



BOARD OF ETHICS

SUSAN BURRISS, CHAIR
MIA SHIRAIISHI, VICE CHAIR
JOHN LATKIEWICZ, SECRETARY

RYAN de la PENA, MEMBER
KELLY GENTRY, MEMBER
DEAN TOYOFUKU, MEMBER

REGULAR MONTHLY TELECONFERENCE MEETING NOTICE AND AGENDA

Friday, September 17, 2021
1:00 p.m. or shortly thereafter

Microsoft Teams Conferencing Information

Click on the link below or enter the url in your network browser to join on your computer or mobile app by VIDEO:

<https://bit.ly/3E5DLB6>

Or

Dial phone number and enter conference ID to call in and join by AUDIO:

Phone: [+1 469-848-0234](tel:+14698480234) United States, Dallas

Phone Conference ID: 605626953#

This meeting will be held via Microsoft Teams conferencing only. Members of the public are invited to join this meeting by using the link above or calling the number above with the conference ID information. You may testify during the video conference or submit written testimony in advance of the meeting via e-mail or mail. To avoid excessive noise/feedback, please mute your microphone except to testify.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Open Session Minutes of August 13, 2021

PUBLIC TESTIMONY

COMMUNICATION

REQUEST FOR AN ADVISORY OPINION

BUSINESS

BOE 2021-28

Review letter sent to Councilmember Cowden re: RAO 2021-03 dated August 26, 2021.

DISCLOSURES

EXECUTIVE SESSION

ES-017

Pursuant to Hawai'i Revised Statutes §92-4, §92-5(a)(4), §92-9(a)(1-4) and (b), the purpose of this Executive Session is for the Board to approve or amend the Executive Session Minutes of August 13, 2021, and to consult with its attorney on issues pertaining to the Board's powers, duties, privileges, immunities, and /or liabilities as they may relate to this item.

ES-004 BOE 2021-08

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 a notarized formal complaint received February 8, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua'i County Charter section 20.02 B, 20.02 E and 20.02 F.

No officer or employee of the county shall:

B. Disclose information which, by law or practice, is not available to the public and which the officer or employee acquires in the course of the officer or employee's official duties or use such information for the officer or employee's personal gain or for the benefit of anyone.

E. Use the officer or employee's official position to secure a special benefit, privilege, or exemption for the officer or employee or others.

F. Use county property for other than public activity or purpose.

ES-012 BOE 2021-22

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 a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua'i County Charter section 20.02 E, Standards of Conduct.

ES-013 BOE 2021-23

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 a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua'i County Charter section 20.02 E, Standards of Conduct.

- ES-014 BOE 2021-24 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 a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua'i County Charter section 20.02 E, Standards of Conduct.
- ES-015 BOE 2021-25 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 a notarized formal complaint received July 30, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua'i County Charter section 20.02 E, Standards of Conduct.
- ES-016 BOE 2021-26 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 a notarized formal complaint received August 3, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua'i County Charter section 20.02 E, Standards of Conduct.

RETURN TO OPEN SESSION

Ratify on Board actions taken in Executive Session.

ANNOUNCEMENTS

Next Meeting: Friday, October 15, 2021 at 1:00 p.m.

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: Aaron Larrimore, Deputy County Attorney

PUBLIC COMMENTS and TESTIMONY

SPEAKER REGISTRATION

Prior to the Day of the Meeting: Persons wishing to testify are requested to register their name, phone number, and agenda item via email at asegreti@kauai.gov; or by calling 808-241-4917.

On the Day of the Meeting: Persons who have not registered to testify by the time the Commission meeting begins will be given the opportunity to speak on an item following oral testimonies of registered speakers.

Each speaker is limited to a three-minute presentation on each item.

WRITTEN TESTIMONY

Prior to the Day of the Meeting: Testimony may be emailed: asegreti@kauai.gov, or mailed: County of Kauai, Office of Boards and Commissions, Board of Ethics, 4444 Rice St., Ste. 300, Lihue, HI 96766.

SPECIAL ASSISTANCE

IF YOU NEED AN AUXILIARY AID/SERVICE OR OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ASEGRETI@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

Draft to be Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Board/Commission:	BOARD OF ETHICS	Meeting Date	August 13, 2021
Location	Teleconference	Start of Meeting: 1:00 p.m.	End of Meeting: 2:20 p.m.
Present	Chair Susan Burriss, Vice Chair Mia Shiraishi, Secretary John Latkiewicz. Members: Kelly Gentry, Dean Toyofuku. Also: Deputy County Attorney Aaron Larrimore. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti. Testifiers: Councilmember Felicia Cowden, County Clerk Jade Fountain-Tanigawa, and County Attorney Matthew Bracken.		
Excused	Ryan de la Pena		
Absent			
SUBJECT	DISCUSSION	ACTION	
Call To Order		Chair Burriss called the meeting to order at 1:00 p.m. Roll call: Member de la Pena: excused Member Gentry: present Member Toyofuku: present Secretary Latkiewicz: present Vice Chair Shiraishi: present Chair Burriss: present Five members present, which constituted a quorum.	
Approval of Minutes	<u>Open Session Minutes of July 23, 2021</u> Vice Chair had a comment on page 2, BOE 2021-20, correct to former Chair Toyofuku and former Vice Chair Shiraishi. Chair Burriss stated that on page 4, paragraph 2 should be “there” instead of “they”.	Vice Chair Shiraishi moved to accept the minutes as corrected. Secretary Latkiewicz seconded. Voice vote: 5 ayes, 0 nays Motion carried 5:0	

SUBJECT	DISCUSSION	ACTION
Public Testimony	<u>None</u>	
Communication	<p><u>BOE 2021-27 Notice of Publication and Notice of Public Hearing received August 5, 2021 from Council Services regarding Bill No. 2830, A BILL FOR AN ORDINANCE AMENDING CHAPTER 3, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO FINANCIAL DISCLOSURES.</u></p> <p>Chair Burriss noted that the ordinance got a unanimous vote from the County Council.</p> <p>Vice Chair Shiraishi stated that no Council members had any objections.</p> <p>Member Toyofuku reported that it was good.</p> <p>Chair Burriss thanked Vice Chair Shiraishi and Member Toyofuku.</p> <p>Administrator Ching stated that the next step will be the second reading and that Vice Chair Shiraishi and Member Toyofuku will need to be present in case there are any questions.</p>	<p>Vice Chair Shiraishi moved to receive BOE 2021-27, Member Toyofuku seconded.</p> <p>Voice vote: 5 ayes, 0 nays Motion carried 5:0</p>
Request For An Advisory Opinion	<p><u>RAO 2021-03 Request for an Advisory Opinion from Felicia Cowden received July 9, 2021 relating to providing testimony to County Boards and Commissions and other State and National Governmental Entities.</u>Chair Burriss clarified that the persons elected would represent the Board if and when the draft ordinance gets on the Council agenda.</p> <p>Administrator Ching confirmed that additional documents from Councilmember Cowden and County Clerk Tanigawa received today was reviewed by members.</p> <p><i>Board took a brief recess 1:08pm – 1:10pm to review the documents.</i></p> <p>Chair Burriss asked Deputy County Attorney Larrimore whether it was in the purview of the Board to define the nature of the correspondence that is acceptable.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Deputy County Attorney Larrimore explained that the Board under the Charter given the responsibility to render an Advisory Opinion on the application of the Code of Ethics when someone comes before the Board and ask for that opinion. If the Board feels that defining the nature of the correspondence is beyond the scope of the Board then he suggested that they exercise caution.</p> <p>Chair Burriss stated that historically the Board has opined on specific requests as to specific incidences in terms of whether or not there is a conflict or some prohibition in regards to the proposed action and wondered if they could possibly honor the request.</p> <p>Deputy County Attorney Larrimore stated that he has seen other Board of Ethics look at larger conversations than just particular incidences. He further explained that if the Board felt that they could render an advisory opinion on a concept or idea that would be in their power, but if they felt they could not, that would be a decision for the Board to make.</p> <p>Chair Burriss welcomed Councilmember Cowden and asked if she needed a document that spells out what she is able to do or be limited from doing.</p> <p>Councilmember Cowden stated that her goal is to create a clarification between the Board of Ethics and herself on the use of letterhead. She stated that the use of letterhead is essential for her to do her job. She explained the process of her sending a letter on letterhead and her use of staff to write a letterhead that goes into the public records. Recently she was writing a letter to the Planning Commission regarding a Bill and she was told that she needed to go before the Board of Ethics to write the letter. She needed the letter to go out right away so asked the County Attorney for an opinion. She stated that the Board may need training to know that it is not possible for her to write a letter on letterhead without staff to ensure that it is properly written and well framed.</p> <p>Councilmember Cowden referenced memo (on file) from County Clerk Tanigawa, outlining the process for correspondence including sending out letters automatically from time to time, “housekeeping”.</p> <p>Chair Burriss asked about the turn-around time from penning a letter and going through the process.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Councilmember Cowden answered that it's very often less than 24 hours.</p> <p>Chair Burriss stated that it would take the Board a separate session to review each element of Councilmember Cowden's request to properly respond to it.</p> <p>County Attorney Matt Bracken stated that he believed that Councilmember Cowden is concerned that she does not violate the Code of Ethics. She is concerned about the use of County property, in this case the use of County letterhead. He advised her that if it's within her role as a Councilmember, she can use the letterhead, his general advice. When there are specific questions he refers them to the Board of Ethics.</p> <p>Deputy County Attorney Larrimore pointed the Board to Section 3-1.6 of the County Code, Fair Treatment provision, it states that no Councilmember or employee shall use or attempt to use his/her official position to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment for him/herself or others. He also read that, nothing in this article shall be construed to prohibit a councilmember from introducing bills and resolutions, serving on committees, or from making statements or taking action in the exercise of his/her legislative function. He stated that this supports County Attorneys statements.</p> <p>Chair Burriss clarified with Councilmember Cowden if she wants the Board to go further than what the County Attorney has told her.</p> <p>Councilmember Cowden stated that she does not. Her sense was that when she got push back and was told that she had to ask the Board of Ethics whether she could write a letter to Planning Commission. She thought this was a normal thing for her to do and is unsure why she needed to ask the Board. In this case she was sending a letter, with guidance from the Planning Department, to the Planning Commission. She did this and then got a push back, which is making her feel targeted, but she is not sure that's the case. Councilmember Cowden expressed that she thought it would benefit the Board to hear from County Attorney Bracken and County Clerk Tanigawa that this is a normal function in her job. She stated that she didn't actually ask for a Request for an Advisory Opinion, she wanted to just communicate that this is what she understands and does not want to worry that when she writes a letter that someone is choosing to misinterpret what she's writing in the letter. The letter that she was told needed to go before the Board was</p>	

SUBJECT	DISCUSSION	ACTION
	<p>regarding her championing for the houseless community. She was writing as a council person trying to tell the Planning Commission that she’s working on something parallel to a bill they are proposing regarding “glamping”. She expressed her passion for her job and how she uses letterhead in her job. She clarified that she is not asking the Board for anything, but would like there to be an understanding of the policy regarding use of letterhead.</p> <p>Vice Chair Shiraishi stated that this is not the proper forum and that Councilmember Cowden is stating that it is not her intent to obtain an advisory opinion, and the County Attorney’s email states that he does not view this as an ethics problem and that she could seek an advisory opinion from ethics, but it is not a directive to do so. She expressed that perhaps it’s something that she should get together with the County Clerk and County Attorney to figure out what’s best.</p> <p>Councilmember Cowden stated that they are already clear, but it appears it is not clear to someone.</p> <p>Secretary Latkiewicz shared a thought that there is some unknown person or department giving her a push back, being that it is vague, he doesn’t want to deal with it. He prefers to wait if the person comes forward and states concerns, otherwise it’s just a vague, something doesn’t appeal to somebody.</p> <p>Councilmember Cowden asked if the County Clerk knew who asked her to ask the Board of Ethics. She asked Ellen Ching why she was required to ask the Board of Ethics to write a standard letter.</p> <p>Ms. Ching stated that if she is asked a question that should be directed to the Board of Ethics, she will direct them to the Board, she will not speak on their behalf.</p> <p>County Clerk Tanigawa stated that she can check and let Councilmember Cowden know if it was Council Services staff and who that person is.</p> <p>Councilmember Cowden apologized for wasting everyone’s time. She asked and was told it came from across the street, she rested her issue and appreciated their time.</p>	

SUBJECT	DISCUSSION	ACTION
	<p>Chair Burriss stated that she and probably all the board members did not know that all her letters go through a vetting process, so it's hard for her to understand how anything that goes out with her signature becomes an issue. She explained that for the board the process of responding to an advisory opinion is typically narrowed in focus so that they can see, without going global, what it is that they should be writing an opinion on.</p> <p>Councilmember Cowden stated that she did not expect a written opinion from the Board. She wanted to make sure that everyone was clear on the process.</p> <p>County Clerk Tanigawa stated she provided an overview of a process, it is not full proof, but they do try their best at making sure that there is compliance with everything that's done.</p> <p>Deputy County Attorney Larrimore suggest that Councilmember Cowden formally withdraw the RAO and memorializing the event. Discussion regarding if she doesn't withdraw followed.</p> <p>Councilmember Cowden returned to the meeting and formally withdrew her request for an advisory opinion.</p> <p>Ms. Ching stated that a response will be sent acknowledging the original request and request to withdraw. Deputy County Attorney Larrimore agreed.</p>	<p>No Action</p>
<p>Business</p>	<p><u>BOE 2021-21 Update and discussion on Ethics bill that went before Council on August 4, 2021.</u></p> <p>Ms. Ching stated that it was covered under Communication. Recapped that there will be a second reading and the Vice Chair Shiraishi and Member Toyofuku will need to be available for that to respond to any questions.</p>	<p>No Action</p>
<p>Disclosures</p>	<p><u>Employees:</u></p> <ol style="list-style-type: none"> 1. Judith Hayducsko, Deputy Manager-Engineer, Department of Water 2. Arryl Kaneshiro, Councilmember 3. Cameron Takamura, Deputy County Attorney 	<p>Secretary Latkiewicz moved to approve disclosures #1 thru #4. Vice</p>

SUBJECT	DISCUSSION	ACTION
	<p>4. Felicia Cowden, Councilmember</p> <p>Chair Burriss entertained a motion to approve #1 thru #4.</p>	<p>Chair Shiraishi seconded.</p> <p>Voice Vote: 6 ayes, 0 nays. Motion carried 6:0</p>
<p>Executive Session</p>	<p><u>ES-012 BOE 2021-22 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 a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-013 BOE 2021-23 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 a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-014 BOE 2021-24 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 a notarized formal complaint received July 29, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-015 BOE 2021-25 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 a notarized formal complaint received July 30, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p> <p><u>ES-016 BOE 2021-26 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 a notarized formal complaint received August 3, 2021, charging that an employee or officer of the County has breached the Code of Ethics as set forth in the Kaua‘i County Charter section 20.02 E, Standards of Conduct.</u></p>	<p>Member Toyofuku moved to move into Executive Session. Secretary Latkiewicz seconded.</p> <p>Voice Vote: 6 ayes, 0 nays. Motion carried 6:0</p>

SUBJECT	DISCUSSION	ACTION
Return to Open Session		The Board resumed in Open Session at 2:17pm Roll call: Member de la Pena: present Member Gentry: present Member Toyofuku: present Secretary Latkiewicz: present Vice Chair Shiraishi: present Chair Burriss: present Six members present, which constituted a quorum.
	Ratify on Board actions taken in Executive Session.	None
Announcements	Next Meeting: Friday, September 17, 2021 at 1:00pm Secretary Latkiewicz will not be able to attend the next meeting.	
Adjournment		Hearing no objections Chair Burriss adjourned the meeting at 2:20 p.m.

Submitted by: _____ Reviewed and Approved by: _____
 Anela Segreti, Administrative Specialist Susan Burriss, Chair

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



BOARD OF ETHICS

SUSAN BURRISS, CHAIR
MIA SHIRAISHI, VICE CHAIR
JOHN LATKIEWICZ, SECRETARY

RYAN de la PENA, MEMBER
KELLY GENTRY, MEMBER
DEAN TOYOFUKU, MEMBER

August 26, 2021

Felicia Cowden
Councilmember
Kaua'i County Council
4396 Rice Street
Lihu'e, Kaua'i, Hawai'i 96766

Re: REQUEST FOR ADVISORY OPINION REGARDING PROVIDING TESTIMONY IN A
[COUNCILMEMBER'S] OFFICIAL CAPACITY TO COUNTY BOARDS AND COMMISSIONS AND OTHER
STATE AND NATIONAL GOVERNMENTAL ENTITIES

Ms. Cowden:

This letter serves to acknowledge that you submitted a request for an advisory opinion with respect to application of the Code of Ethics on July 9, 2021 (see attached letter). You withdrew this request for an opinion at the Board of Ethics meeting on August 13, 2021.

The Board took no action on an advisory opinion after you withdrew the request. The Board did not render, nor fail to render, an opinion on your request, as you withdrew the request prior to the rendering of an opinion.

The Board appreciates your time in bringing this issue before them.

Sincerely,

Susan Burriss
Chair, Board of Ethics

Cc: Jade K. Fountain-Tanigawa, County Clerk
Aaron Larrimore, Deputy County Attorney
Ellen Ching, Boards & Commissions Administrator

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
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

July 9, 2021

RECEIVED
JUL 09 2021
BOARDS & COMMISSIONS

Susan Burriss, Chair
and Members of the Board of Ethics
c/o Office of Boards and Commissions
Via E-mail only: asecreti@kauai.gov

Dear Chair Burriss and Board Members:

**RE: REQUEST FOR ADVISORY OPINION REGARDING
PROVIDING TESTIMONY IN MY OFFICIAL CAPACITY AS A
COUNCILMEMBER TO COUNTY BOARDS AND COMMISSIONS
AND OTHER STATE AND NATIONAL GOVERNMENTAL
ENTITIES**

I have recently been cautioned on the manner in which I submit written testimony as an individual Councilmember to the Planning Commission, i.e., am I able to submit it using Council letterhead, or do I submit it on plain stationery?

My recent experience involved submitting written testimony requesting the Planning Commission to consider separating elements of a particular proposal initiated by Council colleagues (Council Bill No. 2822) as my preference is to address the Open Zone and Agriculture Zone through separate bills. This is my professional opinion as a Councilmember. Sometimes I testify as an individual when that is appropriate. I sought advice from the County Attorney and was able to subsequently submit written testimony using Council letterhead.

This situation continues to concern me because:

- I have been routinely writing letters since I took office, as I am asked for support in one direction or another by constituents, etc.
- For decades I have observed councilmembers testify in their official capacity before the commission on various topics, including the pre-covid present.
- In speaking with Director Hull regarding my concerns with Bill No. 2822, I understood him to be saying I can/should present my case to the commission.
- How do I do my job if I cannot speak officially as a Councilmember when addressing other layers of government?

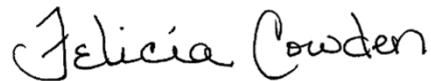
RAO 2021-03

Susan Burriss, Chair
and Members of the Board of Ethics
RE: Request for Advisory Opinion
July 9, 2021
Page 2

I would like to request that County Attorney Matthew Bracken and County Clerk Jade K. Fountain-Tanigawa also be present at the meeting scheduled to discuss this matter.

I am available and look forward to discussing this matter further with you and getting clarification on fulfilling my duties as a Councilmember. I may be reached at the Office of the County Clerk, Council Services Division, at 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

A handwritten signature in black ink that reads "Felicia Cowden". The signature is written in a cursive, flowing style.

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:dmc