Action Item
Board of Trustees

Action Item #: BR 16-1

Meeting: February 25, 2016

Action Item Issue: Approval of BOT Bylaws Amendment as shown in Attachment “A” and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment “B”

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Reviewed by: Kamana'opono M. Crabbe, Ph.D. Ka Pouhana
Chief Executive Officer

Reviewed by: Robert K. Lindsey Jr.
Chairperson, Board of Trustees

I. Action.

A. To amend, approve, adopt, and ratify OHA Board of Trustees’’ By-Law Article XVII, “Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct”, as shown in Attachment “A”; and

B. To approve, adopt and ratify a stand-alone policy which shall be titled “Code of Conduct and Sanctions for Violation of the Code of Conduct” as shown in Attachment “B”.

II. Issue. This Action Item contemplates the amendment of OHA Bylaws Article XVII,
the creation of a code of conduct for OHA trustees and sanctions for trustees for the violation of the code of conduct, and the concurrent approval, adoption and ratification of the code of conduct as a stand-alone policy to comport with the recommendation of the Board of Trustees.

The modification to conform the OHA BOT Executive Policy Manual, Subseries 1030 (Trustee Duties, Responsibilities, and Conduct), to the Bylaw amendment is proposed to ensure consistency of meaning and substance between Bylaw and Executive Policy.

III. Discussion

A. On December 11, 2015, OHA Corporate Counsel submitted an initial draft of the proposed OHA Code of Conduct and Sanctions of Violation of the Code of Conduct to the Ad Hoc Committee on Bylaws for its consideration.

B. On December 14, 2015, the Ad Hoc Committee on Trustee Responsibilities forwarded its confidential report to the Ad Hoc Committee on Bylaws.

C. On December 21, 2015, OHA Corporate Counsel submitted a White Paper for discussion to the Ad Hoc Committee on Bylaws for its consideration.

D. OHA Bylaw Article XIII, “Amendments to Bylaws” (page 15), requires that the Bylaws shall be amended only by two-thirds vote of all members to which the Board is entitled, that any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board, and that the Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.

E. Page 5 of the BOT Executive Policy Manual, under subseries 1020, Policy Formulation, the provision entitled “Maintenance of BOT Policy Manual” requires that the manual be updated as needed, but no less than annually, by adding new or amended policies and deleting abolished policies. In addition, on that same page the provision entitled “Systematic Bylaws Review” requires that OHA shall review and update the OHA Bylaws on a regular basis.

F. In discussions with the Chairperson of the Ad Hoc Committee on Bylaws, the OHA CEO, and the OHA Corporate Counsel on January 13, 2016, the understanding and conclusion reached pursuant to instructions from the Ad Hoc Committee Chairman was that the Code of Conduct and Sanctions for Violation of the Code of Conduct would be presented to the BOT as a stand-alone policy to be incorporated by reference into OHA BOT Bylaws Article XVII and that Administration was to draft an action item, the amendment to the OHA Bylaws, and the proposed Code of Conduct and Sanction
for Violations of the Code of Conduct for consideration by the Ad Hoc Committee on Bylaws.

IV. Alternative Actions

A. To concurrently amend, approve, adopt, and ratify OHA Board of Trustees’ By-Law Article XVII, “Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct”, as shown in Attachment “A” and to also approve, adopt and ratify a stand-alone policy which shall be titled “Code of Conduct and Sanctions for Violation of the Code of Conduct” as shown in Attachment “B”.

B. Decline to concurrently amend, approve, adopt, and ratify OHA Board of Trustees’ By-Law Article XVII, “Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct”, as shown in Attachment “A” and to also decline to approve, adopt and ratify a stand-alone policy which shall be titled “Code of Conduct and Sanctions for Violation of the Code of Conduct”, as shown in Attachment “B”.

C. Take no action.

V. Recommended Action

A. To concurrently amend, approve, adopt, and ratify OHA Board of Trustees’ By-Law Article XVII, “Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct”, as shown in Attachment “A” and to also approve, adopt and ratify a stand-alone policy which shall be titled “Code of Conduct and Sanctions for Violation of the Code of Conduct” as shown in Attachment “B”.

VI. Funding  No funding is required.

VII. Timeframe  Approval, adoption, and ratification of this action item as set forth in Section I, Action above to take effect immediately upon approval by the BOT after second reading.

VIII. Attachments:

A. Proposed amendment to OHA By-laws Article XVII

ATTACHMENT “A”
OHA BY LAWS ARTICLE XVII

Amend OHA Bylaw Article XVII by deleting the bracketed material as shown below:

ARTICLE XVII

[Censure of Trustees
If any Trustee, after an executive hearing which may include ho’oponopono, is found to have repeatedly violated the Bylaws the Board shall by no less than two-thirds vote (6) of the members of the Board is entitled to, impose disciplinary action against said Trustee. The Board”’s decision shall be documented in a written decision and order which shall state the findings of the Board regarding the Trustee”’s conduct and the disciplinary action mandated. Disciplinary action that may be imposed by the Board may include, but not limited to:

1. Written censure; and/or
2. Restriction of member from chairing a Committee; and/or
3. Suspension of the privilege of representing the Office of Hawaiian Affairs at any community, national, or international conference.]

Substitute the following underscored language for the language removed.

ARTICLE XVII

Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct

The professional conduct of a member of the Office of Hawaiian Affairs (“OHA”) Board of Trustees shall be guided by the Code of Conduct and Sanctions for Violations of the Code of Conduct, hereinafter referred to as “Code of Conduct”, which shall be created as a stand-alone executive policy of the Board of Trustees and made part of the OHA Board of Trustees’ Executive Policy Manual as a stand-alone policy.

The Code of Conduct shall contain a discussion of fiduciary responsibilities of an OHA Trustee and laws applicable to a trustee’s conduct. The Code of Conduct consists of three parts: (1) Fiduciary Responsibilities; (2) Board of Trustees’ Executive Policies; and (3) Applicable Laws. The Sanctions for Violations of the Code of Conduct shall contain procedures which are fitting to the position of an elected trustee and while ensuring that appropriate due process is afforded to a Trustee whose matter is being considered by the Board of Trustees.

The Code of Conduct and Sanctions for Violation of the Code of Conduct shall be reviewed at least annually to be kept current with changes to the Board of Trustees’ Executive Policies and laws applicable to Trustee conduct.
ATTACHMENT "B"

OFFICE OF HAWAIIAN AFFAIRS
BOARD OF TRUSTEES EXECUTIVE POLICY

CODE OF CONDUCT AND SANCTIONS FOR VIOLATION OF THE CODE OF CONDUCT

Part I. Board of Trustees’ Code of Conduct

A. Purpose. The purpose of this policy is to establish the standards of conduct required of each Trustee of the Office of Hawaiian Affairs Board of Trustees hereinafter referred to as “Trustees”. As public officials, Trustees are guided in their professional conduct by (1) fiduciary duties, (2) the Office of Hawaiian Affairs (“OHA”) Board of Trustees’ Executive Policies, and (3) Federal, State, and County laws applicable to Trustee conduct. All members of the OHA Board of Trustees, hereinafter referred to as “Board” shall adhere to the highest ethical standards of conduct reflected in state law and Board policies.

B. Standards of Conduct.

1. In order to support the vision, mission, values and goals of OHA and fulfill its statutory obligations, the Board must function as a collegial unit. The Board functions well as a unit when its individual members act ethically, are committed to working together, operate in a non-partisan manner and speak with one voice. The Board creates a positive climate when it acts with integrity and civility, and uses its influence appropriately.

2. This Code of Conduct is comprised of (1) fiduciary responsibilities; (2) the OHA Board of Trustees’ Executive Policies; and (3) laws applicable to Trustee conduct. All members of the Board shall be provided a copy of this Code of Conduct and Sanctions for Violation of the Code of Conduct contemporaneously with their taking of his or her official Oath of Office. All members of the Board shall annually sign statements affirming their compliance with their official oath of office and provisions of this Code of Conduct.

3. The Code of Conduct shall consist of the following components:

A. Fiduciary Duties

a. Duty of Care
b. Duty of Loyalty

c. Duty of Obedience

d. Duty of Impartiality

B. The OHA Board of Trustees Executive Policies:

C. Statutory Standards of Conduct for public officials and state employees include:

   a. Confidentiality (HRS §84-12)


   c. Employment (HRS §84-18 Restrictions on post employment)

   d. Fair Treatment and Use of State and OHA Personnel, Assets, Resources, and Time for Other than OHA Business (HRS §84-13)

   e. Financial Disclosure (HRS §84-17)

   f. Conflicts of Interest (HRS §84-14)

   g. Gifts (HRS §84-11)

Subpart 1A. Standards of Fiduciary Duties and Responsibilities.

A. Members of the Board serve a public interest role and thus have a clear obligation to conduct all affairs of OHA in a manner consistent with this concept. Members of the Board are expected to place the welfare of OHA above personal interests, the interests of family members, or others who may be personally involved in affairs affecting OHA. All decisions of the Board shall be made solely on the basis of a desire to promote the best interests of OHA and its beneficiaries.

1. Duty of Care and Informed Decision-Making. Trustees shall strive to make informed decisions based on sufficient information, thoughtful deliberation and comprehensive understanding of issues. To achieve that goal, Board members
gather information by listening, asking questions, analyzing materials and exploring issues thoroughly in conjunction with other Trustees, staff, and constituency groups. In other words, thorough due diligence should be conducted and considered before decision making on all major issues.

2. Duty of Care and Duty of Loyalty and Protection of OHA Assets, Resources, Personnel, and Time. The Board established Executive Policies regarding a Trustee Sponsorship and Trustee Allowance program. Each Trustee must diligently and prudently expend those funds in a fair and impartial manner for the OHA beneficiaries and, when applying personal judgment, shall ensure that such application of judgment is consistent with his or her fiduciary responsibilities and in compliance with OHA’s policies and procedures.

3. Duty of Loyalty and Authority to Act. Each Board member is encouraged to contribute his or her talents and perspectives to the Board. Although Board members are free to voice their personal opinions, no Board member has the authority to solely act on his or her own to further a personal agenda or to direct OHA employees or operations.

4. Duty of Loyalty and Official Spokesperson. Trustees are the stewards of OHA and the advocates of its policies and programs. The official spokesperson for the Board is the Chairperson of the Board or the Chairperson’s designee.

5. Duty of Loyalty and Duty of Obedience and Support for Board Decisions. Individual Trustees are able to express their opinions vigorously and openly during the decision-making process and may respectfully disagree with colleagues. However, once a decision has been reached and the Board has taken official action, it is each member’s responsibility to support the decision. Similarly, individual Trustees are expected to adhere to duly enacted Board Executive Policies and actions.

6. Duty of Impartiality. While many decisions must by definition benefit some beneficiaries more than others, individual Trustees, however, must remain impartial and must not favor any beneficiary over another. This requirement to remain neutral becomes more difficult when the Trustee is also a beneficiary.

Subpart 1B. Standards Established by Board Executive Policies

A. Conflicts of Interest. (Implements HRS §84-14 )

1. Conditions of Potential Conflict of Interest. Conditions of potential conflict of
interest exists when the Board must consider any matter for OHA which also
directly involves:

a. a Trustee or a member of the Trustee’s family (which shall be a spouse,
parents, siblings and their spouses, children and their spouses, and any
household member);

b. a public or private organization with which a Trustee is affiliated, as
defined below; or

c. a Trustee’s personal financial interest as defined under chapter 84, HRS,
as amended;

2. Disclosure by Trustee of Potential Conflict of Interest. Any affected Trustee, at
the first knowledge of the matter, shall fully disclose, as noted below, the precise
nature of the interest or involvement.

3. Exception to Disclosure Requirement. This disclosure requirement shall not
apply to any Trustee who declares a conflict of interest and recuses
himself/herself from consideration of the matter at hand before the Board.

4. Definition of Affiliation. For purposes of this provision, an affiliation exists if
a Trustee or a member of the Trustee’s family is an owner (which shall be an
ownership interest valued at more than $5,000 or 10% or more ownership of the
business), officer, director, trustee, partner, employee (which shall also include
legal counsel, consultant, contractor, advisor, or representative) or agent of such
organization.

5. Written Disclosures. All disclosures required under this Article must be
directed in writing to the Board Chairperson who, together with the Board
Attorney, shall be responsible for the administration of this Bylaw.

a. Disclosure Process. A Trustee who in the discharge of official duties
would be required to take an action or make a decision that would
substantially affect the Trustee’s financial interests or those of an
associated business, unless the effect on the Trustee is no greater than on
other members of the Trustee’s business classification, profession, or
occupation, must take the following actions:

(1) Prepare a written statement describing the matter requiring
action or decision and the nature of the potential conflict of interest;
and

(2) Deliver copies of the statement to the Board Chairperson for distribution to the Board.

b. **Conflict of Interest.** If a potential conflict of interest presents itself and there is insufficient time to provide the written statement under paragraphs (a) and (b) immediately above, the Trustee must orally inform the Board of the potential conflict in open meeting session.

6. **Report to Chairperson of the Board.** Matters covered under this provision shall be reported initially to the Chairperson for appropriate action. Should the Chairperson be the Trustee with a potential conflict, the matter shall be reported to the Vice Chairperson. Should both the Chairperson and the Vice Chairperson have a potential conflict, the matter shall be reported to the Chairperson of a Board standing committee.

7. **Disclosed Information to Be Held in Confidence.** Information disclosed to the Chairperson shall be held in confidence to the extent required by law.

8. **Required Actions for Trustee with Potential Conflict of Interest.** If a potential conflict of interest arises for a Trustee, the Board Chairperson assigns the matter in which the potential conflict arises, if possible, to another Trustee or other individual who does not have a conflict of interest. A Trustee with a potential conflict of interest shall:

   a. Abstain from influence over the action or decision in question. File a statement describing the potential conflict and the action taken if the Trustee is not permitted or is otherwise unable to abstain from action in connection with the matter. The statement shall be filed within a week of the action taken.

   “Abstain” means a Trustee who has a potential conflict of interest shall not chair a meeting, participate in any vote, offer any motion or discussion, or otherwise attempt to influence other Trustees on the matter giving rise to the potential conflict of interest.

9. The Board Chairperson shall promptly distribute copies of the statement to the Board members.

10. **Determination of Conflicts.** Questions concerning possible conflicts of
interest shall be directed to the Chairperson of the Board. The Board shall
resolve the questions by majority vote at a Board meeting in compliance with
Chapter 92, HRS, as amended. Where any matter covered by Chapter 84, HRS,
as amended, is involved, the potential conflict shall be referred to the Board
Counsel for guidance and, if necessary, the Hawai‘i State Ethics Commission for
disposition. Questions of potential conflict not covered by Chapter 84, HRS, as
amended, and questions of conflict under Section 78-4, HRS, as amended, shall
be referred to the Board Counsel for a legal opinion.

B. Employment. Except as provided in this subpart, a Trustee shall not seek or accept
employment with departments with State of Hawai‘i or Counties within the State of
Hawai‘i while serving as a Trustee. This provision does not prohibit any Trustee from
employment as an adjunct faculty member from employment with a college or
university in a non-administrative, part-time position.

Subpart 1C. Laws and Prohibited Activities.

A. Use of position to secure benefits. Except as otherwise provided by law or policy of
the Board, a Trustee shall not use the position, authority, title, influence, or prestige of a
Trustee to secure special privileges or exemptions not available to the general public for
the benefit of the Trustee, Trustee’s family members, or others. (HRS §84-13)

B. Confidential or protected communications. Except as otherwise required by law or
authorized by the Board, a Trustee shall not disclose to any unauthorized persons
information or communication subject to confidentiality by action of the Board or other
applicable law or policy, including proprietary information and/or privileged
attorney/client communications. (HRS §84-12)

C. Use of influence. Except for those decisions that are subject to the direct authority of
the Board, no Trustee shall attempt to influence OHA’s internal hiring process or the
awarding of consulting or other contracts subject State Procurement Code and
administrative rules. (HRS Chapter 103D - Hawai‘i Public Procurement Code and HRS
Chapter 103F - Purchases of Health and Human Services, as amended)

D. Restrictions on Campaign Activities. Trustees must observe state law restrictions on
campaign activities which prohibit the preferential use of OHA resources or incidents of
office for oneself or another candidate. The following activities by Trustees are
violations of the OHA Code of Conduct and the state ethics code (HRS Chapter 84-
Standards of Conduct):

1. Using OHA time, equipment, supplies, or OHA premises for campaign
activities or campaign purposes. "Campaign activities" or "campaign purposes" include: (a) selling, purchasing, or distributing campaign fundraiser tickets, including complimentary tickets; (b) conducting campaign meetings; (c) distributing campaign literature or materials; (d) soliciting campaign assistance or support; or (e) producing campaign literature or materials or storing such materials.

a. OHA time means the actual time during which a state official or employee, etc., is supposed to be performing his or her state duties. State time thus excludes lunchtime, break time, vacation time, and so forth.

b. OHA equipment includes, for example, copy machines, fax machines, telephones, typewriters, computers, and vehicles such as OHA trucks and cars.

c. OHA supplies include stationery, paper, stamps, and other office supplies.

d. OHA premises include offices, conference rooms, working areas, and so forth. OHA premises or facilities that are available to the public for use (e.g., for holding meetings or conducting business) may also be used for campaign activities on the same basis as the facilities are available to the public.

2. Using state personnel during state time for the purpose of performing campaign tasks or activities.

3. Using the state mail or messenger service for campaign purposes.

4. Using state computers or e-mail accounts for campaign purposes.

5. Soliciting campaign contributions or campaign assistance by sending letters addressed to state officials or employees at their state offices.

6. Using one's official position to give unwarranted advantages or preferential treatment to campaigns. The State Ethics Code prohibits state officials, employees, legislators, and board and commission members from using their official positions to coerce campaign contributions or campaign assistance from anyone. State officials, employees, legislators, and board and commission members should also avoid combining official business with campaign solicitations.
7. Selling fundraiser tickets to or soliciting the purchase of fundraiser tickets from subordinates or businesses or persons supervised or inspected.

8. Candidates walking through state agencies to meet with state employees for campaign purposes. The Hawai‘i State Ethics Commission believes that the State Ethics Code prohibits candidates from being allowed to walk through state agencies to meet with state employees for campaign purposes.

E. State Seal. The state seal may not be used by a state official or employee in conjunction with campaigning if such use gives the state official or employee or another any unwarranted advantage or preferential treatment in violation of HRS §84-13, as amended. State officials and employees are advised to contact the Hawai‘i State Ethics Commission for advice before using the state seal on campaign materials. Anyone using the state seal in conjunction with a campaign may also wish to contact the Department of the Attorney General regarding the application of HRS §5-6, as amended.

F. Misdemeanor For Fundraising In Government Facilities. In addition to the State Ethics Code, HRS §11-354 makes it a misdemeanor for any person to solicit a campaign contribution in a government facility used for official duties by a state or county employee. This law does not apply to certain government facilities that are permitted to be used for political activities. HRS §11-354 is part of the campaign spending law.

G. Conflict Between Code of Conduct and Applicable Laws. The provisions of applicable law shall govern in the event of any conflict between the law and this Board Executive policy.

H. Penalties For Violation of the State Ethics Code

1. An administrative fine of up to $500 for each violation may be imposed by the Hawai‘i State Ethics Commission.

2. Disciplinary action such as reprimand, probation, demotion, suspension, or discharge may be imposed by Hawai‘i State Ethics Commission.

3. Any favorable state action is voidable, and the Attorney General may pursue all legal and equitable remedies.
Part II. Sanctions for Violations of the Trustee Code of Conduct

A. Procedure for Responding to Violations or Breaches of the Code of Conduct

1. In enacting and promulgating these sanctions for violation of the Code of Conduct, the Board is not in any way asserting that these sanctions are exclusive remedies for a Code of Conduct violation. The Board recognizes that jurisdiction over criminal behavior resides in federal, state, and county law enforcement authorities and the respective justice systems. Conduct identified as criminal behavior shall be referred to the appropriate law enforcement authorities without inordinate delay.

2. As to an internal OHA process for addressing violations, should evidence or allegations of Code of Conduct violations by a Trustee of OHA come to the attention of the Chairperson of the Board, which after further review by the Chairperson appears to constitute a breach of the Code of Conduct, the Chairperson and the Vice Chairperson shall discuss the matter with the Trustee to obtain additional facts and perspective and to seek a mutually agreeable resolution.

3. Should the Code of Conduct continue to be violated by the Trustee after discussion with either the Chairperson or the Vice Chairperson, the Chairperson shall bring information on the violation forward to the BOT in executive session. Should the Code of Conduct thereafter continue to be violated, the Chairperson, after appropriate consultation with the Board Counsel, will place the matter on the agenda for appropriate action by the Board of Trustees. The Board shall discuss the matter in executive session, allowing the Trustee whose conduct is at issue to provide an explanation of the conduct. The Board may then by majority vote censure or sanction the Trustee.

B. Complaint Process

1. A Trustee who believes that a fellow Trustee has violated the Code of Conduct may seek resolution of the matter through appropriate conciliatory measures prior to commencing an official complaint under the Code of Conduct.

2. A Trustee or the OHA CEO who wishes to commence an official complaint under the Code of Conduct shall file a letter of complaint with the Board Chairperson within THIRTY (30) days of the alleged event occurring and indicate the nature of the complaint and the section or sections of the Code of Conduct that are alleged to have been violated by the Trustee. The Trustee who is alleged to have violated the Code of Conduct and all other Trustees shall be forwarded a copy of the letter of complaint by the Board Chairperson, or where otherwise applicable in what follows, by the Vice-
Chairperson, within FIVE (5) days of receipt by the Board Chairperson of the letter of complaint. If the complaint is with respect to the conduct of the Board Chairperson, the letter of complaint shall be filed with the Vice-Chairperson.

3. When a Trustee or the OHA CEO files a letter of complaint and a copy of that letter of complaint is forwarded to all Trustees, the filing, notification, content, and nature of the complaint shall be deemed to be strictly confidential, the public disclosure of which shall be deemed to be a violation of the Code of Conduct. Public disclosure of the complaint and any resulting decision taken by the Board may be disclosed by the Board Chairperson only at the direction of the Board, following the disposition of the complaint by the Board at a Code of Conduct hearing.

4. To ensure that the complaint has merit to be considered and reviewed, at least one other Trustee must provide to the Board Chairperson, within THREE (3) days of the notice in writing of the complaint being forwarded to all Trustees, a letter indicating support for having the complaint heard at a Code of Conduct hearing. Any Trustee who forwards such a letter of support shall not be disqualified from attending and deliberating upon the complaint at a Code of Conduct hearing convened to hear the matter, solely for having issued such a letter.

5. Where no letter supporting a hearing is received by the Board Chairperson in the THREE (3) day period referred to in section 5 above, the complaint shall not be heard. The Board Chairperson shall notify all other Trustees and the OHA CEO in writing that no further action of the Board shall occur.

6. Where a letter supporting a hearing is received by the Board Chairperson in the THREE (3) day period referred to in section 5 above, the Board Chairperson shall convene, as soon as is reasonably possible, a special meeting of the Board to allow the complaining Trustee to present his or her views of the alleged violation of the Code of Conduct.

7. At the special meeting of the Board, the Board Chairperson shall indicate, at the commencement of the meeting, the nature of the business to be transacted and that the complaint shall be heard in an in-camera session of the special meeting. Without limiting what appears below, the Board Chairperson shall ensure fairness in dealing with the complaint by adhering to the following procedures:

a. The Code of Conduct complaint shall be conducted at an in-camera Code of Conduct hearing session of a special Board meeting convened for that purpose. All preliminary matters, including whether one or more Trustees may have a conflict of interest in hearing the presentations.
regarding the complaint, shall be dealt with prior to the presentation of
the complaint on behalf of the complaining Trustee.

b. The sequence of the Code of Conduct hearing shall be:

(1) The complaining Trustee or OHA CEO shall provide a
presentation which may be written or oral or both;

(2) The respondent Trustee shall provide a presentation which may
be written or oral or both;

(3) The complaining Trustee or OHA CEO shall then be given an
opportunity to reply to the respondent Trustee’s presentation;

(4) The respondent Trustee shall then be provided a further
opportunity to respond to the complaining Trustee’s presentation
and subsequent remarks;

(5) The remaining Trustees of the Board shall be given the
opportunity to ask questions of both parties;

(6) The complaining Trustee or OHA CEO shall be given the
opportunity to make final comments; and

(7) The respondent Trustee shall be given the opportunity to make
final comments.

c. Following the presentation of the respective positions of the parties, the
parties and all persons other than the remaining Trustees who do not have
a conflict of interest shall be required to leave the room, and the remaining
Trustees shall deliberate in private, without assistance from
administration. The Board may, however, in its sole discretion, call upon
legal advisors to assist them on points of law or the drafting of a possible
resolution.

d. If the remaining Trustees in deliberation require further information or
clarification, the parties shall be reconvened and the requests made in the
presence of both parties. If the information is not readily available, the
presiding Chairperson may request a recess or, if necessary, an
adjournment of the Code of Conduct hearing, or an adjournment to
continue the current meeting to a later date.
e. In the case of an adjournment, no discussion by Trustees whatsoever of the matters heard at the Code of Conduct hearing may take place until the meeting is reconvened.

f. The remaining Trustees in deliberation may draft a resolution indicating what action, if any, may be taken regarding the respondent Trustee.

g. The presiding Chairperson shall reconvene the parties to the Code of Conduct hearing and request a motion to revert to the open meeting in order to pass the resolution.

h. All documentation that is related to the Code of Conduct hearing shall be returned to the Chairperson or designate immediately upon conclusion of the Code of Conduct hearing and shall be retained in accordance with legal requirements.

i. The presiding Chairperson shall declare the special Board meeting adjourned.

8. A violation of the Code of Conduct may result in the Board instituting, without limiting what follows, any or all of the following sanctions:

   a. Having the Board Chairperson write a letter of censure marked “personal and confidential” to the offending Trustee, on the approval of a majority of those Trustees present and allowed to vote at the special meeting of the Board;

   b. Having a motion of censure passed by a majority of those Trustees present and allowed to vote at the special meeting of the Board;

   c. Having a motion to remove the offending Trustee from one, some or all Board committees or other appointments of the Board passed by a majority of those Trustees present and allowed to vote at the special meeting of the Board, for a time not to exceed the Trustee’s term as Trustee.

   d. Any Board action favorable to a Trustee obtained in violation of this executive policy is voidable on behalf of the Board; provided that in any proceeding to void a Board action pursuant to this policy, the interests of
third parties who may be damaged thereby shall be taken into account. Any proceeding to void a Board action shall be initiated within SIXTY (60) days after the determination of a violation under this policy. The Board may pursue all legal and equitable remedies and/or sanctions through the Board Counsel.

e. The offending Trustee shall not engage in interactions with OHA administrative staff.

f. The offending Trustee shall not have access to documents and information which are intended to deter or prevent misuse of that information.

g. The offending Trustee’s shall not be allowed out of state travel.

h. The offending Trustee shall not have use of a Trustee allowance or requiring third party administration of the Trustee Allowance Fund.

i. The offending Trustee shall not have the privilege of publishing articles in Ka Wai Ola and OHA’s internet sites.

9. The Board may, in its sole discretion, make public its findings at the special meeting or at a regular meeting of the Board.