

KAUAI COUNTY
BOARD OF ETHICS

RULES AND REGULATIONS

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RULE 1: GENERAL PROVISIONS

1.1 PURPOSE

These rules, made pursuant to Section 20.05B of the Charter of the County of Kauai, are intended to provide for the efficient administration of the declared policy of the Code of Ethics as set forth in Article XX of the Charter.

1.2 DEFINITIONS

The following definitions will be used in these rules and regulations, unless the context clearly requires otherwise, it being understood that the use of any gender shall be applicable to all genders, and that the singular number shall include the plural and the plural the singular.

(a) "Advisory Opinion" - an opinion rendered by the Board pursuant to a request by any officer or employee, or former officer or employee, as to whether or not the facts and circumstances of a particular case violate or will violate the standards of conduct prescribed by Article XX.

(b) "Answer" - the written response to a complaint filed with the Board by the person disputing that complaint.

(c) "Article XX" - Article XX of the Charter of the County of Kauai and entitled "CODE OF ETHICS."

(d) "Board" - Kauai County Board of Ethics.

(e) "Charge" - the statement of facts and conclusions establishing a violation issued after the decision of the Board.

(f) "Complainant" - the party who has filed a complaint alleging that an officer or employee has violated Article XX.

(g) "Complaint" - a notarized letter, or a document authorized by a resolution of the Board, setting forth the basic facts alleging a violation of one or more provisions of Article XX.

(h) "County Attorney" - the Office of the County Attorney of the County of Kauai.

(i) "Decision" - the written conclusion of the Board rendered after the hearing, upon due deliberation of a complaint.

(j) "Deleted opinion or decision" - a summary of an advisory opinion, or decision, in which the identity of persons is not disclosed.

(k) "Employee" - a person employed by the County, except an officer or an independent contractor.

(l) "Officer" - the Mayor, councilpersons, all department heads and deputies, members of boards and commissions, and the purchasing agent.

(m) "Respondent" - the person allegedly violating Article XX.

(n) "Ruling" - a statement of Board action, which may be followed by an advisory opinion rendered due to the requester's need for immediate guidance.

1.3 THE BOARD

(a) Office. The office of the Board is in the County Building, Lihue, Kauai, Hawaii; or such other address as the Board may designate from time to time. All communications shall be addressed to the Kauai County Board of Ethics, c/o Office of the County Attorney, 4396 Rice Street, Lihue, Kauai, Hawaii 96766, unless otherwise directed.

(b) Meetings. The Board shall meet at least quarterly and exercise its powers in any part of the County of Kauai. Additional meetings may be called by the Chairman, or two (2) or more members upon notice to the other members. A majority of the membership to which the Board is entitled shall constitute a quorum for the conduct of business and shall be necessary for any action to be taken. Meetings shall be open to the public unless an executive meeting is deemed necessary by the Board pursuant to law.

(c) Election and Terms of Office. The Chairman, Vice-Chairman and Secretary shall be elected and shall serve for terms of one (1) year or until their respective successors are elected, such terms to commence on January 1 of each and every year.

(d) Duties and Responsibilities. The Board shall be responsible for the administration of the Code of Ethics.

RULE 2: DOCUMENTS, SERVICE, WITNESSES AND SUBPOENAS

2.1 FILING OF DOCUMENTS

(a) Where. All disclosures, complaints, requests for opinions, motions, submittals, reports, petitions, briefs, memoranda, and other papers required to be filed with the Board shall be filed by either mailing or hand-carrying same to the Office of the County Attorney. The date of the actual receipt of all papers filed and such shall be deemed the official time of filing.

(b) Signature. Certificate of Truth. All papers shall be legible and be signed in ink by the party executing same or by his duly authorized agent or attorney. The signature of the person signing the document

constitutes a certification that he had read the document; that to the best of his knowledge, information and belief, every statement contained therein is true and no such statements are misleading; and that it is not for purposes of delay.

(c) Number of Copies. An original of all papers shall be filed, as well as six (6) copies of answers, motions, and memoranda submitted for hearing purposes.

(d) Name and Address of Affected Persons. The initial document filed by any person in any proceeding shall state on the first page thereof his name, mailing address, and telephone number as well as the name, mailing address, and telephone number of others to be served with any documents filed in the proceeding.

2.2 COMPUTATION OF TIME

The day of the act, event or default is not to be included in computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable law. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday recognized by the State of Hawaii, in which event, the period runs until the next day which is not a Saturday, Sunday, or holiday.

2.3 CONTINUANCES OR EXTENSIONS OF TIME

Whenever a person or agency has a right, or is required, to take action within the period prescribed or allowed by these rules, or by order of the Board, he may apply in writing to a member of the Board for an extension not to exceed fifteen (15) days. Additional extensions or extensions exceeding fifteen (15) days will be granted by the Board only upon motion for good cause shown. The Board will not accept action not performed or documents not filed within the prescribed time without good cause shown.

2.4 SERVICE OF PROCESS

(a) By Whom Served. The Board shall cause to be served all orders, notices, and other papers which it is required by law to serve. Answers, motions, memoranda, and other pleadings relating to complaints or hearings shall be served by the party filing same.

(b) Upon Whom Served. All papers shall be served upon all counsel of record at the time of filing, upon parties not represented by counsel or upon their agents designated by them or by law. Any counsel entering an appearance subsequent to the initiation of the proceeding shall notify all parties of record of such fact.

(c) Method of Service. The service of complaint shall be made personally upon the individual, or in case he cannot be found, by leaving copies at his usual place of abode with some person of suitable age and discretion then residing there, or by delivering a copy to an agent

designated by him or by law to receive service of such papers.

Service of all other papers required to be served shall be made by delivering a copy to counsel of record, if any, or to the individual or his agent designated by him or by law to receive service of such papers or by mailing a copy to his last known address. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office, with his secretary, clerk, or other person in charge; or, if there is no one in charge, leaving it in a conspicuous place; or, if the office is closed or the person to be served has no office, leaving it at his usual place of abode with some person of suitable age and discretion then residing there. Service by mail is complete upon mailing. A certificate of the time and place of personal delivery or of mailing shall be filed with the Board by the person making the service.

2.5 SUBPOENAS

(a) Who May Issue. The Board may issue or cause to be issued subpoenas requiring the attendance of witnesses or the production of documentary evidence at any designated place of hearing.

(b) Application. Any party of record may make application to the Board for the issuance of subpoenas. The application must be in writing, must be reasonable in scope, and must specify as clearly as possible documents or data desired and show their relevancy.

(c) Time of Application. Application for subpoenas shall be made at least five (5) days prior to the hearing. If application is made at a later time, the Board may, in its discretion, continue the hearing or any part thereof.

(d) Enforcement. Enforcement of subpoenas served pursuant to these rules will be effected by written application of the Board to any circuit judge.

RULE 3: DISCLOSURE REQUIREMENTS

3.1 WHO TO FILE

All elected and appointed officers and employees, who are elected or appointed by officers elected pursuant to law or by County agencies and who have discretionary, executive or policy making powers and responsibilities shall be required to file the disclosure pursuant to Article XX.

3.2 CONFIDENTIAL INFORMATION

Disclosures filed with the Board are confidential and the Board shall not release the contents thereof except as required by law.

3.3 PROCEDURE AFTER FILING

Each disclosure will be reviewed by the Board in executive session for conflicts of interest. If no conflict is found to exist, the Board will file it. If a conflict or potential conflict is found, the Board will so notify the individual and advise corrective action to be taken to avoid violation of Article XX. Where the situation is deemed to have precedential value, the Board will proceed as though the disclosure was a request for an advisory opinion, and after rendering such, circulate a deleted advisory opinion to appropriate county agencies, officers, and employees.

RULE 4: CONSOLIDATION OF PROCEEDINGS AND DISQUALIFICATION OF BOARD MEMBERS

4.1 CONSOLIDATIONS

The Board, upon its own initiative or upon motion, may consolidate for hearing or for other purposes, proceedings which involve substantially the same parties or issues if it finds the same to be expeditious and nonprejudicial.

4.2 DISQUALIFICATION OF BOARD MEMBERS: BIAS OR PREJUDICE

(a) Requested Disqualification. A party to a hearing may request disqualification of any Board member by filing an affidavit alleging that such member cannot act impartially because of personal bias or prejudice. Every such affidavit shall state the facts and reasons therefor, and shall be filed at least ten (10) days before the hearing. The Board member against whom the affidavit is so filed shall answer the affidavit or file a disqualifying certificate. If he chooses to answer the affidavit, the remaining members of the Board shall decide whether or not he should be disqualified.

(b) Voluntary Disqualification. Any Board member may disqualify himself by filing with the Board a certificate that he deems himself unable for stated reasons to sit in judgment with impartiality in the pending hearing.

RULE 5: ADVISORY OPINION

5.1 REQUEST FOR ADVISORY OPINION

(a) Applicability. Advisory opinions may be requested by officers or employees to assist them in the proper performance of their official duties and responsibilities in accordance with Article XX.

(b) Form. All requests for advisory opinions made to the Board shall be in writing and shall contain
(1) the name of the person requesting the opinion,
(2) the County agency in which he serves or works,
(3) his position therein, (4) the nature and duties of his service or employment, (5) the date of request,
(6) his business and home addresses and telephone

numbers, (7) a statement of the facts and circumstances upon which the Board is to make its determination, and (8) the signature of the person requesting the opinion.

(c) Supplementary Information. The Board, with prior notice to the person requesting the opinion, may interview or cause to be interviewed anyone who may have information desired by the Board in the consideration of a request for an advisory opinion.

(d) Filing Completed. A request for an advisory opinion is considered filed when the Board has received in writing all the information deemed necessary by it to make a proper determination.

5.2 REQUEST FOR HEARING

The officer or employee requesting an advisory opinion may also request a hearing, stating in writing his reasons therefor. If granted, the Board may limit the time allowed for the hearing and the number of participants.

5.3 RENDERING OF ADVISORY OPINION

An advisory opinion shall be rendered to the person requesting same within thirty (30) days after the filing of the request has been finalized. It will be in writing and signed by at least three (3) members of the Board. It will be considered rendered when it is signed and personally delivered or placed in the mail, postage prepaid and addressed to the person requesting the opinion at the address furnished by him.

(a) Dissenting Opinions. Any member who disagrees may file a written dissenting opinion which will be placed at the end of the majority opinion.

5.4 RULINGS

In the case where an individual requesting an advisory opinion indicates that he must, due to circumstances deemed reasonable by the Board, make an immediate decision, the Board may issue a ruling signed by three or more members, which may be followed by an advisory opinion.

5.5 AN OPINION RENDERED BY LAPSE OF THIRTY (30) DAYS

Failure by the Board to render an advisory opinion within thirty (30) days after the filing of a request therefor shall be deemed a finding of no breach of Article XX. It shall be incumbent on the County Attorney to notify the person requesting the opinion.

6.1 COMPLAINTS INSTITUTED BY A MEMBER OF THE PUBLIC

(a) All complaints shall contain a concise statement of the facts constituting the alleged violation of Article XX, the name and position of the respondent, and shall be signed under oath by the complainant. The oath shall be administered in accordance with the laws of the State of Hawaii.

(b) Upon receipt of a document which does not comply with the requirements of sub-paragraph (a) of this rule, the Board shall return the document, noting the deficiency.

6.2 COMPLAINTS INITIATED BY THE BOARD

(a) Upon receipt of information indicating a possible violation of Article XX, the Board will initiate an investigation, the nature and scope of which shall be defined by resolution.

(b) If after such investigation the Board resolves to initiate a complaint, the same shall be reduced to writing and signed by three (3) or more members of the Board.

6.3 INFORMAL HEARING

(a) Notice. Upon the filing of a complaint, the Board shall notify the respondent in writing of a proposed informal hearing and request his attendance for the purpose of obtaining further information concerning his alleged violation of Article XX. The notice of informal hearing shall state the date, time, and place of the hearing and shall be given not less than five (5) days prior to the hearing. Such hearing shall be in executive session and may be recessed to a later day or to a different place without notice other than the announcement by the Board at the hearing.

(b) Procedure for an Informal Hearing.

(1) The Presiding member of the Board shall convene the hearing and read the complaint. The hearing, although informal, will be conducted in an orderly manner. Board members shall have an opportunity to direct questions to the respondent and he shall be afforded an opportunity to explain the alleged violation of Article XX.

(2) The respondent may attend the informal hearing with counsel or authorized agent.

(c) Preliminary Opinion. Within a reasonable time after the informal hearing, the Board shall render an opinion as to whether or not there is a probable violation of Article XX by the respondent.

(1) If no probable violation is indicated by the opinion, the complaint shall be dismissed by the Board, and the complainant so notified.

(2) If the respondent fails to attend the informal hearing, or if a probable violation is indicated by the opinion, the Board shall cause the respondent to be served with a copy of the complaint. The respondent shall have twenty (20) days after service to answer the complaint in writing. The answer shall specifically admit, deny, or explain the allegations of the complaint and shall set forth any matter constituting a defense.

(d) Disposition. Upon failure to file an answer or upon admission of allegations of the complaint, the Board shall transmit its decision and recommendation to the Council as to complaints involving County officers and to the Civil Service Commission as to employees for appropriate disposition; in addition, copies of the Board's decision and recommendations may be referred to the pertinent officer or agency for disciplinary action.

6.4 FORMAL AND CONTESTED HEARINGS: NOTICE OF HEARING

(a) Written Notice. The Board shall give at least ten (10) days written notice prior to the hearing, unless such notice is waived in writing by the respondent. The notice of hearing shall state:

(1) The date, time, and place.

(2) The legal authority for the hearing.

(3) The particular sections of Article XX and/or the rules involved.

(4) The right of the party to counsel if so desired.

(5) The right to request an open hearing.

(b) Oral Notice. The hearing may be recessed to a later day or to a different place, without notice other than the announcement thereof at the hearing.

6.5 FORMAL AND CONTESTED HEARINGS: REQUEST FOR AN OPEN HEARING

A respondent who wants an open hearing shall file a request for same at least five (5) days prior to the time set for the hearing. The Board, for good cause shown, may waive the foregoing requirement, and may impose conditions deemed advisable.

6.6 FORMAL AND CONTESTED HEARINGS: PRE-HEARING CONFERENCE

(a) When a pre-hearing conference is held:

(1) Each party shall disclose the theory of his case, including the basic facts he intends to prove and the names and addresses of all witnesses he intends to call.

(2) Each party shall disclose and permit examination of all exhibits which are in his possession or under his control and which he intends to offer in evidence at the hearing. Such exhibits shall then be marked for identification.

(3) Unless so disclosed, no witness required to be disclosed by paragraph (a) shall be permitted to testify, nor any exhibits required to be disclosed by paragraph (b) shall be received in evidence, at the hearing over objection unless the Board finds that there was reasonable ground for the failure to disclose same prior to the hearing.

(b) Pre-hearing procedure. In any action, the Board may direct the parties or their agents or attorneys to appear before it for a conference to consider:

(1) Simplification of the issues.

(2) Amendments to the pleadings.

(3) Avoidance of unnecessary proof by obtaining admissions of fact and of existence and contents of documents.

(4) Limitation of the number of witnesses.

(5) Other matters as may aid in the disposition of the complaint.

At least seventy-two (72) hours prior to the hearing, the Board shall issue an order which summarizes the action taken at the conference. Such order shall control the subsequent course of the hearing, unless modified to prevent manifest injustice.

6.7 FORMAL AND CONTESTED HEARINGS: PROCEDURE

(a) Convening the Hearing. The Presiding Officer shall convene the hearing, shall read the complaint, and the pre-hearing order, if any.

(b) Opening Statements. At the outset, the parties shall have the opportunity to make opening statements. The usual order of making opening statements shall be as follows:

(1) Opening statement by the complainant.

(2) Opening statement by the respondent. He may reserve this opportunity to make the opening statement until after the complainant has presented his case.

(c) Presentation of the Case. Witnesses shall be examined as follows:

(1) Direct examination by the party calling the witness.

(2) Cross examination by the opposing party.

(3) Redirect examination by the party calling the witness.

(4) Recross examination by the opposing party.

(5) Examination of witnesses by the Board may be made at any time.

(d) Final Arguments. After all the evidence has been presented, the Board shall give the parties the opportunity to summarize. The usual order of final arguments shall be as follows:

(1) Final argument by the complainant.

(2) Final argument by the respondent.

Rebuttal argument shall be strictly limited to the scope of the respondent's final argument.

Time limits may be imposed by the Board for the final arguments.

(e) Closing the Hearing. The Presiding Officer shall bring the hearing to a close after final arguments have been completed. All requested memoranda shall be submitted prior to the final decision of the Board.

(f) Petition to reconsider. Within ten (10) days after rendering its final decision, the Board may entertain a written petition to reconsider its decision. The petition shall be promptly granted or denied in writing.

6.8 RULES OF EVIDENCE

The Board shall not be bound by the rules of evidence except that effect will be given to the rules of privilege recognized by law. Any oral or documentary evidence which is relevant and material to the complaint may be admitted.

6.9 DECISIONS

(a) Issuance. Every decision of the Board rendered after hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law. Within forty-five (45) days after a decision has been rendered, the Board shall file a deleted decision which shall be a matter of public record. At the end of each calendar year, the decisions issued during that period may be printed, along with an index. The County Attorney shall

provide available copies upon request at a charge pursuant to law.

(b) Submission of Proposed Findings of Fact and Conclusions of Law. The Board may direct the prevailing party to submit proposed findings of fact and conclusions of law. The party required to prepare such shall do so within the time set by the Board and shall obtain from the opposing counsel or party the approval thereon as to form, and deliver the original and six (6) copies to the Board; or, if not so obtained, serve a copy upon each party who has appeared in the action and deliver the original and six (6) copies to the Board. The party served with the proposed findings and conclusions may within five (5) days thereafter deliver to the Board a copy of his objections, proposed findings, and conclusions. The Board shall determine the actual findings of fact and conclusions of law.

(c) Dissenting Decisions. Any member of the Board who disagrees may file a written dissenting decision.

6.10 RECORD OF THE HEARING

The record of the hearing shall be compiled pursuant to law. The complainant and the respondent shall be entitled to a copy of the record of the hearing or any part thereof upon application to the Board and upon payment of the costs therefor.

6.11 CHARGE

Upon a determination that a violation exists, the Board shall transmit its findings to the Council as to complaints involving County officers and to the Civil Service Commission as to employees.

RULE 7: PUBLIC INFORMATION

7.1 WHEN OBTAINABLE

The public may obtain information on matters relating to Article XX by inquiring during regular business hours at the Office of the Mayor or by submitting a written request to the Board.

7.2 INSPECTION OF RULES

The rules of the Board are available for public inspection during regular business hours at the Office of the Mayor or the Office of the County Clerk, County Building, Lihue, Kauai, Hawaii.

7.3 INSPECTION OF MINUTES OF BOARD MEETINGS

The minutes of Board meetings shall be deleted to prevent disclosure of the identity of persons involved in confidential matters and, after such deletion, shall be available for public inspection at the Office of the Mayor during regular business hours.

7.4 INSPECTION OF DELETED OPINIONS AND DECISIONS

Deleted advisory opinions and decisions of the Board shall be available for public inspection at the Office of the Mayor during regular business hours.

7.5 CONFIDENTIAL RECORDS

Disclosures and other matters deemed confidential by the Board pursuant to law will not be released or inspected except with the written authorization of the individual involved.

RULE 8: DECLARATORY ORDER ON BOARD'S OWN MOTION

Notwithstanding the other provisions of these rules, the Board may, on its own motion or upon request but without notice or hearing, issue a declaratory order to terminate a controversy or to remove uncertainty concerning the application of Article XX. The order shall state the controversy or uncertainty, shall cite the provisions of Article XX, rule, order of the Board, law or other matter involved.

RULE 9: PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF THESE RULES

(a) Any person may petition the Board for the adoption, amendment, or repeal of these rules of the Board.

(b) Content of Petition. The petition shall contain:

(1) The name, address, and telephone number of the petitioner.

(2) The nature of the petitioner's interest.

(3) The substance of the proposed rule or amendment and/or a designation of the provisions sought to be repealed.

(4) The reasons in support of the proposed rule, amendment, or repeal.

(5) Any other information relevant to the petition.

(c) Rejection of Petition. The Board may reject any petition which does not conform to the requirements of this rule.

(d) Processing and Consideration of Petition. The petition shall be filed at the office of the Board and dated upon receipt. The petitioner shall be notified of the date, time, and place of hearing by the Board on his petition, his privilege of personal appearance with or without counsel, and his privilege of presenting evidence and argument in support of his petition.

(e) Disposition of Petition. Within ninety (90) days after the hearing thereon, the Board shall either deny the petition in writing, stating its reasons, or agree with the petition or portions thereof, by initiating proceedings in accordance with law for adoption, amendment, or repeal of these rules.

RULE 10: APPEARANCE BEFORE THE BOARD

The right to appear before the Board by any person, his counsel or his authorized agent, having business with the Board may be denied if the Board determines that the person, his counsel or his agent has acted in a manner which prevents the orderly and peaceful conduct of business. The right to appear may be reinstated upon the Board's acceptance of a written statement that the individual will abide by the Board's rules and will not disrupt the orderly and peaceful conduct of its proceedings.

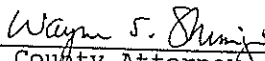
Adopted this 14th day of April, 1988,
by the Kauai County Board of Ethics.

KAUAI COUNTY BOARD OF ETHICS

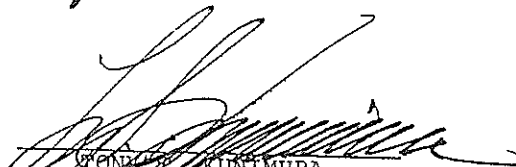


Melvin Kua, Chairman

APPROVED AS TO FORM
AND LEGALITY:


Wayne S. Shimizu
County Attorney

APPROVED THIS 21st DAY
OF April, 1988.



TOMOYUKI KUNIMURA
Mayor, County of Kauai

CERTIFICATION

It is hereby certified that the foregoing Rules and Regulations of the Kauai County Board of Ethics, consisting of Rules 1 through 10, were adopted on 15 MARCH, 1988 by the Kauai County Board of Ethics pursuant to the provisions of the Administrative Procedures Act, Chapter 91, HRS, and Section 20.05 of the Charter of the County of Kauai, adopted 1968, to be effective 2 January 1969, and that the notice of public hearing on the foregoing Rules and Regulations, which notice included the substance of such Rules and Regulations, was published in the GAROW ISLAND on 16 February 1988.

Dated in Lihue, Kauai, Hawaii, this 11 day of MAY, 1988.

KAUAI COUNTY BOARD OF ETHICS

By Melvin Kua
MELVIN KUA, Chairman

Received this 17th day of May, 1988.

Jerome Y. K. Hew
JEROME Y. K. HEW
County Clerk