mr. de la Pena. Motion passed 4:0, 2 abstentions. Motion carried.	
Communication	<u>BOE 2019-09 Possible conflict of interest and recusal dated March 14, 2019, from Ross Kagawa relating to Resolution No. 2019-25, Mayoral appointment of Lori K. Koga to the Charter Review Commission.</u> Chair entertained motion to receive communication BOE-2019-09		Ms. Burriss moved to receive BOE 2019-09. Ms. Tabura seconded the motion. Motion carried 6:0	

SUBJECT	DISCUSSION	ACTION
	<p><u>BOE 2019-10 Possible conflict of interest dated March 21, 2019, from KipuKai Kualii relating to Bill No. 2738, the Mayor's proposed operating budget for fiscal year 2019-2020 – appropriations for YWCA.</u></p> <p>Chair entertained motion to approve to receive communications BOE-2019-10</p>	<p>Ms. Burriss moved to receive communication BOE 2019-10. Mr. de la Pena seconded the motion. Motion carried 6:0.</p>
	<p><u>BOE 2019-11 Possible conflict of interest dated March 21, 2019, from Arryl Kaneshiro relating to Bill No. 2738, the Mayor's proposed operating budget for fiscal year 2019-2020 – appropriations for Grove Farm Co., Inc.</u></p>	<p>Ms. Shiraishi moved to receive communication BOE 2019-11. Ms. Burriss seconded the motion. Motion carried 6:0.</p>
	<p><u>BOE 2019-12 Possible conflict of interest dated March 21, 2019, from Arryl Kaneshiro relating to Bill No. 2738, the Mayor's proposed operating budget for fiscal year 2019-2020 – appropriations for Kaua'i Soil Conservation.</u></p>	<p>Mr. de la Pena moved to receive communication BOE 2019-12. Ms. Tabura seconded the motion. Motion carried 6:0</p>
	<p><u>BOE 2019-13 Possible conflict of interest dated April 3, 2019, from KipuKai Kualii related to the YWCA of Kaua'i Disaster Preparedness Improvement Project.</u></p>	<p>Ms. Tudela moved to receive communication BOE 2019-13. Ms. Shiraishi seconded the motion. Motion carried 6:0.</p>

SUBJECT	DISCUSSION	ACTION
<p>Request for an Advisory Opinion</p>	<p><u>RAO 2019-01 Request for Advisory Opinion dated January 9, 2019, from Lyle Tabata Regarding Donald Fujimoto's outside employment.</u></p> <p>Chair Toyofuku asked if County Clerk, Ms. Tanigawa, had any particular item that she wanted to speak on. She replied no.</p> <p>Ms. Tudela requested clarification regarding RAO 2019-01. It was clarified that they have discussed this, but it had been deferred.</p> <p>Ms. Ching stated the deferral was to review the two prior opinions that were rendered regarding Lyle Tabata's outside employment.</p> <p>Ms. Tabura questioned why Mr. Tabata was requesting opinion and not Mr. Fujimoto. Discussion of the form requesting the opinion and the option to refer to the Board of Ethics. It is a policy that stands. Mr. Fujimoto did appear before the Board, but Mr. Tabata did not.</p> <p>Discussion of deliberating on 2019-01 with 2019-08. Ms. Shiraishi pointed out that there is a distinguishable difference between the two, Mr. Tabata had a specific firm and Mr. Fujimoto was broad, saying random firms and individuals.</p> <p>Ms. Ching asked for the record that Member Tabura state reason for abstention.</p> <p>Ms. Ching asked for the record that each member state reason for denying 2019-01.</p>	<p>Ms. Shiraishi moved to disapprove the outside employment request as referred by Lyle Tabata. Ms. Tabura seconded then withdrew. Mr. de la Pena seconded. 5:0, 1 abstention. Motion carried</p> <p>Ms. Tabura stated that she was not present and did not feel she had all the information from the previous meetings.</p> <p>Ms. Burriss stated that the definition of RME involves applications in front of various County Boards and Officers,</p>

SUBJECT	DISCUSSION	ACTION
		<p>conflict is ever present.</p> <p>Ms. Tudela supported Ms. Burris statement and suggested they reference 2016 Charter 20.02 E special benefits that could potentially create a conflict, 20.02 A, reciprocal decisions that could reasonably tend to create conflict.</p> <p>Mr. de la Pena supported motion because Mr. Fujimoto could be self-employed and could represent multiple firms and individuals that aren't named, and because he's self-employed he would be submitting permits himself rather than someone else from the company.</p> <p>Ms. Shiraishi stated the definition of an RME and all the responsibilities it entails implies a conflict, as well as the fact that he would be applying for permits with the County and he works for the County, and because his request is vague and he cannot say who he'll be working for. Also since he works full time for the County the</p>

SUBJECT	DISCUSSION	ACTION
		<p>only time he would be able to go and apply for permits and all the things for this potential outside job would be during County employment time, do not see how he could do both.</p> <p>Chair Toyofuku stated that understanding the definition of an RME and considering the department he works in and that permits and plans and everything else will be going to divisions and departments in that overall department to begin with, and request was very broad.</p>
<p>Business</p>	<p><u>BOE 2019-04 Substantive Disclosures Information</u></p> <p>Discussion of responsibility of reviewing of disclosure statements and amending disclosure statements. Charter section 20.05, D4, responsibilities. Applications have been received incomplete, looking at clarifying that all sections needs to be completed; must fill in all sections with “not applicable” and “N/A” or “none” rather than leaving it blank. Also questions regarding companies that are unknown to Board, do we need somewhere for an explanation or just kick back and ask for more clarification. Discuss amending form to get more details and getting a draft from staff.</p> <p>Clarified three things needing change: 1. Employer and what kind of business it is. 2. NA, all fields must be completed. 3. List Boards and non-profits they may be sitting on and brief description on what they do.</p>	<p>Mr. de la Pena moved that Boards and Commissions staff draft a disclosure statement with clarification of employer and type of business, clarifying that all questions must be completed; description of board, committees in</p>

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Tudela stated that she thought a role description of what a Member does when he or she reviews the disclosure, which is not on disclosure form, but worth that it be documented.</p> <p>Ms. Ching suggested to discuss with attorney where the role would be defined.</p> <p>Ms. Sasaki suggested the administrative rules be revised, indicating clarification in respect to the Charter.</p> <p>Mr. de la Pena and Chair Toyofuku cited sections in the Charter and in the Rules that clarify role of Board. No change needed, want to ensure consistency going further.</p>	<p>detail. Ms. Burriss seconded. Motion carried 6:0</p>
	<p><u>BOE 2018-17 Explicit recommendation on the steps to be taken at the Charter level and the administrative level to improve the existing countywide disclosure requirement coupled with a fine schedule.</u></p> <p>Ms. Sasaki will email a full report to members. She verbally reported that what is needed is to draft an Ordinance and get a pass. She's looked at the codes from the other Counties, there is a penalty for a late filing and if they continue to be late there's another penalty and so on. Some Counties have, for no filing at all, have serious penalties and she did not like that and did not think the members would as well. The other option would be to draft a rule, however that may leave it open for challenge. Draft says \$100 for first late filing, \$200 for the second late filing, thereafter for each additional late filing \$200 and that the person would have an opportunity to have a hearing with the Board as to the reason they have a late filing if they chose to, with Board having adjudication authority. Ms. Sasaki would draft ordinance, Boards and Commissions would get it through the process.</p> <p>Ms. Tanigawa, County Clerk, stated that the Ordinance process once submitted to the</p>	

SUBJECT	DISCUSSION	ACTION
	<p>County Council takes about two months, if it falls into schedule and there's not a lot of discussion.</p> <p>Ms. Sasaki proposed that the Ordinance should go into the County Code right before the end of the penalty section, in Chapter 3-3.11, violation and penalties, after C and D would become E.</p> <p>Discussed where monies would go. Ms. Tanigawa explained that it depends what would like money to be used for. If it goes into the general fund it goes to support other County projects. Can designate it to a special fund which need to establish by ordinance if don't have it.</p> <p>Ms. Sasaki will send draft Ordinances, one establishing a fund, one establishing a fine schedule.</p>	<p>Mr. de la Pena moved to defer BOE 2018-17 for further information and review. Ms. Tabura seconded. Motion carried 6:0</p>
	<p><u>BOE 2019-08 Review Advisory Opinions RAO 13-006 and RAO 18-004.</u></p> <p>Ms. Tudela clarified that Board is looking to amend or revoke and that is why it is coming to review.</p> <p>Ms. Sasaki stated she needs to check on the process to have an opinion to revoke the opinions. She wants to make sure there would be a process that she needs to look into the procedure to have decision in public files.</p> <p>Ms. Tudela asked for legal definition of revocation.</p> <p>Ms. Sasaki explained that she would like to see how agencies handle it.</p>	<p>Ms. Burriss moved to consider whether a method of notifying the general public is necessary or desirable with respect to decisions that appear to revoke prior decisions of the Board. Ms. Tudela seconded. Motion carried 6:0</p> <p>Ms. Shiraishi moved to revoke RAO 13-006 and RAO 18-004. Ms. Tudela seconded. 4:2. Motion carried.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Ms. Tudela looked up definition and is satisfied that it is from this point in time no longer valid.</p> <p>Lengthy discussion regarding what led to the review of RAO 13-006 and RAO 18-004 and why Board is considering revocation and should they move forward.</p> <p>Mr. de la Pena stated he felt that Mr. Tabata should be given opportunity to defend before revoking the past Advisory Opinions.</p>	<p>Mr. de la Pena – nay – feel that this a different request than Mr. Fujimoto, not only because of the RME but also because Mr. Fujimoto would be self-employed and wearing multiple hats.</p> <p>Ms. Tudela – aye – because leaving it out there would be confusing for other employees and with more specifics of what the role entails is concerned about potential conflicts that could occur.</p> <p>Ms. Burriss – nay – believe it is unnecessary, what did today speaks for itself and what was done in 2013 and 2018 is history, can't rewrite it.</p> <p>Ms. Tabura – aye – based on additional information, to eliminate confusion.</p> <p>Ms. Shiraishi – aye – need to clear the record, situation is different from Mr. Fujimoto and be dealt separately so that all other County employees are clear as to the opinion, based heavily on the</p>

SUBJECT	DISCUSSION	ACTION
		<p>definition of RME and they are required to conduct direct management of the contracting entity and supervise construction projects and review all contracts. This is a big role and creates a conflict with his County employment.</p> <p>Chair Toyofuku – aye – all reasons stated, interpretation of RME definition, it is the Responsible Managing Employee of the entire company entity and any contractor could potentially have plans, permits, documentation that may have to come before certain County departments and as Deputy County Engineer, he sits over a lot of these departments.</p>
<p>Disclosures</p>	<p><u>Employees</u></p> <ol style="list-style-type: none"> 1. Kilipaki Vaughan – Deputy Fire Chief 2. Ernest Barriera – Assistant Chief Procurement Office 3. Lyle Tabata – Deputy County Engineer <p><u>Volunteers</u></p> <ol style="list-style-type: none"> 4. Lori Koga – Charter Review Commission 5. Kurt Akamine – Board of Water Supply 6. Jen Chahanovich – Fire Commission 7. Elesther Calipjo – Board of Water 	<p>Mr. de la Pena moved to approve #1-8. Ms. Tudela seconded.</p>

SUBJECT	DISCUSSION	ACTION
	8. Leland Kahawai – Salary Commission	Motion carried 6:0
Executive Session	There was no Executive Session	
Announcements	<u>Next Meeting: Friday, May 17, 2019 – 1:00 p.m., Mo‘ikeha Building, Liquor Conference Room 3</u>	
Adjournment		Ms. Shiraishi moved to adjourn the meeting, Chair Toyofuku adjourned the meeting at 2:47 p.m.

Submitted by: _____
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
 Dean Toyofuku, Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.

COUNTY COUNCIL
Arryl Kaneshiro, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Felicia Cowden
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

RECEIVED

MEMORANDUM

May 6, 2019

MAY 9 2019

TO: Members of the Kaua'i County Council **BOARDS & COMMISSIONS**

FROM: Arryl Kaneshiro, Council Chair **AK**

RE: **POSSIBLE CONFLICT OF INTEREST RELATING TO AGENDA
ITEM C 2019-108, LEGAL DOCUMENT**

Pursuant to Section 20.04(B) of the Kaua'i County Charter, Section 3-1.9 of the Kaua'i County Code 1987, as amended, and Rule No. 8 of the Rules of the Council of the County of Kaua'i, I hereby provide written disclosure on the record of a possible conflict of interest relating to Agenda item C 2019-108, "Right-of-Entry Agreement by and between the County of Kaua'i and Grove Farm Company, Inc., TMK No. (4) 2-8-005:006," due to my employment with Grove Farm, Incorporated. The purpose of the Right-of-Entry Agreement is to authorize the County to enter onto private property for purposes of performing repaving and reconstruction work.

In light of the above, I will recuse myself from the aforementioned item.

Should you have any questions, please contact me. Thank you for your attention to this matter.

CNT:mn

cc: May 29, 2019 Council Meeting Agenda
County of Kaua'i Board of Ethics
Council Services Staff



**KAUA'I COUNTY BOARD OF ETHICS
DISCLOSURE STATEMENT
INSTRUCTION SHEET**

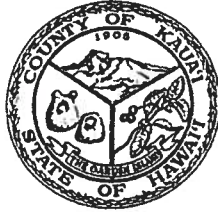
- I. **WHO MUST FILE.** The Mayor, Council persons, Prosecuting Attorney, all department heads and deputies, members of boards and commissions, the purchasing agent, any employee delegated or authorized to act on behalf of the director of finance and deputy director of finance in their absence, and all candidates for elective office.
- II. **WHEN TO FILE.** Disclosure forms must be filed within thirty (30) days of taking office or within seven (7) days of filing nomination paper as a candidate for office, as in the case may be. Section 3-1.9, Kaua'i County Code 1987; Section 20.04, Charter of the County of Kaua'i.
- III. **WHAT TO FILE.** Charter §20.04 says you must file a list of all property in which you have a right, title, or interest, a business firms which contract for county business in which you have any interest, all places of your employment including part-time employment, all sources and amounts of income, business, ownership, officer and director positions, debts, creditor interests in insolvent businesses, and the names of persons represented before government agencies.
- IV. **AMENDMENTS.** Disclosure forms must be updated within thirty (30) days of any change in information requiring disclosure.
- V. **PENALTY FOR FAILURE TO FILE.** A violation of any provision of the Code of ethics of the Charter of the County of Kaua'i shall be cause for fine, suspension, or removal from office or employment.
- VI. **WHERE TO FILE.** All Disclosure Statements should be filed by email, mail or in person, addressed as follows:

**Kaua'i County Board of Ethics
c/o Office of Boards and Commissions
Mo'ikeha Building
4444 Rice Street, Suite 150
Lihu'e, Kaua'i, Hawai'i 96766**

asegreti@kauai.gov

**We suggest you make and retain a copy for your personal records.
DISCLOSURE FORMS ARE PUBLIC RECORD**

BOE 2019-04



**BOARD OF ETHICS
COUNTY OF KAUA'I**

DISCLOSURE STATEMENT

THIS DOCUMENT SHALL BECOME A PUBLIC RECORD WHEN RECEIVED BY THE OFFICE OF BOARDS AND COMMISSIONS. PLEASE COMPLETE ALL SECTIONS, USE N/A IF YOU HAVE NOTHING TO REPORT FOR A PARTICULAR SECTION.

I. GENERAL INFORMATION

NAME: _____
(First) (Middle) (Last)

Name of spouse: _____

POSITION TITLE: Indicate your elected or appointed County position, Board or Commission, or the public office you are filing for:

- I am a Candidate for Public Office: _____
(Name of Public Office)
- I am an Elected or Appointed official or **delegated employee** for Kaua'i County: _____
(Position Title)
- I am an Appointed member of a Board or Commission: _____
(Name of Board or Commission)

II. EMPLOYMENT – List all **current employment other than County employment (including part-time)**

Employer	Type of Business	Position

III. CURRENT ANNUAL INCOME – List all sources and amounts of income greater than \$1,000 (i.e. wages, income from rental or real estate, loan repayments, stock dividends, interest on savings or bonds, retirement income, social security, etc.) including your County of Kaua'i income.

Source (Required: name of company)	Current Annual Income (Round to the nearest \$10,000. If more than \$100,000, you may list > \$100,000)

IV. BUSINESS INTEREST – List all business, partnerships, or sole proprietorships and the percentage of interest in which you have an interest (please identify acronyms appropriately).

Business Name	Percent Ownership Interest	Check here if business contracts with the County
_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>

V. POSITION HELD IN BUSINESS OR ORGANIZATION – List in the space below the information requested for all organization (whether corporations, non-profit corporations, unincorporated organization, partnerships, etc., and identify acronyms appropriately) in which you are an official of the organization (for example, president, vice-president, secretary, treasurer, trustee, agent, board member, etc.)

Organization Name	Type of Organization	Position
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

VI. CREDITORS – List the name of every person, business, organization, or corporation (excluding credit cards) to whom you owe money.

VII. REAL PROPERTY – List the street address or tax map key number of any real estate in which you have an interest. (Pursuant to the Constitution of the State of Hawai'i, Article XIV)

Address/Location	Tax Map Key Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

VIII. REPRESENTATION BEFORE GOVERNMENT AGENCIES – List the names of all persons, corporations, organizations, partnerships, etc. that you have represented before any government agency, (Federal, State, or County) board, or commission in the last five years:

Name of person, company, etc.	Board/Commission/Agency	Year
_____	_____	_____
_____	_____	_____
_____	_____	_____

IX. CREDITOR INTEREST IN INSOLVENT BUSINESSES – List the name of any insolvent business which owes money to you.

X. CERTIFICATION – MUST BE SIGNED IN FRONT OF A NOTARY PUBLIC

I hereby certify that the above statement made by me are true, complete, and accurate to the best of my knowledge and belief. I further understand that if I acquire or possess an interest that might reasonably tend to create a conflict of interest with my duties or authority, or I or a member of my immediate family, which includes parents, siblings, spouse, or children, is an owner, officer, executive director, or director of an organization in any matter pending before me, I shall make full disclosure of the conflict of interest and shall not participate in said matter.

Signature

Document Date: _____ # Pages: _____

Document Description: _____

Notary Name: _____ Circuit

Subscribed and sworn before me this _____ day of _____, 20____

Notary Public, State of Hawai'i

My Commission Expires: _____