

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as amended 10/16/2020.

Board/Commission:	BOARD OF ETHICS	Meeting Date	September 18, 2020
Location	Teleconference	Start of Meeting: 1:01 p.m.	End of Meeting: 2:46 p.m.
Present	Chair Mia Shiraishi, Vice Chair Susan Burriss, Secretary Mary Tudela. Members: Kelly Gentry, John Latkiewicz, Dean Toyofuku. Also: Deputy County Attorney Charles Foster. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti. Testifier: Nicholas Courson		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Shiraishi called the meeting to order at 1:01 p.m. Roll call: Member Gentry: present Member Latkiewicz: present Member Toyofuku: present Secretary Tudela: present Vice Chair Burriss: present Chair Shiraishi: present Six members present, which constituted a quorum.
Approval of Minutes	<u>Open Session Minutes of August 10, 2020</u> Mary stated that she called Administrative Specialist to make two typos which were corrected and reposted. Vice Chair Burriss noted that on page 7, “mute” should be “moot”. Chair Shiraishi noted that on page 3, “question” should be “caution”. Chair Shiraishi entertained a motion to approve the minutes of August 10, 2020 as amended.	Member Latkiewicz moved to approve the minutes of August 10, 2020 as amended. Member Toyofuku seconded. Voice vote: 6 ayes, 0 nays Motion carried 6:0

SUBJECT	DISCUSSION	ACTION
Testimony	<u>None</u>	No action
Communication	<p><u>BOE 2020-25 Possible conflict of interest from Council Chair Arryl Kaneshiro dated June 10, 2020 relating to C 2020-169, right-of-entry agreement on the June 17, 2020 Council Meeting.</u></p> <p>Chair Shiraishi entertained a motion to receive.</p>	<p>Secretary Tudela moved to receive BOE 2020-25. Member Toyofuku seconded.</p> <p>Voice Vote: 6 ayes, 0 nays Motion carried 6:0</p>
Request for an Advisory Opinion	<p><u>RAO 2020-02 Request for an Advisory Opinion from Nicholas Courson dated August 10, 2020 relating to whether it would be a conflict of interest for him to do transactional legal work while employed on a contract basis by the Kauai Emergency Management Agency.</u></p> <p>Charles Foster, Deputy County Attorney, addressed concerns that there may be a conflict on some of the board members sitting on this matter. His legal opinion is that they do not have a conflict in rendering an opinion to Nick's request. He asked if anyone had any legal reason to think they have a conflict.</p> <p>Chair Shiraishi clarified that Mr. Courson had been assigned to the Board of Ethics as the Deputy County Attorney and also former administrator for Boards and Commissions for some of the members and now he is before some of the people he used to advise. Question is to see if that in and of itself is in issue.</p> <p>Mr. Foster confirmed that it is not an issue.</p> <p>Chair Shiraishi confirmed that all members could be fair and impartial. Hearing no one with a potential conflict she called for the motion.</p> <p>Mr. Foster suggested that the motion be more specific. He would suggest a motion that the Board is finding no conflict with considering the request.</p> <p>Ms. Ching suggested that though Nicholas Courson has previously served as the Deputy County Attorney for the Board of Ethics and previously Administrator for Boards and Commissions the members find that they have no legal conflict in considering RAO 2020-02.</p>	<p>Vice Chair Burriss moved that although Nicholas Courson had previously served as the Deputy County Attorney for the Board of Ethics and Administrator for Boards and Commissions the members find that they have no legal conflict in considering RAO 2020-02. Secretary Tudela seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>

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	<p>Chair Shiraishi opened the meeting up for discussion.</p> <p>Secretary Tudela asked Mr. Courson if he could share any example of when his transactional work with non-County potential clients would ever overlap with his current duties as County Project Manager and Compliance Officer.</p> <p>Mr. Courson did perceive it as a possibility and request is a surplus of caution and to be transparent. If the occasion arose he would disclose it to the KEMA administrator and appropriately handle it.</p> <p>Member Toyofuku asked Mr. Courson to specify transactional work in addition to estate planning.</p> <p>Mr. Courson stated that he has been asked in the past to do 1031 exchanges and lease work. He is busy and it would be limited. It would be things that would be after work or weekend so would not include work to go to court or before administrative agencies. Maybe basic consulting work.</p> <p><i>Vice Chair Burris got disconnected, she was connected by computer but could not unmute. She rejoined the meeting, but could not be heard. She reconnected and confirmed that she could hear the meeting, but could not unmute.</i></p> <p>Chair Shiraishi asked what he means by consulting work.</p> <p>Mr. Courson did not have any examples, but has been asked to draw trust and do 1031 exchanges, but would not want to limit himself unduly provided that he stayed within what he outlined in his letter. He confirmed that he would come back to the Board if something came up outside of his letter.</p> <p>Chair Shiraishi asked him to explain the bulk of his current work, specifically if the buck stops with him.</p> <p>Mr. Courson said it does not and he explained how the CARES Act grant operates. He is a resource and tracks the money overall per US Treasury guidelines, but no final determinations on who receives money and what it is used for except for being within the guidelines. He will also be involved in the County's ACT 35 monies project to fix up a levy on the west side. He explained his role in the Small Business grants.</p>	

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	<p>Chair Shiraishi asked who he anticipates his clients to be.</p> <p>Mr. Courson stated that it would be work for family members as well as clients for a friend who is a financial planner who has asked, and possibly some estate planning. He emphasized that he does not have a lot of time for extra work.</p> <p>Chair Shiraishi stated that she wants to be sure it is an appearance of a conflict versus a conflict.</p> <p>Mr. Courson does not see it as either. He stated that many in the County have second jobs and he does not have the ability to directly influence and the handful that he does he would stay far from that. He is disclosing far above and beyond HR policy.</p> <p>Chair Shiraishi stated her concern being if someone whom receives money becomes a client.</p> <p>Member Toyofuku stated that he is assuming that Mr. Courson would know that County employees or any entities that got CARES Act money could potentially be an appearance of conflict.</p> <p>Mr. Courson stated that he would commit to that, but was not in control of anyone that received CARES Act money, and in response to County employees the County Code is specific. He stated he could commit to not engage in work with anyone that got CARES Act monies or any County employees if that makes the Board more comfortable.</p> <p>Secretary Tudela clarified that she hears that Mr. Courson does not intend to market himself and that he will adhere to County codes and is concerned that the Board would not be consistent and restrict him in a way that they would not restrict another employee.</p> <p>Deputy County Attorney Foster stated that the request is for an opinion about whether the proposal violates conflict of interest and that the Board needs to focus on section 3.17 of the code and make that determination. He is uncomfortable with the Board making ad hoc conditions, the question is, is there a conflict or is there not a conflict? This is his opinion as their attorney.</p> <p>Board members discussed their thoughts on what they believe Mr. Courson was saying.</p>	<p>Vice Chair Burriss moved that there is no conflict provided that Mr. Courson conducts business as stated in his request. Secretary Tudela seconded.</p>

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	<p>Chair Shiraishi summarized that Mr. Courson is saying that he would not do any transactional work on County time and will not appear before any County agencies then that would be fine, and he will come before Board if there is anything that comes up he will come before Board again for guidance.</p> <p>Mr. Courson stated he would comply with the Code of Ethics, Charter and Code, and Board of Ethics Rules and Regulations.</p> <p>Chair Shiraishi called for roll call vote.</p>	<p>Roll call vote: Member Gentry: aye Member Latkiewicz: aye Member Toyofuku: aye Secretary Tudela: aye Vice Chair Burriss: aye Chair Shiraishi: aye</p> <p>Motion carried 6:0</p>
BUSINESS	<p><u>BOE 2020-26 Discussion and possible action regarding Advisory Opinion in response to RAO 2020-01.</u></p> <p>Board discussed the finished advisory opinion and forwarding it to Mr. Renaud and question if it should be sent to his supervisor. Clarified that it needs to be sent to address furnished by the requester per rules.</p>	<p>No action.</p>
	<p><u>BOE 2020-27 Discussion and possible action regarding revising the disclosure statement.</u></p> <p>Ms. Ching explained that based on previous discussions this item was placed on the agenda regarding Section IV of disclosures and adding type of business for more information and clarification.</p> <p>Ms. Ching clarified that can add acronym statement under employment but looking at adding type of business under section IV.</p> <p>Chair Shiraishi suggested changing type of business and type of organization to nature of business and nature of organization.</p> <p>Ms. Ching suggested description of business. Board discussed which to use.</p>	<p>Secretary Tudela moved that change disclosure form to specify under employment to ask for a description of the type of business and if acronyms are used to spell out the meaning of the acronym.</p> <p>Secretary Tudela amended motion to under 4 description of business interest and under type of employment to spell out the acronyms.</p> <p>Secretary Tudela amended her motion to under #2 Employment to add identifying acronyms as appropriate and amend type of business to description of business activity, under #4 Business Interest description to add description of</p>

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		<p>business activity and under #5 Position Held in Business or Organization to add description of organization activity. Vice Chair Burriss seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>
	<p><u>BOE 2020-28 Discussion and possible action on new employee orientation and acknowledgement on ethics.</u></p> <p>Ms. Ching reported that she has been in conversation with HR and there is an acknowledgement signed by employees when first hired. She asked about a reminder to employees, and HR suggested putting it in a newsletter. She last discussed with them putting it in their newsletter twice a year as an update.</p>	<p>No action.</p>
	<p>Chair Shiraishi asked to amend the agenda to go into executive session to accommodate Nadine Ando, Special Counsel's schedule.</p>	<p>Member Latkiewicz moved to amend the agenda to go into executive session. Member Toyofuku seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>
<p>Executive Session</p>	<p>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 consult with the Board's legal counsel on issues pertaining to Resolution 2019-1 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; 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.</p> <p><u>ES-028 Executive Session Minutes of August 10, 2020</u></p>	

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	<p><u>ES-029: BOE 2020-29 Pursuant to Hawai‘i Revised Statutes §92-4 and §92-5 (a) and (2) and (4), the purpose of this Executive Session is for the Board to discuss and make decisions regarding any response to the Complaint No. 20-001 served on August 24, 2020, in accordance with the Preliminary Opinion served on August 18, 2020 that may be received prior to the meeting (formal Answer to Complaint due on September 14, 2020).</u></p> <p>The Board moved into Executive Session at 2:02 pm</p>	<p>Vice Chair Burriss moved to go into executive session at 2:02pm. Secretary Tudela seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p>
Return to Open Session	<p>Ratify on Board actions taken in Executive Session.</p>	<p>The Board resumed in Open Session at 2:43 p.m.</p> <p>Secretary Tudela moved to ratify decisions made in Executive Session. Member Latkiewicz seconded.</p> <p>Voice vote 6 ayes, 0 nays. Motion carried 6:0</p>
Disclosures	<p><u>Employees:</u></p> <ol style="list-style-type: none"> 1. <u>Hugo Cabrera, Office of the County Attorney</u> 2. <u>Arryl Kaneshiro, Councilmember</u> <p><u>Volunteers:</u></p> <ol style="list-style-type: none"> 3. <u>Kelly Gentry, Board of Ethics</u> 4. <u>Jennifer Carter, Civil Service Commission</u> <p><u>Candidates:</u></p> <ol style="list-style-type: none"> 5. <u>Richard Fukushima, Candidate for County Council</u> 	<p>Secretary Tudela moved to approve disclosures Cabrera, Kaneshiro, Carter & Fukushima. Vice Chair Burriss seconded.</p> <p>Voice vote: 6 ayes, 0 nays Motion carried 6:0</p> <p>Secretary Tudela moved to approve disclosure Gentry. Vice Chair Burriss seconded.</p> <p>Voice vote: 5 ayes, 1 abstain, 0 nays Motion carried 5:1:0</p>

SUBJECT	DISCUSSION	ACTION
Announcements	Next Meeting: Friday, October 16, 2020 – 1:00 p.m., Teleconference	
Adjournment		Without objection the meeting was adjourned at 2:46 p.m.

Submitted by: _____ Reviewed and Approved by: _____
Anela Segreti, Administrative Specialist Mia Shiraishi, Chair

- () Approved as circulated.
- (X) Approved with amendments. See minutes of 10/16/2020.