

Aloha Maui County Council Members-

My name is Kimberlyn Scott. I am here to testify in opposition to the approval of JD Kim for Head Prosecutor of Maui. Mahalo for your time and the serious consideration of what I am about to say-

These are some of the causes which impel me to reject the choice of Mayor Victorino-

The Oath of Office¹ that all public officers are required to adhere to, explains that everyone here including Mr Kim swears to "support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and" to "**faithfully discharge their duties .. to the best of their ability.**"

Mr Kim has broken his Oath to the County and the People.

In 2011 Mr Kim was hired as Head Prosecutor. He did not divulge disciplinary action taken against him prior to his hiring, thus he was hired without full disclosure to his employer- the state, ie the people.

In 2015 Mr Kim again did not comply with the **ABA's Rule** under (8.1 Bar Admission & Disciplinary Matters) **Maintaining The Integrity of The Profession** which reads-*An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:*

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority...

Mr Kim broke this rule.

Will he apply the same lack of ethics to the hiring of other prosecutors in his charge? We know he hired Robert Rivera as Deputy Prosecutor. Does Mr Kim know that Mr Rivera was fired while working as a prosecutor? Does he know why? If he does know why, then he did a better job at hiring than he did at Being hired.

The Maui County Charter contains a **CODE OF ETHICS** which declares that "*Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.*"²

1 <http://lrbhawaii.org/con/constitution/CONST%200016-0004.html>
 2 <https://www.mauicounty.gov/DocumentCenter/View/83827/Charter-2017-Edition?bidId=>

This applies to all government officials including the Head Prosecutor.

Prosecutors are most often chosen through local elections. Maui is the only county in our state in which the Mayor chooses the nominee and the Council votes to approve or disapprove the nomination. That is an extremely important fact given our government was founded on the precept that *“Governments are instituted among Men, deriving their just powers from the consent of the governed, — “ and “That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it”*.³

This Council is guarding the “Rights of the People”.

In order for the people to exercise their power of “*consent*” they must be able to judge whether the prosecutors office has become “*destructive of these ends*”. This infers disclosure of disciplinary actions.⁴

Furthermore, the Maui Charter preamble reads, “WE, THE PEOPLE OF THE COUNTY OF MAUI, mindful of our Hawaiian history, heritage and culture and our uniqueness as a four island county, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono," ["The life of the land is perpetuated in righteousness."] In order to secure the benefits of the best possible form of county government and to exercise the powers and assume the responsibilities of county government **to the fullest extent possible**, we do hereby adopt this charter of the County of Maui, State of Hawai'i. (Amended 2012)

It is the duty of the Council according to Maui County Charter to approve via the voting process a Head Prosecutor for Maui while incorporating all rules and standards. In order for Council to do the job to the “*best of your ability*” you must have all the information. This would apply to all hires, not just a Head Prosecutor. But because of the powers, responsibilities and limited supervision inherent in the job of Head Prosecutor, the normal standard for appointment must be stringently applied. You are supplied with the power needed thru the Charter⁵ which reads- Section 3-6. Powers of Council. The council shall be the legislative body of the county. **Without limitation of the foregoing grant or of other powers given it by this charter, the council shall have the power: 3. To conduct investigations of (a) the operation of any department or function of the county and (b) any subject upon which the council may legislate.**

That is the role of this Council now. To investigate the subject to the “best of your ability”. That means the Council should not be swayed by evidence given by those who stand to gain from their positive testimonies alone. Rather, facts, data, personnel records, work and personal history should be “investigated” exhaustively to earn the trust and protect the rights of the people whom are represented by the Councils diligence or lack thereof.

What is Mr Kims role in all this as an attorney nominated for Head Prosecutor?

The Model Rules of Professional Conduct: Preamble & Scope explains that “In all professional functions a lawyer should be competent, prompt and diligent.”⁶

3 <http://www.ushistory.org/declaration/document/>

4 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_1_bar_admission_disciplinary_matters/

5 <https://www.mauicounty.gov/DocumentCenter/View/83827/Charter-2017-Edition?bidId=>

6 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/mo

Mr Kim has not been so. He was either unaware of the rules and functions of his profession, and therefore incompetent or he was not “guided by the standards of professional conduct as defined by applicable professional traditions, ethical codes, and law” as per Prosecution Function.⁷

The function of JD during the nomination process is made even clearer for us in PROSECUTION FUNCTION⁸ Standard 3-2.1 *The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline.* It is easily inferred that JD is to subject himself to questioning and provide data etc that determines his professional conduct, skills and experience.

Mr Kim made sure to provide testimonies that showed him in a good light, but he either forgot or refused to add evidence that may have shown otherwise. Neither of these possible scenarios present Mr Kim as following the rules, standards, or ethics he is charged with having to be a Head Prosecutor.

Again the ABA Model Rules of Conduct⁹ clarify “professional conduct - [5] *A lawyer's conduct should conform to the requirements of the law, service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.*

Furthermore, the ABA explains that (a) *In light of the prosecutor's public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations.*¹⁰

If the construct of truth, justice and law are to remain incorruptible then the purveyors of truth, justice and law must BE incorruptible. Their ethical code must be without blemish so that they can, with pono stand in judgment of others. As the guardians of justice, Head Prosecutors in particular can ill afford to tarnish truth, justice or law via action, or inaction.

We are no longer debating What Mr Kim did to mandate disciplinary action before he was hired in 2011. We are deliberating upon whether the denial or delay in the protocol for hiring was deliberate.

The first incident was in 2011 during his first nomination. This is when he withheld information that reasonably should have been given, (but he can, in lawyerly fashion, decry technically not knowing unless it can be proved that the information was asked for either during his interviews or in hiring documentation.) There is a reasonable assumption that he should have known to divulge the disciplinary action taken against him, as we hope he has done when vetting prosecutors who work under him.

Then in 2015 when the information of disciplinary action was exposed accidentally and questions were

[del rules of professional conduct preamble scope/](#)

7 <https://www.law.berkelev.edu/php-programs/courses/fileDL.php?fID=9989>

8 <https://www.law.berkelev.edu/php-programs/courses/fileDL.php?fID=9989>

9 https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/

10 https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/

asked, Mr Kim was not forthcoming. To this day there is no clear answer, but at this point that is not relevant. We have established is that Mr Kim knew the information was wanted by 2015 via contact with the Council and during the publicized nomination hearings.

His “higher code of ethics”, his sense of “pono” should have alerted him that this was wrong. But he ignored what was right and did what served his private agenda.

This behavior should alert the County to at least the probability that there are other issues possible with Mr Kims viewpoint of the code of ethics, standards and rules he has sworn to abide by.

I suggest that considering the amount of trust placed in this office, a code of ethics that exemplify the “*highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government*” have not been met.

When the current office of Head Prosecutor denies or delays data or documents including personnel records he is in violation of professional conduct as per **Prosecutorial Function** under **Diligence, Promptness and Punctuality** (e) *The prosecutor should be punctual in attendance in court, in the submission of motions, briefs, and other papers, and in dealings with opposing counsel, witnesses and others. The prosecutor should emphasize to assistants and prosecution witnesses the importance of punctuality in court attendance. [12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.*¹¹

The act of omission was either deliberate on Mr Kims part, which is a violation or he did not know the information should be given. Either reason presents a flaw in Mr Kims standards, rules, ethics, and function.

This is what we are here to deliberate today with his third nomination as Head Prosecutor.

After my experiences within the criminal justice system, I take very seriously the decision you must make. It is my opinion that Maui County can do better than Mr Kim for Head Prosecutor.

I hope Council shows the people that it takes the position of head prosecutor and the responsibilities of Council to employ a candidate who is worthy to represent Justice, truth and Law very seriously by voting “No” to Mr Kim as Head Prosecutor. I know that Council can also take more time to consider Mr Kim and investigate further. Either option is preferable to a “Yes” now.

There are other serious legal and constitutional issues that should be heard and investigated by this Council regarding Mr Kim, but my time is limited here, though I am prepared to dedicate more of my time and labor to your investigation as a concerned citizen.

Do you have any questions I can answer now to aid your decision making process?

¹¹ <https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fID=9989>