

HAWAII COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

November 9, 2005 – 10:00 a.m.

Elections Office Conference Room

25 Aupuni Street, Room 105a, Hilo, HI 96720

Present: Reeve Williams, Chair
Karl Kawahara, Vice Chair
Kerry Inouye, Member
Wayne Joseph, Member
Patricia K. O’Toole, Deputy Corporation Counsel
Bobby Jean Leithead-Todd, Deputy Corporation Counsel
Mary Crosson, Secretary

Also present, at various times: Alex Achmat, Observer
“Lance,” Observer
Richard Ganigan, Jr., Petitioner (Pet. 2005-04)
Brian De Lima, Attorney for James Arakaki (Pet. 2005-05)
James Arakaki, Councilman/Respondent to Petition (Pet. 2005-05)
Sidney Fuke, Respondent to Petition (Pet. 2005-07)
Jay Yoshimoto, Legislative Auditor’s Office, Observer
Rodney Oshiro, of Friends of Arakaki, Observer
Jason Armstrong (of the *Hawai‘i Tribune-Herald*)
Nick Hermes, Department of Public Works, Witness (Pet. 2005-04)
Joseph Kamelamela, Attorney (Pet. 2005-04)
Hiram Keliikoa, Respondent (Pet. 2005-04)
Stanley Nakasone, Witness (Pet. 2005-04)
Daniel Paleka, UPW, Witness (Pet. 2005-04)
Alton Nosaka, UPW, Witness (Pet. 2005-04)

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CHAIR: Okay, the Board of Ethics will come to order. It’s ten o’clock. First order of business, statements from the public. Do we have any statements from the public, _____, any statements from the public? If you are here to testify, you have to sign it. I presume you’ve done that, you’ve got to sign in if you’re going to testify. I would like to just take a moment and have the public introduce themselves and state your position being here _____. Starting with the gentleman on the left.

ACHMAT: My name is Alex Achmat, and I’m here to just observe the operations of the Council, and I have an interest in the complaint against Mr. Arakaki.

KK: What was that name again?

CHAIR: I get the name—

ACHMAT: A-C-H-M-A-T

CHAIR: A-C-H-A-M-A-T? [Sic.] And what's the next—what's your name?

“LANCE”:
My name's Lance, and I'm here to observe how the County functions.

GANIGAN: Richard Ganigan, of Public Works—

CHAIR: Okay, and you're here on a petition?

KK: I didn't get his name.

CHAIR: These names are kind of getting at you.

KK: Yeah, I'd like to know, really, what your names are.

PKO: Ganigan, he's a petitioner in a case. It's a new business.

KK: Ganigan.

DE LIMA: Brian De Lima, representing Mr. Arakaki.

KK: I know that name.

(Inaudible conversation.)

CHAIR: In the back?

YOSHIMOTO: Jay Yoshimoto, legal _____ with the Legislative Auditor, Research Branch,
_____.

OSHIRO: Rodney Oshiro, Friends of Arakaki, observer.

ARMSTRONG: Good morning, Mr. Chair, I'm Jason Armstrong, reporter with the *Hawai'i Tribune-Herald*. Now that you know who all of us are, I was wondering if you folks could turn your name tags around so that we can see who you are.

CHAIR: Good point. Touché.

ARMSTRONG: Thank you.

CHAIR: Bob Williams, Chair.

KK: Karl Kawahara, Vice Chair.

WJ: Wayne Joseph, Member.

BLT: Bobby Leithead-Todd, Deputy Corporation Counsel.

KI: Kerry Inouye, Member.

PKO: Patricia O'Toole, Deputy Corporation Counsel.

MC: Mary Crosson, Secretary.

CHAIR: Keeps it all together. Thank you. Okay, have you all had a chance to review the minutes of the October 12, 2005, regular session? Have you all read those? Any additions or corrections? Is there move to accept and file?

KI: So moved.

CHAIR: Seconds?

WJ: Second.

CHAIR: All in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: So moved. Have you all had a chance to review the minutes of the executive session of October 12, 2005? Any corrections, additions, wishes? Move to accept and file?

WJ: Moved.

KI: Second.

CHAIR: All in favor?

WJ: Aye.

KI: Aye.

KK: Aye.

CHAIR: The Chair votes aye. Moving along, I think in the interest of expediency, we'll defer the new business. I'd like to have a motion to defer the new business until the—and the first agenda will in fact be the unfinished business, 5a, beginning with Petition 2005-05, David Kimo Frankel. Any discussion on that—

KK: I so move.

CHAIR: Okay, a motion is made.

WJ: Second.

CHAIR: Second. All in favor?

KK: Aye.

WJ: Aye.

KI: Aye.

CHAIR RW: Let the record show we're moving right along to the first order of business, item 5a, Petition 2005-05, David Kimo Frankel is requesting an informal advisory opinion on Section 2-91.4 of the Hawai'i County Code regarding Council Member James Arakaki's receipt of gifts to his legal defense fund. In this matter, a motion—a petition was made by counsel for Mr. Arakaki that I basically had a conflict of interest in this issue, because I talked to the Tribune-Herald regarding it, and at the last meeting I had recused myself accordingly. So, in that case, I pass the Chair over to the Vice Chair, Mr. Karl Kawahara, and I will be mute on this issue.

CHAIR KK: What issue shall—Petition No. 2005-05.

PKO: Maybe that _____ I don't know if we have enough chairs.

CHAIR KK: _____ is the matter of David Kimo Frankel, requesting an informal advisory opinion on Section 2-92—2-91.4 of the Hawai'i County Council (sic.) Code, regarding Council Member James Arakaki's receipt of gifts to his legal defense fund. This is open to discussion.

PKO: You can let them state their presence and then—because Mr. Frankel, I think, indicated he was not able to be here today, so we have his written material, and then we can let them address it.

CHAIR KK: Yeah, we have Bobby Leithead as counsel, _____ James Arakaki, counsel Brian De Lima, _____.

DE LIMA: Well, Mr. Chairman, I submitted an affidavit with two exhibits, which were sent to the Campaign Spending Commission. I think it's important to note that Mr. Frankel's complaint to the Campaign Spending Commission and the Ethics Commission served a positive point in that it allowed the Campaign Spending Commission to review the advice it had given to Mr. Arakaki's campaign. Because what happened, is that Mr. Arakaki's campaign recognized that they had a campaign debt, and based on that campaign debt wanted to know what was the legal way to pay off that debt. So as you can see from the letters that were sent to the Campaign Spending Commission, they were told by the Executive Director, Mr. Watada, that the campaign could no longer raise funds. That turned out to be incorrect. Mr. Watada and the

Campaign Spending Commission, upon receipt of Mr. Frankel's complaint, examined what had transpired, acknowledged that they had indeed told Mr. Arakaki's campaign that they could not raise any funds, and as such, that was incorrect information. Now when Mr. Arakaki's campaign was told they couldn't raise funds through the campaign, a legal defense fund was established. Mr. Arakaki's name is on the—his social security number is on that account, because that's where the money would go to. It's important to note that Mr. Arakaki's campaign basically filed reports indicating that they have these legal expenses as a result of the effort to disqualify his campaign. Now his opponent, Mr. Fulks, never filed any campaign spending report. Now, myself as attorney for Mr. Arakaki in that dispute, I am required by law to charge the campaign for my time. I can donate up to \$2,000 of in kind services to the campaign, which I did. I donated my two thousand campaign services. Now Mr. Fulks was represented by an attorney, in this case it was the complainant against Mr. Arakaki in this case. Mr. Fulks filed no campaign spending report, there's been no listing of any in kind contribution by Mr. Frankel or any other attorney, so Mr. Arakaki abided by the rules and incurred those legal expenses in order for him to run for office. The Campaign Spending Commission acknowledged that that is a legal expense. Now, the problem is, because he has term limits, he can no longer run for the Hawai'i County Council, and as such, Mr. Watada, as Executive Director, advised Mr. Oshiro, who is also present here today, that they could not raise any more money. That was incorrect. If they had been told they could raise monies, the monies would not have been made to the legal defense fund, and as such there would be no issue today. But Mr. Arakaki felt that since these contributors were not going to be listed on the campaign spending disclosure, that he believed the public had a right to know who was contributing money to pay off this legal debt, these debts, incurred for the campaign. So he insisted, because of his reputation and office, that all those contributors be listed on the ethics disclosure, gifts disclosure sheet, which he did. He expended no monies, because he felt the public should have a right to know who contributed money to this legal defense fund, which was for the purpose of paying off his legal expenses. Now, when Mr. Frankel raised this issue, the Campaign Spending Commission and staff and Mr. Watada recognized that they had given some incorrect information. They looked at the law and they advised the campaign that the—that indeed, they could raise money. The only caveat is, those monies raised needed to comply with the campaign spending limits at the time of the election, and any money raised during this subsequent election period would count towards any future political race should Mr. Arakaki choose to run for another office. So that is the caveat. Based on that new information, the campaign committee decided that they would file an amended report and that all the monies in the legal defense fund would be returned to the contributors, and they would be advised that there was—that they would be able to contribute money directly to the campaign committee for the purpose for which the campaign committee was utilized, which was paying off the prior campaign debt. So, I think if anything, Mr. Arakaki's actions were exemplary. Now in terms of the specifics of the complaint, really what it comes right down to is, did he solicit funds, was it tied to any action on the Council. Campaign

monies are generally raised by some people who have an interest in the government, and Mr. Arakaki did not directly solicit any funds, nor did he indirectly solicit funds. Those funds were solicited by friends and family members, basically tied to the campaign, of which Mr. Oshiro, like I said, was the treasurer. So there was no quid pro quo. It was purely to pay off a campaign debt, and Mr. Arakaki—from the beginning, the campaign committee was right. They should have been able to raise these funds, pay off a prior campaign debt, and _____ then was basically, purely a responsibility of being able to run for office. I'd be happy to answer any questions.

CHAIR KK: Thank you, Mr. De Lima. Do the members of the Board have any—

WJ: --Am I correct to assume, then, that the monies that were donated to the—

DE LIMA: --legal defense fund—

WJ: --legal defense fund, was returned and subsequently put into the campaign fund?

DE LIMA: No, it hasn't been returned yet. There is a—you know, I'm sorry, but it probably didn't get into your package in time for you to review, because we just submitted it I think yesterday, attaching a letter that was written to the Campaign Spending Commission. It required that the money—the Campaign Spending Commission is meeting right now, by the way, to act on this proposal. But basically, within 30 days of the Campaign Commission's meeting, which is today, the money has to be returned to the legal defense fund contributors. And then they can in turn contribute it directly to the campaign, so that's the representation being made to the Campaign Spending Commission as well as to the Ethics Commission, of what—because that's the best way to account for what it really is, which is campaign contributions.

WJ: So all the money will be returned within the next 30 days.

DE LIMA: Yes, sir.

WJ: And it'll be up to the donators what to do with it?

DE LIMA: Right. And we expect that they will comply with the—if they wish to contribute to the campaign, they'll comply with the understanding that it has to comply with the campaign spending limit. So for example, one of the contributions was \$2,500. Under the campaign spending limit, it can be only \$2,000. Everything else is within the campaign spending limit.

KI: I have no questions right now.

CHAIR KK: Just for verification here, originally he was asked whether the candidate could raise more funds, or it was ruled by the Campaign Spending Commission that he could not raise more funds.

DE LIMA: Mr. Watada told him—

CHAIR KK: --Mr. Watada made that—and as it turned out, it was incorrect.

DE LIMA: That's correct.

CHAIR KK: Did they, did they themselves make that determination, the Campaign Spending—

DE LIMA: --We—Mr. Arakaki and myself met with the Campaign Spending Commission, I think it was the last time that you guys had a meeting scheduled. What happened was they sent us a notice saying we're going to have this matter heard on October 12, or whatever date it was. We went up, we met with Mr. Watada himself, their new executive director, Grant Tanimoto, a staff member, and they acknowledged the accuracy of Mr. Oshiro's letter, and Mr. Watada acknowledged that he did give—

CHAIR KK: --Mr. Oshiro—

DE LIMA: --from the Friends of, Friends for Arakaki campaign.

CHAIR KK: Oh, okay, right.

DE LIMA: So Exhibit "A" that I attached to my affidavit is the letter that he wrote to the Commission, which acknowledged he had a conversation with Mr. Watada, and Mr. Watada represented that they couldn't raise any more funds. And that was incorrect. You can raise money, but it's limited to the campaign spending limit at the time, can be used to pay off existing campaign debts, and if you—if you run for another office, you're limited by the amount of money contributed during the new election cycle.

CHAIR KK: And when you say campaign debts, that legal defense fund is considered a campaign debt?

DE LIMA: For the purpose of which they had intended, it was considered. In fact, they had earlier indicated that the expenditure of funds for which Mr. Arakaki was spending for legal fees was a legitimate campaign expense, because it was directly tied to his eligibility to seek office. There are some real strict requirements on what you can use your campaign monies for, and they checked before they expended the money for legal fees.

CHAIR KK: There were some gifts that were—that exceeded campaign limits?

DE LIMA: Like any campaign, if you get money over the limit, you are required to refund those monies. And when that donation was received by the legal defense fund, it was disclosed as part of the ethics—the question was, are you governed by the Campaign Spending Commission, because they were told it was no longer governed by the Campaign Spending Commission, because of the fact that they could not raise any monies. But that was incorrect. And I think that the Campaign Spending Commission has sent out letters to all non-partisan, term limits officials, because they recognize that there needed to be some clarification and guidance in this area. So I think that was recently done. I think they're visiting each of the islands and having meetings as well, to kind of deal with this, quote, term limits situation, because that's what happens. You've got a term limit, you cannot raise any more monies, which was what Mr. Watada thought at the time that he gave that advice to the Friends, but not true, you can raise money to pay off the campaign debt, but you're required to abide by the campaign spending limits at the time of that election.

PKO: The query in my mind is whether—is the Commission acting on something today, and do we need to wait for their official decision before the Board can act. I mean, I'm sure the Board members know that exempted from reporting as a gift are campaign contributions, so the whole gift disclosure I guess would have been, you know, should not have been filed if the correct opinion had been given.

DE LIMA: Right.

PKO: But, so I'm asking, what is the Commission doing today? Will that formalize that?

DE LIMA: I've been advised that they are in concurrence because basically I wouldn't have written that letter if I didn't understand that to be the case. So we conferred on the 12th, they concurred with the factual scenario, I submitted the letter indicating the actions of the legal defense fund, what was going to be done and the time line. I spoke to the staff person, Mr. Tanimoto. They're probably meeting right now, and they're going to take action on it. They indicated the staff was going to recommend no fine for this, because it was based on their incorrect information. But the staff is not the Commission. The Commission could do something entirely different, but I don't think the factual scenario that I'm putting forth is any different. Basically, the concept is that—I submitted an affidavit indicating the contents of the letter, so the way I look at it, I think you could _____ this matter, because it is a campaign contribution, and but for Mr. Arakaki's actions of making a public disclosure, you know, he did the right thing, and all those monies are going to be campaign contributions eventually.

PKO: So when you report what you reported as a gift to the Campaign Spending Commission, then, after the meeting, their meeting, will you amend his gift disclosure filing?

DE LIMA: Well, I think—we would do anything that the Commission thinks would be appropriate to resolve this thing completely and forthright. The bottom line is, those gift disclosure contributors should have been campaign contributors. That was the objective of the campaign initially. The only reason a legal defense fund was established was purely because they were told no further campaign contributions could be received by the Friends for Arakaki for the campaign expenses. That was incorrect information. So I think this public discussion would bring it to a conclusion. I mean, I don't know why we'd have to do a legal fiction of withdrawing something that was already filed. I think we've basically explained what has occurred in this matter. And I indicated in the beginning of my statement, Mr. Frankel brought this matter to the public's attention, which was what Mr. Arakaki intended from the beginning. He wanted the public to know that he was getting these contributions. Mr. Arakaki's campaign wanted the public to know that these should be considered campaign contributions, not legal defense funds. That was not the purpose of Arakaki's campaign. Arakaki's campaign went to the Campaign Spending Commission and said, we have this campaign debt. We want to raise funds to pay off this campaign debt. They were given incorrect information. Now the Commission is correcting that information and recognizing what Mr. Frankel and Mr. Arakaki both recognized—that this should be campaign contributions. If they were given the correct information, all these would be campaign contributions, it would be listed in the campaign spending report. We wouldn't be here today. So I think Mr. Frankel has done Mr. Arakaki a favor, so to speak, by bringing this matter to the campaign spending commission's attention, so they can correct a mistake. And then as you correctly pointed out, it wouldn't have to be listed on the gift disclosure, but because it wasn't accepted by the Campaign Spending Commission, Mr. Arakaki did what he should be applauded for, which is to make it public, which is what he did.

CHAIR KK: Any questions from the Board members? Correct me if I'm wrong, but from what you are saying right now, it seems that this whole matter seems to be moot based upon the fact that the funds eventually will be returned and—

DE LIMA: And I'm hoping that those people will contribute to the campaign, so the bills that Mr. Arakaki has with our law firm can be paid up, because I cannot by law waive those fees.

CHAIR KK: Okay. Now, you also mentioned the fact that—we know that he cannot run for office—

DE LIMA: --he cannot run for—

CHAIR KK: --for Council, but yet he can retain that funds, campaign funds?

DE LIMA: Actually, if he pays off the debt, if there's any surplus, and if he doesn't run for office, he has to either donate that to a charitable organization or pro rate it to

the contributors. But usually they donate to a charitable organization. That's been the practice by most campaigns, to donate to a charitable organization.

CHAIR KK: Any questions? You know, I'd like to just state that it's unfortunate that Mr. Frankel couldn't be here today, since he had previous commitments he could not break. He stated last time that he would have liked to be here today, but he couldn't be here. But does he know the existence of this letter?

DE LIMA: I couldn't say that he knows it exists, but we did send it to his address that we have.

CHAIR KK: Oh, you did send it to his address?

DE LIMA: Yes, but I cannot say that he received it prior to today.

CHAIR KK: Oh, okay. Okay, we've heard the situation as described by Mr. De Lima. Is there any further question? Do we have to make a decision at this time on the matter, or can we discuss it first before we make any decision?

PKO: You probably should have a motion and then discuss it. My only concern is the Commission didn't act yet.

CHAIR KK: The Commission, what?

PKO: The Campaign Spending Commission did not act yet.

DE LIMA: I would suggest, why don't we table this, and I'm sure by the time your meeting ends, we can find out what the Campaign Spending Commission did, because they're meeting right now.

PKO: And they'll issue something in writing?

DE LIMA: Well, they'll take a vote and they record their minutes.

PKO: Yeah, so we can get something—I have to write an informal advisory opinion, and I'd like to have that available. And Mr. Frankel could, if he does not like this decision, ask for a formal hearing.

CHAIR KK: Mr. De Lima, there's a situation very complicated. I am resigning from this Board as of the end of this meeting today, which, if this decision is not made today, then we'll not have a quorum to decide the situation, unless you release Mr. Reeves [sic.] to be involved in this. It's a complicated matter, but I think if you got a phone message from the Campaign Spending Commission in Honolulu—

DE LIMA: Well, I think if you table this until you did your other business, I'm sure we can get a confirmation that they've acted on the recommendation.

WJ: I'd like to make a motion to table this matter until we can get a—

KI: I second this motion.

CHAIR KK: There is a move by Mr. Joseph, seconded by Mr. Inouye, that we table the motion until we get further information from the Campaign Spending Commission.

DE LIMA: Later at this meeting.

CHAIR KK: Okay. Any discussion? No discussion. Okay, all those in favor say aye.

WJ: Aye.

KI: Aye.

CHAIR KK: Aye. Motion is carried, unanimous.

DE LIMA: _____ we'll call them right now.

CHAIR KK: Thank you, Mr. De Lima.

(Bob Williams resumes as Chair)

CHAIR: And the next order is business, and again I'd like to deviate from the agenda, with the Board's _____, to accommodate the members of the public who are here, and skip right over to the next item, Petition 205-07, update on David Kimo Frankel's petition seeking implementation and enforcement of Section 2-91.3 of the Hawai'i County Code pertaining to the registration of lobbyists. Mr. Fuke, would you please join us. Subsequent to our last meeting, Mr. Fuke put forth I thought a well regarded discussion, and we've also just now received the opinion by official counsel to the Board, "What is a Lobbyist," which I've not really had a chance to read just yet. It came in this morning.

BLT: The first page is the part that's relevant to Mr. Fuke, which basically—this is of course subject to the Board agreeing with my reasoning, that under the Hawai'i County Code's definition of a lobbyist, Mr. Fuke, because he is required to directly communicate with agencies such as the Planning Commission and the County Council to try and get the applications that he processes approved, that when—

PKO: --I'm just suggesting if no one's had a chance to read it yet, maybe we should break for a few minutes so they can read it and then be better able to ask you questions.

CHAIR: And I direct the Board also to Mr. Fuke's communication, you've seen that, it's a letter dated October 27, subject complaint of David Kimo Frankel. Note that he's registered as a lobbyist.

BLT: Other people have come forward to register, also.

CHAIR: And also, the memo from Constance Kiriu, which further elaborates. So let's take a second to look at all that.

(10:30 a.m. to 10:38 a.m.: Break to read materials.)

CHAIR: Give me a good, practical definition of a ministerial matter, will you?

BLT: A ministerial matter is basically where if someone is complying _____, if they come in to get approval of something and, as long as what they're submitting complies with the building code, the fire code, the subdivision code, those kinds of things, and basically you're going through a checklist—did they submit this, did they submit this, are the beams the right size, have they got the required setbacks. And you're going through basically a checklist, and if they have complied with the code, you're required to give them a building permit. And so in that case it's ministerial, because it doesn't require an exercise of discretion. However, if—let's say someone wants a variance from the building code, zoning code, that's not ministerial, because you're not required to give the variance, because it is something that's different. It's out of the ordinary, and that requires an exercise of judgment and an exercise of discretion. But ministerial—and the only thing that the Supreme Court actually ruled on is building permits, where they basically said building permits, but I would argue that something similar to building permits, and other things that are ministerial would be, you know, when you're just getting a regular permit for whatever. One example in one case we're doing, you need to come and get a driver's abstract, right, you know—because they're just giving information. But building permits, probably getting their design stamped as conforming to the building code, the kinds of things like that.

CHAIR: Any further time required to digest this information? Returning to the order of business, let the record show that we have reviewed the minutes of the last minute. We have Mr. Fuke here again to perhaps summarize or to reiterate. We've looked at the input of counsel, Bobby Leithead-Todd, on clarifying lobbyist registration requirements. Moreover, we've seen the memorandum of the County Clerk, Constance Kiriu, on notice to lobbyists, and basically which meets the criteria I think Mr. Frankel was seeking to obtain. So renewed emphasis on that. And we also have a letter from Mr. Fuke which makes some good recommendations on how to differentiate between an individual and a—a clarified definition of what the individual is, however, also noting that he is now registered as a lobbyist. So with that in mind, do you want to add some supplemental information or ideas?

FUKE: No, I think that the Board has all of the information to render an opinion. I do have several questions, however, more for clarity's sake. If the Board would agree with what your counsel has advised you, you're basically saying that people who process applications that go before any boards or commissions, that when the boards and commissions have some measure of discretionary

authority, whether it's before the tax adjudication board or the liquor commission, or planning commission, board of appeals, or whatever, I would assume that—if I understand what your counsel has advised is that those would all fall under quote, unquote, the category of a lobbyist. And likewise before the County Council, because there's the discretion, that the County can say yes or no on an application, as distinguished from like the subdivision or building permits or plan approval, where Council has indicated they're pretty much checklisted and—

CHAIR: --ministerial function—

FUKE: --so if that's the Board's position, and again _____ it's a question of how these things really work, because it's a little convoluted and I'm really trying to fill out _____. While you were talking on the other matter, I was just kind of reviewing this thing here, and I have some questions, and so—

CHAIR: --what is that, the lobbyist registration form?

FUKE: The lobbyist registration form, and also like the clarity of the _____ by your counsel. So I guess I have several questions. First is like—would this be retroactive, where subsequent to the Board's making an opinion, for example, and assuming that you go along with your counsel's opinion that it would be retroactive wherein like all existing applications that we already have on file, that are before the commissions and boards, or what we have—

CHAIR: That's a good question. Shall we address that, could we address that? You understand the question? If we buy her logic, which is a clarification which doesn't give you too much heartburn, essentially, but then the question is, at what point do we start to implement this? There's another issue there, and that's the exemption of attorneys, right, so what about that? I guess the first question is, do we support the clarification? Is there discussion from the members of the Board on that? Agree, disagree, opinion, on what she's written?

KI: Okay, according to this lobbyist registration under Hawai'i County Code Section 2-91.3, for my level of discussion and information, to me it's pretty clear, I think. Whether it should be retroactive, that I don't know.

PKO: Is it retroactive _____ is still pending. _____.

CHAIR: Wayne, any thoughts on that? The first point, do you generally agree with the clarification of the code, the law, do you agree with that?

WJ: Well it's vague in some areas. And if you look at this—

CHAIR: I've never seen that.

PKO: That's the form from upstairs.

KI: I do have one question, and I don't know, maybe Pat or Bobby Jean can answer. And the question is, why would attorneys be exempted? If they're doing basically the same job—

CHAIR: --because they're special, I guess—

KI: --I mean, if they're all lobbyists for somebody.

BLT: You'll notice that in italics in the paper that I _____, I did not that under state law, that attorneys, if they were lobbying, are required to register. The County Code has not been amended, and so that would be something that, if you think the Code should be amended, you could make a proposal and send it up to the County Council to make it consistent with state law, which requires that when they are lobbying, attorneys are required—there is some language that on certain things, when they're basically acting in an attorney capacity, like before an adjudicatory board, that maybe they don't. But on other issues, when it's trying to get something passed through the Council or Planning Commission, or in this case the State Legislature, they have file.

CHAIR: Okay, so do we have a sense from this Board that attorneys should be included within the scope of logic, as well, on what are clearly logic matters, and is there a motion that we should render an opinion on that?

PKO: No, I don't think you should render an opinion. It would be suggested legislative change, but you know, you should take it up separate from considering this proceeding.

CHAIR: Okay, but you bring it back up, okay.

FUKE: I still have some more questions. Maybe I can just kind of go over—

CHAIR: --but that brings up an area, let me just make a note of that, _____.

FUKE: Maybe I can just kind of like go over all of those, and you can make your determination accordingly.

CHAIR: Okay.

FUKE: And it says if you spent more than \$275 in any reporting lobbying period, or you spend more than five hours in any month, I would assume that month is the calendar month—it's a calendar month, right? Okay. So, if you do not spend more than \$275 or if you do not have more than five hours in any month, then do you still need to report—do you still need to have such a _____. You don't need to file it

CHAIR: No, it doesn't say that, no.

FUKE: Okay. I just wanted to have that clarified. Then, also in terms of like your expenditures, if you have the form _____ in how you determine expenditures, so I'm going to be very specific, _____. Every Christmas I give council members a can of peanuts. And it costs like about, actually \$18, no more than \$20, and it's not related to any application or whatever, so the question is, do I have to report that, because if there's nine council members and maybe like their staff or whatever, cumulatively, like ten, you might have more than \$275, so—

CHAIR: --let me put that back in your lap. You've already registered as a lobbyist, right?

FUKE: Correct.

CHAIR: What subject area?

FUKE: I registered two times, one because I had two pending applications before the County Council, on two separate applications, and I would assume that this five hours, \$275, relates to each application, correct, right? So I just wanted—

CHAIR: --it occurs to me that that contribution at Christmas is not directly lobbying, but you are a registered lobbyist, so they know _____ comes, Fuke Planning Consultant, you know—

FUKE: Well the council members on their own respectively have to make their own reporting.

CHAIR: That's right. The gift disclosure would seem to take care of it, I should think.

BLT: Also, one of the definitions is whether the expenditure is made for a lobbying purpose, and because the gift—my personal recollection is that the gift comes in, it's not related to any particular application, it gets recorded by the Council members—by the way, they're very good peanuts—and it's not intended to persuade someone to vote one way or another. So I don't think something like that—however, you take somebody out to lunch so you can discuss a matter, and that's a lobbying lunch, and that's an expenditure.

CHAIR: The mechanics of the form I wrestle with, but I do see—I mean, there is a subject area and so I think _____ common sense would seem to prevail on that. But the retroactive is still an issue. What else?

FUKE: Under—you talk about like, expenditures for the purpose of lobbying in the total sum of \$25 or more per day. So if you have a lunch with one of the council members, for example, and the lunch comes out to like \$30, and you figure out 15/15, do you have to register that? Or is it like \$25 cumulatively, for the whole activity.

CHAIR: Counsel, help me out. Do we need to really rule on these things? Are we really the _____ for this _____.

WJ: I have the lobbyist form in front of me. I'd like to know exactly what _____.

FUKE: It just says over here, like entertainment and food and beverage, for example.

WJ: But if you go to the last page, I think the last page clarifies the specifics of everything.

FUKE: It says here expenditures incurred in the total sum of \$25 or more per person per day _____, so my question is, if your lunch is \$30 and his share was \$15, or whatever, does that get reported, although the cumulative amount is \$25? But by reading this, it would seem to be no, because you spent only \$15.

WJ: I tend to say no. I would agree with your _____.

CHAIR: Pat, can you help us on this? Actually, who is the keeper of this form, and who is the evaluator of this form? The County Clerk, is it not?

PKO: It's filed with the Clerk, but it's a condition of the Ethics Code, and I think it's appropriate for him to ask you and they can change the form.

CHAIR: I take a very broad reading myself. I think we're all pretty level about that.

FUKE: And the last question I have is related to our bread and butter, which is like the fees and allowances. And that's like under—I can't find the page where it talks about how do you report—it says list all contributions received by you for the purpose of lobbying in the total sum of \$25 per _____. Do I need to disclose what is my compensation from the _____?

CHAIR: Well, I would say _____, and your remuneration is \$5,000, you know, payment, then basically that would be—you're a lobbyist—be a lobbyist—and a planning consultant's fee but it would not be a _____. The only reason you're getting a payment in the first place is to accomplish rezoning _____.

FUKE: It's really—I'll give you a specific situation on the change of zone. A traditional lobbyist would not do anything apart from just lobby.

CHAIR: Right.

FUKE: What I would have to do is, I'd have to prepare the _____ and to the environmental report and all that stuff, and my fees are all kind of wrapped up in it. So, I don't have like a separate fee for—I mean, if you do it by the hourly basis then I think you can just kind of make your separation, but for the

most part, mine—it's like I believe more than 60 percent, then the client knows exactly what his exposure is if I can finish _____, then I get more money, and if I finish—

CHAIR: --Maybe you should consult out a lobbyist or something, you do the planning and _____ work and put the lobbyist to the lobbying. I mean we're really splitting hairs, here.

FUKE: I know.

CHAIR: But I should think that would be probably one way to run the system.

BLT: The material that I looked at, it does not require you to report everything that you are paid by your client. What it does is, it requires you, if the money is paid to you to do lobbying—

CHAIR: --per se—

BLT: --a proportion of it goes to lobbying, and you have to kind of apportion out. Like let's say you're paid \$15,000. You tell somebody the fee is \$15,000. When you're doing that, you're thinking that you're buying my expertise and we'll _____, but a portion of that time is actually spent before the Planning Commission. So you may need to apportion that out. But that really is your call in terms of how to do that.

KI: And according to this, this letter, under Section 5, fees and allowances—

CHAIR: --what are you—

BLT: --the one from me. On page 4—

KI: --page 5. Page 5, _____, paragraph 5, fees and allowances. In bold letters it says the fees made for the purpose of lobbying, not anything else, simply lobbying.

CHAIR: So your analysis, your packaging, your, you know, research or your write-up— I mean that's all yours not to report, right?

FUKE: Okay.

CHAIR: It's when you take the Planning Director to lunch, I think--_____, so I sort of commend you—compliment you, as well, for helping us clarify this, obeying the law, adhering literally to the letter of the law and the _____ of the law, and for stimulating our thinking also. _____.

FUKE: I think I have an idea of how to handle that. Probably since I do a fixed fee basis, then you can just kind of apportion like what you're hourly rate would

be and then the amount of time you spent before the Council and all that _____ . So that has to be recorded in.

CHAIR: Yes. Lobbying, for the purpose of—

FUKE: --Would that be like part of the \$275 cap or, because if it is, then obviously everybody _____ .

CHAIR: You're going to be—

FUKE: --another \$275 _____ , that's what we spend.

BLT: The \$275 is what you spend, according to this. It's under expenditures. There is not as much clarity—no, no, no, no. You must be paid or spend. You must be paid and you must spend more than \$275.

PKO: Paid any amount, or—

BLT: --you can be paid anything. They can pay him \$100,000 for his work, but if he doesn't spend more than \$275 lobbying, he doesn't have to file a report. You know, like if the \$100,000 goes for botanists, archeologists, and all of that stuff, none of that gets reported because that's not lobbying.

PKO: But what about the time he spends lobbying.

BLT: That he has to figure out—

PKO: --if it doesn't amount to \$275, it's not. It's like five bucks of his time actually lobbying.

BLT: Well actually the lobbying, I think, falls more into the, what is it, five hours. I think when you're looking at expenditures, it's like—taking people out to lunch, did he pay for advertising. Did he, you know, provide _____ , cover aerial photographs, hire a helicopter to fly over it, you know, that kind of stuff.

FUKE: So if I were to not spend more than \$275 over a six-month period, and not spend more than five hours a month, you know, on that particular activity—

CHAIR: --or actually lobbying.

FUKE: Correct, yeah. Then I don't have to file a report which would then disclose my compensation for my work?

BLT: Right, exactly.

FUKE: It's easier to just keep everything below that.

CHAIR: _____.

FUKE: Anyway, thanks—

BLT: --you still have to register.

FUKE: I have to register, correct. At the conclusion of that activity, then I'll just say that there was not—I didn't exceed this _____. Okay, thank you.

CHAIR: Can we take action, actually, on the actual opinion—petition, rather, regarding the lobbying enforcement, or registration. I think that's where we need to go now, is to say that we've rendered—since this issue has been raised, we've seen—we've seen a great increase in the number of lobbyists, we've had clarification on this issue in that a real world, you know, planning consultant is now registered as a lobbyist and is able to differentiate as to how to _____. So are we to say that we are to get an opinion back to Mr. Frankel that we—give me some words, counsel, _____ the words. Give me the words I want.

PKO: Well if he requested an informal advisory opinion, we will do one, and I suggest we incorporate what Ms. Leithead-Todd wrote and perhaps have some clarification of the issues that were raised and adopt that as the opinion, which I'll draft for you for your next meeting.

CHAIR: I love your logical, constructive—so again you basically have a motion to _____ on the Board here _____ basically to render the informal advisory opinion to include the various components that we've received, to clarify _____.

KI: _____ (*made the motion*).

CHAIR: There was a motion made. Is there a second?

WJ: I'll second it.

CHAIR: Any discussion? I'll call for a vote on the issue. All those in favor?

KI: Aye.

WJ: Aye.

CHAIR: Opposed? Abstained?

KK: _____.

CHAIR: You're in favor?

KK: Aye.

CHAIR: Aye. _____. Petition 2005-07, _____. Moving right along, Petition 2005-06, update on David Kimo Frankel's petition seeking a decision regarding interpretation of the law as it relates to financial disclosure forms. The issue was, what about the spouse registering, and we have gotten clarification on that?

BLT: Okay, I have brought for your review three pieces of paper that I handed out. The first one is the Hawai'i Revised Statutes, Section 84-17, and it's highlighted—

CHAIR: --crystal clear—

BLT: --the language that specifically requires spouse and dependent children.

CHAIR: State law.

BLT: And that's State law. And then I provided the Hawai'i County Code, which does not have that language that says that you put down your spouse and dependent children. And also, the third page is showing that in reporting gifts under the County Code, it does mention the spouse or dependent child, but on the financial disclosure, it does not mention them, and when you read the statutes, the fact that they did not put the language referring to a spouse and dependent child in the section on financial disclosure means that it's not required. And then I think you also look at the fact that much of the County Ethics Code has been based on the State, and there was obviously a conscious decision made when it was adopted by the County Council to leave out the requirement that you had to disclose your spouse and dependent children.

CHAIR: So with that in mind, do we—as a Board, do we feel like we should be consistent on that matter as well, with the State law and make an informal advisory opinion that we revisit that legislation?

BLT: Well the first question is that you have to make a decision on Mr. Frankel's petition. And the question is, does the Hawai'i County Code require that you disclose your spouse and dependent child's financial—

CHAIR: --and the answer is no.

BLT: Okay. And then after you make that motion and make a decision on his petition, then if you want to further make a proposal, I think you'd probably have to put it on your next agenda for a decision making a proposal to suggest an amendment to the County Code.

CHAIR: Any discussion or opinions or advice or thoughts on what she just described? First things first. The County Code, would it be appropriate to _____ Mr. Frankel a motion, communication informing him that there is no requirement according to the current County Code? If so, is there a motion to—

PKO: --Did he request an advisory opinion on just that issue? I wasn't here at that meeting, so I'm not—

CHAIR: --Well we can package this comprehensively. But I want to get this point clear. And so, I'd like to call for a vote on that issue. All in favor?

KI: Aye.
WJ: Aye.
KK: Aye.

CHAIR: The Chair votes aye. That component of that is addressed. Secondly, is there, is there a sense from this Board that we should then make the State law and the County Code consistent so that they do reflect spousal interests such that if you're the—again I'll pick on the poor planning director. If you're the planning director and your wife is a real estate developer and she's making plenty and it's all in her name—you have separate accounts and so forth. Is there a conflict of interest and I think it's pretty clear there would be.

PKO: Okay, I think Ms. Leithead-Todd was correct. We should tell Mary to put that as well as the other _____ as an amendment to the Code—

CHAIR: --on a future agenda—

PKO: --on the next agenda to discuss.

CHAIR: Okay. So do I have a motion to that effect?

WJ: I was about to make that motion.

CHAIR: All in favor?

KI: Second.

CHAIR: All in favor?

WJ: Aye.
KI: Aye.
KK: Aye.

CHAIR: The Chair votes aye. With that in mind, I think we have disposed of what Mr. Frankel—can we prepare a letter to Mr. Frankel informing him of what we're doing. Can you help us with that, Pat, in doing that? And can we move to the next order of business? We've taken action on it, I think we've taken action sufficient on 2005-06, with the opinion we received, and we just need to communicate back to Mr. Frankel what's going on and address this issue in a future meeting.

PKO: Why don't you call Mr. Arakaki?

CHAIR: That's what I want to do now. I want to get back to—now if you'll bear with us, we're still getting back to—Mr. De Lima, Mr. Arakaki, would you please come forward. And do I need to recuse myself for this purpose? The Chair recuses himself _____.

KK: _____ change prior to that?

CHAIR: _____. Well we've taken care of those petitions, and we're back to just clarify what Mr. De Lima has found out from the Campaign Spending Commission, so that's—we need to go back to that issue. So Mr. Kawahara will chair.

CHAIR KK: Okay, we have before us Mr. Arakaki and counsel Brian De Lima, and I understand you do have some communication?

DE LIMA: I talked to the Campaign staff, and they won't be able to give us anything in writing today. The Commission is still meeting, and again they indicated their recommendation is to agree to the procedures put forth by Mr. Arakaki via the letter that I attached. They indicated they are not recommending any fine, but that's a matter for the Commission to decide whether a fine would be imposed or not. But my point is that in any event, they're agreeing that—and this doesn't mean Commission action. The Commission is only going to decide whether there's going to be a fine imposed or whether there's going to be no fine imposed. That's all the Commission is going to decide. What the—the fact that it's a campaign—that you can make campaign contributions has already been clarified by the staff. So I would suggest that you can take action on Mr. Frankel's request for an informal advisory opinion inasmuch as that the legal defense fund monies are going to be returned to the contributors and that the campaign—they're going to be advised that they can make campaign contributions to deal with the matter of the existing campaign debt. And as such, as Ms. O'Toole pointed out, the campaign contributions are not gifts, and as such Mr. Arakaki would not be required to file a gifts disclosure. I think that would be the informal advisory opinion.

CHAIR KK: Should the Board—Pat, do you have any input on what he has just said? You know, based upon—I'm concerned about alleviating this issue, and I won't be here after today. If, in an extreme situation, I can, you know, have steps taken, so I can be here in the next meeting just for, just for this purpose. But it's a complicated matter for me.

WJ: I have a question. Why would the Commission be considering a fine?

DE LIMA: The staff is not recommending any fine. They don't think they would, they would make any fine based on the factual, the facts of this case. But the staff cannot speak for the Commission, so the staff cannot say that the Commission would not render a fine, because it's not the staff's decision. The staff can only make recommendations. The executive director can only make

recommendations. So I did not meet with the Commission. All I did was I met with the existing executive director, the past executive director, and Mr. Tanimoto of the Campaign Spending Commission staff, so they are recommending that the Commission make a finding of no fine based upon the facts as they found them to be, and acknowledging—and the acknowledgment of Mr. Watada that he indeed had spoken to the campaign treasurer and advised the campaign treasurer as to what's being represented in the letters. So no one expects a fine to be imposed, but neither myself nor anyone on the staff could say exactly what the Commission will be doing. More likely than not, they'll act accordingly. But the bottom line in terms of what the legal defense fund is going to do, and the fact that they're going to file an amended return, and the fact that they can make contributions, is a matter of law and not Commission action. And I think that's what you folks are concerned about—not whether the Campaign Commission is going to issue a fine or not.

CHAIR KK: Mr. De Lima, I didn't know some day I would have to call you Mr. De Lima, but be that as it may, do you still feel—and he has heard all of what, and he knows what has transpired in this case—do you still feel that he should be disqualified from voting on this matter? I'm referring to Mr. Reeves.

CHAIR RW: Williams.

CHAIR KK: I mean Mr. Williams.

DE LIMA: Well, in law, if we have a conflict and there's an appearance of impropriety, then when we recuse ourselves and we issue a conflict, we can never come back into a case. We wouldn't want to put Mr. Williams in the position of having to vote on this matter, given the fact that we've already objected. You know, people might think, well is he voting a certain way because he's complained about him, or is he voting a certain way because they complained about him. So I think in all fairness to Mr. Williams, since we've already made the petition and he—from our view, to his credit—he took himself out of any appearance of impropriety—I understand the suggestion, but I don't think it would be fair to Mr. Williams to put that onus back on him.

CHAIR KK: Thank you. I just wanted to, you know, why and—

DE LIMA: --Well, you know, like I think Ms. O'Toole has hit the nail on the head on a couple of points. Number one is, if Mr. Frankel doesn't like the decision he can always ask for a formal advisory opinion, and knowing Mr. Frankel he's probably going to do that anyway. So the truth of the matter is, and if it's not accurately represented, you're probably going to have another bite at the apple anyway. And we should, you know, to me I think we should put this to bed—based on the facts as you have them today, and if something changes you can always revisit this matter, and I'm sure Mr. Frankel's not going to disappear.

WJ: Being that the legal defense fund is going to be—

DE LIMA: --refunded—

WJ: --and all contributions returned, I would like to make a motion to put this matter to rest.

CHAIR KK: You are—what's the word to use?

DE LIMA: You can issue an informal advisory opinion consistent with the findings that have been presented today.

PKO: Find no violation, is that what you're saying? Under these circumstances?

WJ: Under these circumstances.

PKO: If he returns the money—

WJ: --being that the legal defense fund is being dissolved, all the funds are being returned to the—

DE LIMA: --contributors.

WJ: --contributors. I think, I think this matter should _____.

CHAIR KK: Do we understand the motion now? Are we clear, for the record?

PKO: I'm going to write an informal advisory opinion.

CHAIR KK: Do we have an understanding—common understanding of the motion? All those in favor, say aye.

WJ: Aye.

KI: Aye.

CHAIR KK: Chair votes aye. _____.

DE LIMA: Thank you for your time.

CHAIR KK: Thank you.

CHAIR RW: I'll resume my role as Chair, and we move to item—we're returning to the original agenda, get back on New Business, item 4a, Petition 2005-04, Richard Ganigan seeks an opinion regarding an alleged conflict of interest involving CDL training and promoting employees within the Department of Public Works. Now at this point, they have requested that we go into Executive Session. Now a request for hearing was referred to Executive Session. Is there a motion that we move into Executive Session for this issue?

PKO: Can I review your rules?

CHAIR: Yeah, thank you, I'd like a review of the rules. I have them right here. Rules of practice. _____.

PKO: 1.15 says the meetings of the Board shall be open to the public except when personal matters affecting the privacy of an individual are involved, as provided in Rule 4.13.

CHAIR: 4.13?

PKO: Um hmm.

CHAIR: Okay.

PKO: And it shows then again that all meetings are open. They can be held in a closed session to consult with the attorney, which is not the question. Or if the Board makes an affirmative finding upon request by the officer or employee involved that such hearing concerns personal matters affecting the privacy of an individual.

CHAIR: Do you want to make a case for—I'd like to recognize at this point, before we move to Executive—I have to recognize the, what's the word, plaintiff? Richard Ganigan, _____, Richard Ganigan, is that correct?

GANIGAN: Yes.

CHAIR: Mr. Kamelamela, do you want to have a seat, too? _____ you're representing the—

KAMELAMELA: We're representing Harry Jose—

CHAIR: --right—

KAMELAMELA: --and Hiram Keliikoa.

GANIGAN: Can I use this, for my record? (*holding up a tape recorder*)

CHAIR: Yes. Before we go, we're still in open session, and we'd like to—counsel, are you recommending we conduct business in open session? Is there some overriding purpose—

PKO: Well reading the petition, I didn't see what personal matters we going to be discussed. But maybe he has something.

CHAIR: Are you comfortable proceeding in open session at this point?

GANIGAN: We asked for closed, yeah. _____.

CHAIR: You want to do this in Executive Session? Do you want to do this in Executive Session?

GANIGAN: Yes.

CHAIR: Can you state your purpose for doing that? I mean, what is your feelings so we know _____

GANIGAN: _____ could get in the papers.

CHAIR: Pardon me?

GANIGAN: It's kind of like a serious matter, because it's going to go to the newspaper.

CHAIR: The newspapers are not here, _____.

GANIGAN: _____.

CHAIR: There are no members of the press here. Is there a member of the press here? So keep it out of the papers, is that your overriding issue?

GANIGAN? Huh?

CHAIR: Is that the overriding issue—you just don't want this broadcast in the press? I mean, I can understand that.

GANIGAN: I don't think the Mayor wants it to go in the press. This is an issue about how he owns his own company, Mr. Hiram Keliikoa. His own company. He takes County workers, that it's his regular job to train County workers, he's going on work—on off-working times, County workers are paying for their training, when they should be getting it for free. That's his job, but he's charging them, and then they're coming back to work and he's just passing them because he was their trainer, and they're by-passing all the senior workers. They're coming back to work and by-passing everybody.

CHAIR: Can you speak for any specific _____ against Mr. Keliikoa?

GANIGAN: Huh?

CHAIR: Your grievance is against Mr. Keliikoa?

GANIGAN: Yeah, and about rigging promotions, because that's where he—

CHAIR: --but two issues. First of all he's got an inside deal here, I guess is what you're suggesting—

GANIGAN: --Yeah.

CHAIR: He's got a sweetheart deal where he can control—

GANIGAN: Yeah, because then County has to reimburse the guys that he charged, you know, and that's his regular job.

CHAIR: Tell us more about your job, so we understand what it is you do.

KAMELAMELA: Before we proceed, I haven't heard anything from him as to why he wants to keep this closed.

CHAIR: Yeah, well I'm still trying—we're still in open session, so I'm hoping _____ be up and up about this and above board, because, I mean that's where—it's something that could be issue. It should be an issue, it should be heard in open session, but if you have some reason why you feel this would come back to be injurious to you—

GANIGAN: I've been—it's been already addressed through upper heads of the County. There's been an investigation. I'm actually the union steward for Hamakua baseyard for the UPW. So there's been—they've been let known at what is going on, that he's been training County workers. I think that's unethical. You can't do that.

CHAIR: The Board has to _____ petition, Mr. Ganigan. Have you seen that petition? Just take a second and look at that, if you haven't, and make sure we're on the same sheet of music you're on.

GANIGAN: I also have names of people that have been by-passed.

PKO: Okay, so before we—if there is no motion to close the meeting, then we can proceed with the hearing as is.

CHAIR: Well, we're open to it, you know, but—

GANIGAN: --You can just leave it open if you feel like that—

CHAIR: All right—

GANIGAN: --I don't care.

CHAIR: And you're okay with it?

KI: I have a question.

KAMELAMELA: Before we begin, I think it would be better to leave it open than closed, but I talked to Hiram Keliikoa to ask him whether he wanted to have it closed. He said no. He wants it to be open. Why don't you come here?

CHAIR: Yeah, I think—you're welcome to come to the table. I didn't realize who you are.

KAMELAMELA: So he wants the hearing to be open, and I think before we proceed, there's some procedure issues that should be decided, because from what Ganigan's saying, for one thing, I don't think this Board has the jurisdiction to hear his complaint, the way that he's framed it, because actually it's a grievance issue that, to me—that the collective bargaining agreement is what kind of binds the court procedures. Because right now, what I hear, it has nothing to do with an ethics violation, so I'm going to first move to dismiss this complaint because it's in the wrong forum, from here. It has nothing to do with Hiram and Mr. Harry Jose in terms of ethics. It has everything to do with him as being the chief steward for UPW trying to air an issue, to me, which belongs in like an arbitration or grievance procedure. This court should not be saddled with this kind of employment issue that clearly falls potentially under the collective bargaining agreement.

GANIGAN: Excuse me, there is a grievance about this. It's on its way to arbitration already.

KAMELAMELA: Right, so there we have it. So since there is a procedure in place, and he is using that procedure, to avoid any kind of inconsistency or potential inconsistency, we move that this Board—unless we can just leave it to whatever he in the position stated. If it's narrow enough that it doesn't relate to anything with collective bargaining, fine. But right now I don't hear him saying that it's really an issue totally within the jurisdiction and power of this Board.

CHAIR: Well I for one respectfully disagree, Mr. Kamelamela. I thoroughly, fully believe that though this is—certainly you're addressing an arbitration in house, it's the public's right to know if we do have something that smacks of like a nepotism arrangement, and so on. I don't think we should just sweep that under the rug and say jeez, that's the negotiation business.

KAMELAMELA: Okay, Chair, just to set the record straight, there is no nepotism going on here—

CHAIR: _____.

KAMELAMELA: You know, it's—let's just get the facts out. Because all we have is his characterization of certain things which are happening, which is not true—which is not true. Let's go to the arbitration proceedings to resolve it. We cannot resolve this kind of issue here. It has no basis here. For example, just looking at his position, whatever resources is being used, it's only County—non-County resources. It's his own business. So why is he bringing a complaint here? It has to deal with County resources—dealing with County resources, so what I'm moving is to dismiss it. Now Chair, if you don't want

to do that, that's fine, but he should have some reading of it, too. What does the Board want to do in a case like this?

PKO: I think to me that this is just very sketchy, what he's written, but he does allege two violations of the Ethics Code. So if he can focus his attention at least to state what he believes the ethical violation is, at least the Board needs to hear that and then determine whether it is or is not in their jurisdiction and purview. But I don't know if we can make a decision just on this paper here.

CHAIR: Yeah, well, that's pretty much where I'm going with this. I don't know how the rest of the Board on that subject—is being overruled _____. Let me finish, Mr. Kamelamela. I personally feel like we should address this above board, openly. We may find then that we're clearly out of our purview, over our heads, where it may be. But we do have two ethical charges here that we should—within the confines of _____. So we all have the Code of Ethics in front of us, we've been prepared, and we know what this specifically pertains to, and we would like to hear from both.

KAMELAMELA: Okay, and that's fine. But Chair, the way that you characterized, as you said already, tells me—well, _____, you characterized it as being swept under the rug, nepotism. But now I'm wondering, can you be fair to Hiram here?

CHAIR: Well I certainly think so, personally. But we have other votes here, and if I weren't fair, I'm sure I'd be clearly overruled—

KAMELAMELA: --No, but, see that's not my concern because at the beginning, I'm getting the sense already, that maybe what Hiram's doing is nepotism. Maybe what Hiram's doing—or things are being swept under the rug, and you know, that kind of comment itself concerns—

CHAIR: --I have no predisposition against your client, Mr. Keliikoa. I'm wide open to hearing this along with the other members of the Board, and to hearing the charges. It's perhaps an unfortunate choice of words, if I said if this is something going on County government, nepotism, I wasn't speaking specifically to you, to this issue, to this case at all. Basically I'm fair and impartial, I truly am. I have no knowledge of this other than what I see on this sketchy complaint, and I really want to hear what Mr. Keliikoa has to say as well as yourself, and Mr. Jose, which he probably has some input to make here, too. How do the other members of the Board feel about this? Do we want to proceed with this, or just defer—

WJ: --Well, I'd like to address the two complaints brought forth by Mr. Ganigan. _____ for myself, and I want to see what this complaint is about.

PKO: Mr. Kamelamela, are you satisfied with Mr. Williams' response? We do have a rule on asking for him to be disqualified, which if he doesn't respond to, the

Board members have to vote on it, so I want to know if you're formally raising that or not.

KAMELAMELA: Well I raised it as an issue, but I've got to talk to Hiram first. Can I talk to Hiram?

CHAIR: Sure.

KAMELAMELA: Because I'm not the one he's _____. Personally, since he came out and said you know, bad choice of words—I can live with that. Whether Hiram can live with that, I don't know.

CHAIR: Do you want to take a few minutes?

PKO: Yeah, I think it's time for a break, Mary has to--

CHAIR: Okay let's take a break. How much time do you need, Mr. Kamelamela, five, ten minutes?

KAMELAMELA: Five minutes.

CHAIR: Five minutes. Take a five-minute break.

(Meeting broke from 11:25 a.m. to 11:33 a.m.)

CHAIR: So we're all back _____ break, and _____ any challenges to present, or comments?

KAMELAMELA: I talked to my client and _____. So right now he's comfortable having you stay here. However, because of what occurred, about what Ganigan's trying to get this Board for, we're going to ask that the hearing be closed, because it does get into personnel matters, and to me, if it sounds like that's what he's going to do, I would rather keep things pretty clean so that in some way we don't violate any privacy interests of potential names that he might throw out. I'm going to try my best to keep names out, but he seems to have been throwing a potential net trying to bring other people in here, which—the complaint is only directed at Mr. Keliikoa and Harry Jose, but I'm going to ask that we close it.

CHAIR: Does that mean we go to executive session—

PKO: I want you to state what the personal interests, personal matters and privacy interests involved are.

KAMELAMELA: The personal matters is as he stated, that there is a grievance and arbitration that is _____. It's collective bargaining agreement, and to us anything dealing with the CBA is confidential. Those kinds of things shouldn't be let

out for consumption by the public. And, I'm just making a motion—the Board can decide whether it's good enough or not.

CHAIR: All I can say as Chair is, I concur on this issue, to go into executive session. Essentially if there are any other aspersions made and so on, it may or may not be factual based, so—

GANIGAN: --I'm not making any allegations right now, or bringing out any names. I'm keeping that name secure, because if you want you can just subpoena the UPW. They've got all the information. You can subpoena them, take it from there. And then I don't need to say anything. You can just go straight to the UPW and subpoena them.

CHAIR: Do you wish to proceed with this in the closed session yourself?

GANIGAN: Or we can just take it larger, and just subpoena the UPW, then I don't even have to speak. This thing has been investigated for a long time, this allegations that I'm saying. It's not only me in this thing.

CHAIR: Do you want to proceed?

GANIGAN: Yeah.

PKO: Okay, it's not up to them to ask and you automatically do it. You have to make an affirmative finding that personal matters affecting the privacy of an individual be considered. So that's why I asked Mr. Kamelamela to state what the personal matters and the privacy matters were, and Mr. Ganigan earlier.

CHAIR: I heard them. I heard them state them—they satisfied my interests. How do you feel—

WJ: I'm not totally sure Mr. Ganigan wants this in executive session or open session. So could you state for the record.

GANIGAN: Yeah, leave it open. It doesn't matter to me.

KAMELAMELA: But we're making the request, and it has to do with a personnel matter, because now the allegation—you know, he's the shop steward, working with UPW, and there's arbitration matters. To me that's all personnel matters that—

PKO: --Personal matters. Personal, not personnel.

KAMELAMELA: Personnel, personal. But it's personal because it has to do with him, who is—

PKO: --I'm just trying to articulate that--

KAMELAMELA: --who's being brought into whatever fight UPW has. Because that's why you're here.

GANIGAN: No, but it's unfair to me, too, what's going on. I'm being by-passed as a senior, as a senior in the baseyard, and by-passed by other guys that is below me. How would you feel at work, and then that's happened. These guys—

KAMELAMELA: --Well I think before we get to the—

CHAIR: --Wait, first of all, first we need—

KAMELAMELA: --have the court decide whether to close it or not.

CHAIR: Closed or open.

KAMELAMELA: And that could be done—I don't know whether in open or executive session, but we can leave it at—

PKO: --_____ voted.

CHAIR: Actually, it's discussion, further discussion before I call for a vote to let it go to open or closed session.

KK: I don't know. I hear both sides of the argument, but what if we just leave it open and if specific personal matters are to be discussed, then we can stop right there and we'll close it at that point?

KAMELAMELA: I want to say something after the Board has this discussion.

CHAIR: Yeah, I think if we had a matter in arbitration and we'd basically contain it somewhat. I don't think this should be broadcast to the press at this point. I think you know, because of the—we're only addressing some very specific items here, and we could go astray. I hope that we don't go in closed session on this. I don't know what your opposition to that would be.

WJ: I don't see the press here at the moment and who are the two people _____?

CHAIR: I haven't found that out. Would you please stand and identify—

MAN (HERMES): My name is Nick Hermes. I'm the personnel management specialist for the Department of Public Works.

MAN (NAKASONE): _____, superintendent of highways,
_____.

WJ: So I'd like to keep it open.

CHAIR: Well, that doesn't mean the press can't pop in. Any thoughts on that? Even management—you've been in the Fire Department, right, not in management capacity. It's it okay to do this in open session?

KI: I was the chief.

CHAIR: You were the chief. I'm sorry—but you worked your way up.

KI: Yes.

CHAIR: And you've been on both sides of the fence.

KI: Yes.

CHAIR: Me, too. What's your—

KI: Okay, my opinion is that what Mr. Ganigan has brought up verbally, since he's sat here, basically does not address what he has written down here as provision for the specific Code of Ethics. He has brought up, since he has sat down here, union arbitration. He does not say that he is the union steward, and I don't know whether he's representing himself as an individual or he's representing the union as a whole. So if we're going to address this, we should address Section 2-83.

CHAIR: Absolutely.

KI: And it has nothing to do, or nothing should be brought up, about the union arbitration or any other individuals except for Mr. Keliikoa or Mr. Harry Jose.

CHAIR: My sentiments as well. Do we want to go into open or closed session? Call for a vote. All those in favor vote—

PKO: --there's no motion on the floor.

KAMELAMELA: Yeah, there's a motion. And I do appreciate what Mr. Inouye has said because that's what we should focus on. But because of statements made by Ganigan, the things that I'm afraid of is that he may inadvertently bring something up that shouldn't have been brought up, and that's the only concern I have now. If we keep it open the way that Mr. Inouye says, I would have no problems, you know, because then I know that _____. Okay.

CHAIR: Okay. I would like to hear a motion to stay in open session or come up with a motion to remain in open session.

WJ: Motion to remain.

CHAIR: All those in favor, vote aye.

WJ: Aye.
 KI: Aye.
 KK: Aye.

MC: _____.

CHAIR: I'm sorry, for a second I was trying to get this going. Is there a second?

KI: I second.

CHAIR: In favor?

WJ: Aye.
 KI: Aye.
 KK: Aye.

CHAIR: Opposed? The Chair's opposed. The motion's carried.

MC: The Chair is opposed?

CHAIR: Well, the Chair was opposed on that motion. So we're open session. We'll remain in open session. Okay. Now let's proceed.

GANIGAN: Okay, I'm just representing myself.

CHAIR: Okay.

KI: Who will be representing—

CHAIR: --Okay, so—

GANIGAN: I'm representing myself here in this procession. And I'm getting unfair treatment because I've been by-passed.

CHAIR: Let's—just a couple questions, because we kind of want to get a feeling for you know, who you are and what you do. You're an individual working in the Department of Public Works, as a laborer, in what, the Honokaa baseyard?

GANIGAN: Yes.

CHAIR: The Honokaa baseyard. And you're—I think you folks have all read the charges. I guess from an individual, I gather, Richard—from an individual point of view, you feel like you don't have any upward mobility
 _____.

GANIGAN: No. I put in my time and years, and then here this guy comes and transfers from _____ and go by-passing me, you know. This guy's soliciting, soliciting these people to come and train and pay him to get trained on their

own time. Because that's his regular job, to come over there and train people anyway.

CHAIR: What is your job as a laborer—what do you do as a laborer?

GANIGAN: Maintain highways.

CHAIR: You're part of the road crew?

GANIGAN: Yeah.

CHAIR: The shovel guy kind of thing—

GANIGAN: --yeah—

CHAIR: --you're doing grunt work. Can we put the focus on Mr. Keliikoa and ask him a little bit about his job—

KAMELAMELA: --Well actually, I want to ask him questions too, because—I'm not too sure whether he finished making his statement. I want him to make his statement, and then I can ask him questions that's related to what he states and related to—

CHAIR: --Okay, I'm sorry. Do you want to elaborate further on your statement—your accusations, fair treatment 2-14 [sic.], fair treatment, and then conflict of interest. I didn't hear you say much about conflict of interest yet.

GANIGAN: The conflict of interest is he's not training people in the County, and that's his regular job. That's what I was getting to when I got interrupted by Joe. So he's not doing his regular job. He's supposed to be doing that outside work—taking people that he's supposed to be doing for free and taking them and charging them for monies that they're paying for, to be trained and coming back and getting audited, because he's the trainer that trained them outside, so they're going to get audited real fast. And then when he comes back and audits, they by-pass everybody in the baseyard because nobody has been trained.

WJ: Can you—for my purposes, can you explain how you get promoted? They train you in doing what?

GANIGAN: Different types of machinery, so like when the next guy stays home, you can take his place and get temporary assignment and take his job. _____, and it's not happening, because—

WJ: --and you're saying his job is to train people at the work site on how to use that machinery?

GANIGAN: Yeah. They're supposed to turn in a yearly work sheet showing what baseyard they got to train, and who they're going to train for that physical [sic.] year that needs training. Well, it's not happening. Nobody's getting trained. You can look back at the paperwork—

CHAIR: --In the existing—

WJ: --Where did you—

GANIGAN: --There's supposed to be unlimited tasks they're getting trained. The guys are getting trained outside of work.

CHAIR: And you're alleging that no training occurs inside work or –

GANIGAN: --members only get trained.

WJ: Did you bring anything with you that shows there's a number of people being trained—

GANIGAN: He said I can't give you the names. I have the names, but I can't give you the names right now that are not being trained.

WJ: Do you have—

GANIGAN: --and are being by-passed with the people that are being trained by him outside.

KI: I have a question. What is your title, as far as working for the County?

GANIGAN: Laborer II.

KI: Laborer II.

GANIGAN: Yes, I'm the senior _____.

KI: Okay, as the Laborer II, is a CDL one of your requirements?

GANIGAN: No, you have to work your way up to get that.

KI: To get a CDL?

GANIGAN: Yeah, that's his job. Hiram.

KI: His job is to train—

GANIGAN: --train you to get up to that state.

KI: Okay. Now, the next question is, as a Laborer II, if you're not required to have a CDL, I don't see where you need to be trained for a CDL.

GANIGAN: I'm not worried about the CDL. It's the other jobs in that machinery list. There's tractors, there's rotors, all kind other machines that we use. Not only CDL we need, we need to drive all those other machines, but nobody's getting trained. He has other procedures, that's why there's a conflict of interest—too much untold personal programs. There's two trainers in the County. One is Dan Santos (?) _____. Now he doesn't train Public Works, he trains police _____ and the Fire Department. I don't know who else he trains, but you can go look and go hunt for that list, like I said, go look and subpoena _____, subpoena those papers and you'll find out what I'm talking about, since I can't go more in detail.

CHAIR: Any more questions from the Board? You want to pursue that further, Kerry?

KI: Well, you know, my thing is –

GANIGAN: This is a laborer _____. He was a laborer underneath me, underneath one other guy. There's another guy and him, and he's the guy underneath that guy, and he by-passed the other guy and he by-passed me. By training under him on his own time.

KI: I have a problem with this.

CHAIR: You feel we're in the wrong forum, venue here _____?

KI: Well, I won't say that. I guess we should just go on and see what comes out.

CHAIR: Wayne? Karl?

KK: Just one procedural question here. Mr. Kamelamela, you're representing Harry Hose and –

KAMELAMELA: Hiram.

KK: Hiram Keliikoa. Did they ask you to represent them? He is a County employee. Is he entitled to County counsel, too? C-o-u-n-s-e-l.

KAMELAMELA: You mean whether he's—

KK: --Yeah, well, I seen plenty—you're a County counsel, and you're representing County workers, and he is a County worker, and I don't know. How did it happen that he's not represented by some counsel? He chose not to? Did you choose not to?

KAMELAMELA: That I don't know.

GANIGAN: Nobody ever approached me or asked me if I wanted representation.

CHAIR: Did you ask?

GANIGAN: Huh?

CHAIR: Did you ask?

GANIGAN: Yeah, I asked—

KI: --You asked for representation?

GANIGAN: I didn't call them, but I asked for advice from the UPW.

CHAIR: So they're going to represent you, is that right?

GANIGAN: Yeah.

KK: That's why I'm asking—

KAMELAMELA: --So to answer Mr. Kawahara's question about Mr. Jose and Mr. Keliikoa. Yes, they had asked for representation, and so what I did, I did one independent investigation first, because we had to make a determination as to whether whatever was being complained of was within the scope and course of employment. And then I made a determination that it was, because he was complaining about somehow what he's doing on the outside is affecting what he's supposed to be doing. And after that we said we're going to represent them.

KK: Well, I still have questions, but I'll—

CHAIR: --See how it goes.

KK: Yeah.

CHAIR: Did you want to conduct some _____?

KAMELAMELA: Yes, because I have some questions, because since Mr. Ganigan has brought up the complaint—Mr. Ganigan, when did you start with the County?

GANIGAN: 2-98 (?)

KAMELAMELA: And how long have you been a Laborer II? Excuse me?

GANIGAN: Seven years this year.

KAMELAMELA: Seven years. Now, from the year 2000 to the present, have you been at work?

GANIGAN: At work?

KAMELAMELA: Yeah.

GANIGAN: _____ 2004—what you asking, from 2000?

KAMELAMELA: Yeah, from the year 2000.

GANIGAN: In 2000, I was working all the way until 2002. Then I was sent for by Stanley Nakasone _____. Returned back to work on May 10, 2004—

CHAIR: --Two years' absence, you had a two-year absence?

GANIGAN: Yeah, he left me home, without no assistance, no doctor's help, no nothing. Workmen's Comp, just leaving me hanging. And—it's in litigation right now. So then returned back _____ (May 12th?) _____ Nakasone one day, and by that following Monday after that, I think so, I was back to work. From May 10 to November 19, 2004, and then 2004, November 19, I was working a full day of eight hours, and when I returned back to the baseyard, temporary assignment, overseer, Harold Loscomb (?) put me in his office and said you no longer work here. Go home and go back to Workmen's Comp. I don't know what doctor's assessment that he had to do that. So instead I stayed home. I've been released with two doctors' papers to full duty from May 31st and one on ten, I think it's 10/11/05, and—

CHAIR: Sorry, if we get _____.

GANIGAN: Yeah, and I have another release paper on that day. So I have two release papers and a three-page doctor letter, saying for me to return back to work, which County is not letting me go back to work at this time.

KAMELAMELA: Now, when you said that you did come back to work, you had some physical restrictions, right?

GANIGAN: No, I don't.

KAMELAMELA: You mean the doctors told you that—okay, did the doctor tell you that you cannot use vibrating tools and equipment?

GANIGAN: That was for me not to aggravate my body.

KAMELAMELA: Okay, so the answer to the question is yes, there is a physical restriction—

GANIGAN: --No, there's not.

KAMELAMELA: There isn't? Okay.

GANIGAN: Read these two pages.

KAMELAMELA: No, no no, I'm just asking questions.

GANIGAN: No, read these two papers, so you stop asking those questions.

KAMELAMELA: And do you have a restriction not to lift things overhead?

GANIGAN: Nope. The County is making that up. My doctor never wrote that.

KK: You know, we're getting into—

GANIGAN: --He's drifting to another, he's drifting to somewhere else.

KK: Well, we're getting into areas that seems like very—

GANIGAN: --Yeah, this is not about—

KK: --Are you still willing to have—

KAMELAMELA: --No, no, no, no. This is related, because—

GANIGAN: --You want to keep going with this, we can call my lawyer right now—

KAMELAMELA: --because he's claiming that he's being deprived of an opportunity to get a CDL. I'm trying to say wait a minute, if—

GANIGAN: --how long does he—

KAMELAMELA: --if he has restrictions on certain kinds of equipment, to me that has some relevance here, you know. And to me, he's using this forum for another reason.

WJ: Excuse me. Excuse me, gentlemen. I see it very differently. I think Mr. Ganigan brought forth two complaints concerning your department and what someone was doing outside for extra pay, and I think that's the real issue—

CHAIR: --I want to get to that—

WJ: --And that should really be the only issue that I want to listen to.

CHAIR: I want to get to that as well.

GANIGAN: We're jumping into another area that is not even related to this, what I'm bringing about in this paper.

KAMELAMELA: But the Board can make their own decision as to whether it's relevant or not. I—look, I had to be prepared both ways. I think what I'm bringing up is

relevant. If the Court feels it's not relevant, that's fine. Okay, but I'm not here to always come to a debate with either the Board or with Mr. Ganigan, because I really want to get down to the facts of the case, and that's why I brought Hiram here, to talk about the facts. That's why I filed a declaration from Harry Jose, to give you the facts of the case. Now I want to see what kind of facts Mr. Ganigan has to make his claims. That's what I'm here for. I'm only asking questions that I think is relevant. Whatever the Board feels has _____, that's fine.

PKO: I think Mr. Kawahara interrupted, because if you were going to talk about his medical condition, he might want to reconsider whether it's open or closed.

KK: Yes.

CHAIR: Right.

PKO: That's the only.

WJ: But I don't think that's relevant, not _____ a decision.

PKO: You know frankly, I still don't understand what the claim is, the ethical side.

KAMELAMELA: Yeah, I mean—

WJ: --I think I see it in 2-83, section (b), no officer or employee shall use or attempt to use the officer's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment. And I think that's what I'm looking at—

PKO: --So who are you—

WJ: --I think he's been explaining that, that this gentleman on his own time was training people for positions that were within his employment, that could gain employment, and that he's employed as a County worker to train these people during County time, and he's been using his own free time and charging people on his own free time to train people for what they should be learning for free through the County, then there is a violation. I mean, I see it.

CHAIR: Yeah, we're just not that far yet. We kind of want to get to that.

WJ: That's all I'm interested in at this point.

CHAIR: I see a lot of financial absenteeism (?), I see _____, perhaps, some valid, some not valid, and so on. These are things that are way beyond the purview of this Board, clearly, you know. But I kind of want—we want to zero in on this ethical thing, and so—I don't know, Mr. Kamelamela, do you want to pursue this line further? I mean, I think—

KAMELAMELA: --I got to that point, and I have more questions, because to me, he made his complaint. I'm trying to find out precisely what is it he's complaining about, not what we might think he's complaining about. But the more information I think we have, the better decision we can make that is fair to everybody.

WJ: I don't think knowing about his past work history is going to help me make a determination—

KAMELAMELA: --on what—

WJ: --so if you want to ask him specific questions as to his ethical violation, I think that's very appropriate.

KAMELAMELA: Yeah, but so far I haven't heard really anything, and that's what I'm trying to find out. So, Mr. Joseph, if you want to stop me from questioning, that's fine. But I have a duty to my client to ask what I feel is relevant.

WJ: I'd like to stay with your relevancy. And I read to you the portion that he claims. And it's a serious allegation.

KAMELAMELA: Yeah, and I'm not treating this any more less seriously, Mr. Joseph.

WJ: No, but could you better ask the questions specifically to that allegation?

KAMELAMELA: And that's where I'm going.

PKO: You know, maybe we didn't allow you a chance to make an opening statement, to give us an overview of what your case is. Would that be helpful in understanding the line of questioning? We gave you a chance to try and explain—

GANIGAN: --_____, but he kept butting in.

CHAIR: I want to get him to do that, too, and then that's what we would dig into a little but, you know, a little cross-examination as it were, right? I kind of what to hear what you guys have to say to these charges _____.

KAMELAMELA: What I did to try state the case is, I filed a pre-hearing statement which outlines not only what the relevant Code of Ethics provision is, and I think I filed it with the Board in November—November 4th it went out. So that's what I did to give what the law is and give what the facts of the case is. Because I wasn't too sure what Mr. Ganigan was going to bring up, you know, I'm trying to _____. But it is within the power of the Board that if they want me to proceed to another area, I can. It's not a problem with me, because now I'm going into another area, another area of questioning. But this is how I see the case. So by looking at my pre-hearing statement, and listening to what Ganigan had stated, what I wanted to tell the Board is this, that the County shouldn't penalize its employees for one, for people wanting to

improve themselves, because that's what Harry Jose did. He took it on his own time to go out and improve himself. Well, then I want to see what Mr. Ganigan did to improve himself, you now. Why attack another County employee out there who wants to improve himself? So that's one of the points that I'm making here, based upon my pre-hearing statement and the declaration made by Harry Jose. The second point is, why punish somebody who starts his own private business, when he's not really utilizing County resources and when he is doing his job? He may not like the way that Hiram is doing his job, because I'm going to have Hiram tell you guys what he did. But the fact that he may not like what Hiram does doesn't mean that there's ethical violations.

CHAIR: Yeah, we'll figure that out. We can figure that out.

KAMELAMELA: Right.

CHAIR: I hope we can.

PKO: I still think—I mean, it is for me, I don't understand what Mr. Ganigan's saying. I know he didn't get your memo, Joe, but you lay out what you believe he's claiming in his complaint.

KAMELAMELA: Right.

PKO: So maybe we can let him read that and say yes, that's what I'm getting at, that is the problem, that is the alleged problem, and then we'll focus on that.

CHAIR: You mean—

PKO: Yeah, Joe has written out three things that—

CHAIR: --Well, could we give him some time to do that, to read that, and then can we not ask him some questions concurrently, or do we need to take a break to do this? I mean—you probably want to hear what we're asking, _____, there is basically the overview of Mr. Kamelamela on behalf of his client right there. I'm fairly sure that was him, specifically addressing—so I think Wayne, I think, Kerry, do you—are you as obsessed as I am to get to what it is he's done, and so on? I kind of want to get to that.

GANIGAN: You know what the conflict of interest is, they spend so much time—they don't even go to work and stuff and train people, and we can't even get trained to run the rotor or a grass-cutter, the stuff that we need. I'm not even worried for get to the CDL. It's the thing that these guys are by-passing me and running the other equipment at work, because I'm not getting trained.

CHAIR: I know, _____, I know what goes on _____.

GANIGAN: Yeah, I'm not trained to do anything. I worked there almost seven years. I'm not trained on anything.

CHAIR: Could we ask directly what does Hiram—

KAMELAMELA: But I want to finish up my line of questioning, because, because he has a personal stake in this, and I want to see whether that's a real stake, a personal stake or, like I said, whether he's out to do the union's bidding here. And also he's saying he's here for—as an individual. I've been hearing him talk about being _____. But I'm going to try to focus—and that's why I asked questions about him personal _____.

PKO: Why don't we ask him first if he agrees that this is his gripe or not?

KAMELAMELA: Oh, yeah. That's fine.

PKO: If it's not, then we're barking up the wrong tree.

KAMELAMELA: Yeah, okay. So Mr. Ganigan, what I have listed in the pre-hearing statement, in the introduction A, and there's three things that's set out there. Are you in agreement that that's what your complaint is about?

GANIGAN: _____ don't even go there.

KAMELAMELA: Well, didn't—

GANIGAN: I didn't have a problem with Jose because he got a commercial license on his own time. Big deal, you know. The conflict of interest, that's the thing. Going out to County employees, training County workers and the County's got to reimburse—the County, with its own money, got to reimburse these guys because the trainer charged them. When they come back and show their CDL, and they show that they passed their thing, the County has to pay them back with that money. That's what they're paying him for. And these are County workers. That's what's my interest is in this thing, you know. Using _____ money—

CHAIR: --It's a conflict of interest issue—

GANIGAN: --yeah—

CHAIR: --and then fair treatment is another issue—

GANIGAN: --yeah. I'm not getting training there.

CHAIR: _____ his business there—

GANIGAN: --right, right. He's not there. Half the time I call him for ask him for certain papers, whatever, that I needed, but he's not there. He's off, he took off work, he's gone.

CHAIR: So what's the fair treat—what would you say is the fair treatment issue. I mean, _____ missed a lot of words, but one reason or the other, I mean, you're not there all the time, right, because—

GANIGAN: --Yeah. Because of conflict of interest with your job, with your outside work.

CHAIR: That's conflict, what about fair treatment. You also have a fair treatment charge in your—

GANIGAN: --Fair treatment is—I feel I'm not getting fair treatment. I've _____, I've been by-passed, you know. He comes and trains those guys and whatever, and my original trainer used to come and spend almost a month in one baseyard. He could—you know, baseyard to baseyard. I started from _____, and I see that this guy wasn't even around in that time as a trainer. So, this guy would come and spend a month or so in every baseyard and make sure everybody's trainer on that machine, so when the next guy stays home, that guy can take his place and get temporary assignment, a higher pay, you know. And then nobody's hold back in the baseyard, you know. Because right now, guys aren't even trained. You know, this guy stays home and we can't do that now, we got to go—the boss got to go find someplace else to go and work, because nobody's audited to do machines.

CHAIR: I think I get it. You guys got enough so we can put the focus on Mr. Keliikoa, or you want to—

KAMELAMELA: No, I still have questions, because, you know—again, he's basing it on information _____, but I've go to—I've just go to make sure that what he says has to do with him, okay. So, did you ask to get training—

GANIGAN: --yes—

KAMELAMELA: --For the, no, no, no, for CDL training? Did you ask for that?

GANIGAN: How can I ask for that? They don't—

KAMELAMELA: --No, no, that—

GANIGAN: --I can't go there. You have to start from the bottom, go up. They ain't going to just train me, just like that—

KAMELAMELA: --okay.

GANIGAN: You have to put on the list, a list. You ask what you need to be trained, yes, and you tell your boss, okay. He comes to you with this paper and fills it out and says oh, okay, you need this, this, this, this training, okay. When the time comes, seven years later, you got no training.

KAMELAMELA: Okay, so—but as far as you know, Hiram is not the one that makes the list, right?

GANIGAN: Every baseyard makes their own list.

KAMELAMELA: No, no, the question—right, the baseyard, the overseer makes the list, right?

GANIGAN: Yup.

KAMELAMELA: Hiram doesn't make that list.

GANIGAN: Nope.

KAMELAMELA: Okay.

GANIGAN: And if he doesn't do his job by following—

KAMELAMELA: --No, you know, why don't you just answer the question? So that we get a good picture here, so we know that, that you have to get on this list, but Hiram has nothing to do with that, right? He doesn't—he's not the one that picks and chooses as to what kind of training is used, right?

GANIGAN: There's no more no such thing as picking. Everybody goes. There's a senior guy and he's put on the list, and then he receives the list who he's to train for that physical [sic.] year.

KAMELAMELA: Okay, so, let me get this clear. But with Harry Jose, you really don't have any problems with him. To you—he didn't violate the Ethics Code, right? Harry Jose. Let's just stick with Harry. In your eyes, he did nothing wrong to violate the Code, that's correct.

CHAIR: Question, question, before he does that. Harry Jose was what, also a Laborer II?

GANIGAN: Yes, underneath me. Underneath one other guy that's underneath me, then one he's underneath.

CHAIR: But he took an issue to go get some certification, the CD certification right—

GANIGAN: --right—

CHAIR: --and in the process, did he get like trained to run the tractor, trained to run the _____--

GANIGAN: --Yup, yup, yup.

CHAIR: He got all that on the outside?

GANIGAN: The other two lower laborers below me was trained, and then when Harry returned back to work in 2004, _____, they were all on the machines, you know. They got trained right away. Soon as I left, then I was sent home, they got trained.

CHAIR: Okay, so the trainee gets training—

GANIGAN: --No, no, the trainee trains in the baseyard. You got the trainer.

CHAIR: Well I could _____ as a cycle, his cycle of coming around, making the rounds. I don't know what it is he does yet. We'll try to get a handle on this--

GANIGAN: --'Cause every time I stay home, every time they sent me home, the laborers was below me, and I was hired before that, was trained, and the whole time when I was at work, no training. But soon as I got sent home, guys are training above me, they got promoted. The next guys below me, came from Parks and Recreation, they got trained when I was home. When I came back work, I was supposed to be on priority now, training—

KAMELAMELA: --Mr. Ganigan—

GANIGAN: --Never happened.

KAMELAMELA: Mr. Ganigan. My question—because he had made a petition against Harry Jose, you know—

GANIGAN: --_____ because he by-passed me. And he got promoted on top of that.

CHAIR: That's not really an ethical issue, I don't think, for us. That's a bureaucratic problem that maybe you guys _____ deal with and all that. We're just—our interest is—is Jose even an issue here?

KAMELAMELA: I get the sense he's not, but I'm trying to find out whether, from Mr. Ganigan—

CHAIR: That was an example—

GANIGAN: --Yeah—

CHAIR: --Jose was an example—

GANIGAN: --Yeah.

CHAIR: Was your grievance against Jose—did he do anything to—did he violate any ethical code there, Jose?

GANIGAN: No.

CHAIR: No. Okay.

GANIGAN: He just by-passed me, _____.

CHAIR: I tend to agree—

GANIGAN: --Yeah, that's why there's a grievance _____--

CHAIR: --I tend to agree, that's _____--

GANIGAN: --Yeah, yeah, that's not your guys' problem with Jose. It's only him, what he's doing.

CHAIR: Okay, can we just focus on—

GANIGAN: Yeah. What he read earlier was the section that I wrote on this paper, 2-83 and the 2-84, that's the problem.

KAMELAMELA: Okay, now, so now, let's just stick with Mr. Keliikoa, let's just focus, and from what I understand of the process, the overseer and Stanley Nakasone, they're the individuals who decide when the training can start, correct?

GANIGAN: I don't know. I'm not the higher up. I'm not here to decide that for him. Ask him, he's right there.

KAMELAMELA: Okay, but as far as you know, Hiram is the one who does the training. That's all he does, training, right?

GANIGAN: No, he comes on job sites and acts like a supervisor. He's sent out by Nakasone, to come and check on _____.

CHAIR: He's a safety coordinator, too, is that—

GANIGAN: --yeah, yeah, to check if everything's all right. Make sure everybody's wearing their safety gear.

KAMELAMELA: Yeah, but I wasn't talking about that. I was talking about the training aspect. Did he like train you to operate different kind of equipment?

GANIGAN: Nope.

KAMELAMELA: Did you put in a request for it?

GANIGAN: _____ all kind paperwork for the County.

KAMELAMELA: And that request is sent to the overseer, right? The overseer is Stan Nakasone.

GANIGAN: I don't got no request. Never got a request.

KAMELAMELA: Now from what I understand—

GANIGAN: --He said when it was your time, then he'll be training me.

KAMELAMELA: Okay, so who told you that? It wasn't Hiram that told you when it was your time, you'd be trained, right?

GANIGAN: Yup.

KAMELAMELA: So it wasn't Hiram that told you that.

GANIGAN: It came back from Hilo. I don't know who told Harold Loscomb (?) that, but you ask them—

CHAIR: --Loscomb, he's an overseer?

GANIGAN: No, he's a temporary assignment _____.

CHAIR: A temporary overseer in Honokaa?

GANIGAN: _____. You can get this information from Nakasone and Hiram, so—

KAMELAMELA: I'm trying to _____ this in on Hiram, Ganigan, Mr. Ganigan, because your complaint is with him, okay? And so I'm trying to zero in on precisely how is Hiram connected to your complaint. So so far, from what I understand from your testimony, there used to be two trainers, now there's one. Hiram, right?

GANIGAN: Um hmm.

CHAIR: The whole County or East Hawai'i?

GANIGAN: The whole County.

KAMELAMELA: The whole County just had one trainer. The second thing that I understand is that, is that Hiram, Mr. Keliikoa here, is not the one who decides the cycles as to when people get trained. Is that correct? Right?

GANIGAN: I don't know.

KAMELAMELA: Oh, you don't know. Okay. That's what I wanted to find out.

GANIGAN: You ask them.

KAMELAMELA: And also, you have never asked or been told that you'll be—get trained for CDL, right?

GANIGAN: You can ask what you like there, but I'm just ignoring you.

KAMELAMELA: No, no. You, Mr. Ganigan.

GANIGAN: I can ask and keep going on and on. I asked for CDL test papers so I can study and all that, and they was going brush me off and said when it's your time, it's your time, and that's it.

KAMELAMELA: Right, but—

GANIGAN: No furthermore questions.

KAMELAMELA: But Hiram wasn't the one that brushed you off, right?

GANIGAN: You was given a priority list for me to be trained when I came back May 5, 2004.

CHAIR: Who gave him the list? Who gave him the list?

GANIGAN: My baseyard. _____ list on the UPW's request, so I'd be on priority training. I know this, because I'm the senior in that baseyard, they were all by-passing me, the lower laborers. They all by-passed me, so I was supposed to be put on that, and that never happened. I was there, you know, six months—

KAMELAMELA: --Okay—

GANIGAN: Six months blew by and nothing happened. I was sent home again.

KAMELAMELA: I'm trying to focus on Mr. Keliikoa, okay, because that's the other County person that you claimed—

GANIGAN: --I don't claim it, it's true—

KAMELAMELA: --violated the Code of Ethics. So right now you're a Laborer II.

GANIGAN: Yup.

KAMELAMELA: Right.

GANIGAN: Yup. I'm the senior _____ laborers.

KAMELAMELA: Do you operate any other kind of equipment?

GANIGAN: I don't operate nothing, I told you already, 'cause I haven't been trained.
_____.

KAMELAMELA: Now—and is the reason why you didn't get training was because you couldn't operate vibrating equipment? Just answer the question. I mean, if the answer is yes or no, that's fine.

CHAIR: What kind of vibrating equipment are you talking about, a jackhammer?

KAMELAMELA: Yeah, jackhammer, any type of vibrating equipment.

CHAIR: Any equipment in that category?

KAMELAMELA: Not yet.

CHAIR: Are you comfortable? (?)

KAMELAMELA: The reason why you didn't get training—did somebody tell you you couldn't get training because of a physical limitation, that you cannot operate vibrating equipment?

GANIGAN: Yeah, they made their own assumptions.

KAMELAMELA: But Hiram wasn't—Hiram, Mr. Keliikoa, wasn't the one that told you that, right?

GANIGAN: It came from Hilo, I don't know who _____.

KAMELAMELA: And the reason why you weren't trained in like in a bulldozer and truck, was that because you wasn't on the list?

GANIGAN: I was on the list a long time. Never got training. There's back work, paper work, that shows from the UPW.

KAMELAMELA: But as far as you know, Hiram wasn't the one that said you couldn't get trained, right?

GANIGAN: I cannot speak for him. Ask him.

KAMELAMELA: No, No, I'm just finding out what information you have, okay. If you don't know, that's fine. So Mr. Ganigan, as far as you know, if you know, Hiram wasn't the one that kept you from getting trained, right?

GANIGAN: I have no idea. Ask him and Nakasone. It's between them two.

KAMELAMELA: Now, did Mr. Keliikoa come to you and tell you you can take classes from him?

GANIGAN: Yes, he came to the baseyard and solicited his job.

KAMELAMELA: And when did he do that?

GANIGAN: _____. Oh, I have a new business now, here's my card. He passed it around to several workers.

KAMELAMELA: No, no, I'm—okay. So when did he do that?

GANIGAN: One of his excursions to the baseyard.

KAMELAMELA: And Mr. Ganigan, you were there?

GANIGAN: Yup. I was right there in the lunch room when he did that.

KAMELAMELA: So when did that happen?

GANIGAN: When I was back to work.

KAMELAMELA: Yeah, so, when was that, Mr. Ganigan? Because you'd been off and on, off—on and off of work.

GANIGAN: From May 5 to November _____.

KAMELAMELA: And is that the only time that he did it, that you had seen, Mr. Ganigan, passing out his card? What color is his card, Mr. Ganigan?

GANIGAN: I could care less what color is his card.

KAMELAMELA: You don't know the color of the card? But you said you was there?

GANIGAN: I never look at the cards and nose you _____. I was eating my lunch when he was doing that. I don't pay attention to him passing out cards. Come on.

KAMELAMELA: So how do you know that was the card for his business?

GANIGAN: 'Cause he said out loud, you think I deaf?

KAMELAMELA: Okay.

GANIGAN: I'm not deaf. He said out loud and making sh-h-h, no tell anybody, I get in trouble. I not going make up that kind allegation, come on. I not over here, the one that being accused of anything. It's him, the one. So why you questioning me about this kind silly stuff. If I knew you was going be silly, I'll bring my lawyer from Oahu.

KAMELAMELA: It's not silly, because this is serious allegations that you're making—

GANIGAN: --_____. Call the UPW and get 'em subpoenaed, then you'll find out all what he's been doing. You can see the investigation, all about the higher ups and everybody. So if you like bring that out, go ahead.

KAMELAMELA: Okay, so that was time in the lunchroom. Who was there in the lunchroom, Mr. Ganigan?

GANIGAN: Harry Jose was there, people I cannot mention their names, 'cause only Harry is involved in this.

KAMELAMELA: You have read the declaration from Harry Jose? I don't know if you read this declaration. Let me show you the declaration from Harry Jose, Mr. Ganigan, because this is important. You made some very serious allegations. Why don't you read this, Mr. Ganigan.

(Ganigan silently reads the declaration.)

GANIGAN: You should subpoena Mac Asato (?) too, then.

KAMELAMELA: Okay, so Mr. Ganigan, Mr. Ganigan. Wait, Mr. Ganigan, you read page 2 of the declaration of Harry Jose, right? Mr. Jose says on paragraph 3b, Keliikoa did not advertise or solicit to him that he teaches classes for a fee to individuals who want to obtain their commercial driver's license.

GANIGAN: He's lying. _____ in a court of law _____. He's lying.

KAMELAMELA: So you disagree with that statement.

GANIGAN: Yup, he's lying. How he knew about this, from invisible? He could read people's minds, that he was doing that type of job? He solicited them in the lunch room to do that kind of job. _____.

KAMELAMELA: So who else was in that lunch room, besides Harry Jose, that you—

GANIGAN: They're on this list, so I cannot give their names. You like that information, subpoena that UPW. _____. You'll find out choke names.

KAMELAMELA: Now, did Mr. Keliikoa tell you that he never like train you outside the business, you know, outside the County? I mean if—if you wanted to get your CDL license, would you go to Mr. Keliikoa?

GANIGAN: Nope.

KAMELAMELA: Have you ever gone to him, to get your CDL license from Mr. Keliikoa?

GANIGAN: No. Why would I?

KAMELAMELA: Did you know that Harry Jose went to get his CDL license because he wanted to improve himself? So he decided to pay his own money.

GANIGAN: Pay the whole County.

KAMELAMELA: No, no, the question is—

GANIGAN: --no, pay the whole County—

KAMELAMELA: --No, the question—

GANIGAN: --He trainer for train you. _____--

KAMELAMELA: --The question, Mr. Ganigan—

GANIGAN: No, no.

KAMELAMELA: Did Mr. Harry Jose tell you the reason why he went out to get the CDL license from Mr. Keliikoa was to improve himself—

GANIGAN: --Because he cannot train during his regular working time.

KAMELAMELA: You're not answering my question—

GANIGAN: --Too bad—

KAMELAMELA: --But that's okay. That's okay, Mr. Ganigan.

GANIGAN: 'Cause he cannot train the regular workers on working time, so he got to go pay one guy, that is the safety guy, for get one job _____, so he can get ahead in the County. Otherwise you get no training.

KAMELAMELA: Okay, I don't have any further questions.

CHAIR: Well then, I'd like to—do you as the Board--well first of all, how are we doing on time? _____. Let's get to the issue here with Mr. Keliikoa. First of all, I'd like to know, Hiram, what is your job here? Tell me a little bit about your job, how you divide your time and so on.

KELIIKOA: Driver Improvement Coordinator. Basically my job is to train people how to drive _____.

CHAIR: All kinds of equipment—what kind of equipment are we talking about?

KELIIKOA: What heavy equipment that comes in, that we--

CHAIR: --_____, big trucks, tractors, loaders, backhoes, everything.

KELIIKOA: I basically train for the County.

CHAIR: One guy trains the whole work force?

KELIIKOA: I do the Public Works. There's another guy that does—

CHAIR: Parks and Rec—

KELIIKOA: --Parks and Rec, other departments. And this is what I do. And I also do safety, _____ safety, for the Public Works.

CHAIR: Where are you based?

KELIIKOA: Based in Highways.

CHAIR: Geographically—where do you go to work every day, do you _____ a lot?

KELIIKOA: I do all _____.

CHAIR: Okay. And you go out everywhere?

KELIIKOA: Yes.

CHAIR: All the baseyards?

KELIIKOA: Right.

CHAIR: How many baseyards do you got?

KELIIKOA: About five, I think. Five or six.

CHAIR: Baseyards. Ranging from?

KELIIKOA: Ka'u, Kona, Kohala, Waimea, and Hamakua, and Hilo, and Puna. Sorry.

CHAIR: Okay, I get _____. And you do the safety work as well, huh? What do you just do, you spot check, you look for—

KELIIKOA: --Yeah, I do safety inspections, top (?) safety training.

CHAIR: What percentage of your time is doing baseyard training, and what percent with safety would you get, is it like half-half—training versus say, how much—

KELIIKOA: Oh, about—here about half-half.

CHAIR: Uh huh. So does your job description kind of _____ like that, do you think?

KELIIKOA: Yes, right.

CHAIR: So about half-half. Half your time that you go to work, five days a week—

(TAPE ENDED – INSERTED NEW TAPE.)

CHAIR: And how do you get your schedule, who to train, and how's the schedule driven?

KELIIKOA: What I do is I just put on the training, and my boss, once a year, comes together with the overseers for each district, and they come up with what kind of training they need, and then give it to my boss, and my boss—

CHAIR: --So you're like saying if two guys have no back-up capability in Honokaa baseyard, I've got to get somebody else cross-trained to do that—

KELIIKOA: --Right—

CHAIR: --and that's how you decide your priorities, so to speak. So you're operational, at all the baseyards.

KELIIKOA: My boss decides all—

CHAIR: Right, right. Okay. So I get a little feel for that job now. So, let's get right to the grievance here, the conflict of interest. Okay, tell us about your sideline business—how long have you been doing that?

KELIIKOA: About two years.

CHAIR: Two years. What do you got to get, so me heavy equipment—

KELIIKOA: No, I just got a truck, and I do Drivers' Ed.

CHAIR: Driver's Ed, CDL.

KELIIKOA: CDL.

CHAIR: Do you do high school kids for licensing, too?

KELIIKOA: Yes.

CHAIR: You do that, too.

KELIIKOA: Yes, I do that also.

CHAIR: As well as anybody who wants a CDL. Are there other CDL training agencies around?

KELIIKOA: There's another, just one other person, _____ training at this time.

CHAIR: Uh, huh. So only CDL's then—you don't train how to run a D-7, you don't have a baseyard of your own—

KELIIKOA: --I can't—I do that—

CHAIR: --Yeah, because—

KELIIKOA: --I can do that also, on the outside, my business, but I don't have the equipment.

CHAIR: But that's within the scope of your capability—you can say that you will train Mr. Ganigan here, _____, to learn how to run a backhoe, if he goes—

KELIIKOA: If he has the equipment.

CHAIR: He's got to go find some of the equipment somewhere else? Have you done that sort of stuff?

KELIIKOA: I've done that for—I forget the name of the company, up in—

CHAIR: --for a company, not individuals?

KELIIKOA: No, no—up Mauna Kea.

CHAIR: Okay. So the only individual training you've done is CDL's essentially, on the side, _____ your truck, your time, your location somewhere. Where do you do that training?

KELIIKOA: We go down at the airport, it's open—

CHAIR: --Oh, yeah, I see you down there. _____. Okay. Okay, I got a little feel for that job and what you do on the outside job now. I guess I got to ask you the big one here—where you out there passing your business cards around in the lunch room—

KELIIKOA: --No—

CHAIR: --and the baseyards _____ business?

KELIIKOA: No. I don't—if anything, they would come to me, and I would tell them you got to come see me at your lunch hour or after—

CHAIR: --If you hear it through the coconut wireless, hey, this guy can train you.

GANIGAN: You lie and you're a church person.

PKO: You should let--

KAMELAMELA: Mr. Ganigan—

PKO: --let Joe ask the questions.

CHAIR: Yeah, yeah, yeah—why don't I just—

KAMELAMELA: --No, but you know, I want the Board—let me just _____ questions.

PKO: Well usually they go after, but if you want them to go first—

CHAIR: --Yeah, go ahead, guys, with your inquiry.

WJ: Do you train on your regular job—as a County employee, do you train the people for CDL licenses?

KELIIKOA: Yeah, in a _____.

WJ: Yes.

KELIIKOA: I only train them. I don't give them the license, I don't examine them.

WJ: But that's part of your job?

KELIIKOA: That's part of my job, yeah, that's part of my job.

WJ: In the County?

KELIIKOA: Correct.

KK: What about the allegation of you passing out your business cards at lunch?

KELIIKOA: That's totally false. That's—he's lying, not me.

(WHO?): He what?

KK: I just was hoping—

CHAIR: --It's just one word against the other here, and we have to move along.

KELIIKOA: I've never, I've never, ever gone up to any person in the County on County time and solicited their service—not service, but their money, to come and get my service.

CHAIR: How long have you worked for the County?

KELIIKOA: Twenty-three years.

CHAIR: Twenty-three years. And what's your rank, by the way, you're a—what do you call it, like an SR rating or something like that?

KELIIKOA: Twenty-one, I think.

CHAIR: Twenty-one. What what's your rating, like a—you got a rating, what's you're—

GANIGAN: _____.

CHAIR: But you're not up in that SR category, where you're kind of like—

GANIGAN: No, no.

WJ: I _____. Since you started your weekend business, approximately how many County employees have come to you?

KELIIKOA: I think two or three, around there.

CHAIR: How many folks do you reckon you're training year-round, just—I mean, County employees, during your business work hours, in the baseyard, around the island, how many folks do you reckon you actually do train? You only got 50 percent of the time you're doing training on, right, so I mean—I don't know.

KELIIKOA: _____--

CHAIR: --How many guys do you actually train for your equipment operation or CDL or whatever, doing your job, during work hours? Do you reckon you train ten guys a year, twenty guys a year?

KELIIKOA: I train a lot, how much—

CHAIR: --During the working hours.

KELIIKOA: Yeah.

CHAIR: On the working hours.

KELIIKOA: Well I'm always training, that's my job.

CHAIR: Well you said it's about 50 percent of the time, the rest of the time you might be—you know, you might be going out spot-checking for Mr. Nakasone or something, right, saying like well, would these guys run the same operation out there, or—and I gather that safety work—you know, you're cutting trees and moving brush and stuff like that. You're concerned about that, too, that it's going—that you're not—no one's out there working without earmuffs over

their heads, hearing aids. So—but would you just hazard a guess at the number of people a year you train?

KELIIKOA: Well—

CHAIR: --Wild guess.

KAMELAMELA: You mean, you're just talking about the County guys?

CHAIR: Yeah, just County guys, yeah, yeah. Doing the County hours and training County employees. That's probably 50 or 60 percent of his job, right. Do you think you're training a quarter, about like a quarter—like this month, have you trained anybody this month?

KELIIKOA: Oh, yeah. I just finished _____ one person, training on CDL.

CHAIR: CDL. How long did that take?

KELIIKOA: Two weeks.

CHAIR: Two weeks, one person.

KELIIKOA: Right. That's just for the CDL now. Then you get other equipment—

CHAIR: Guy runs a tractor.

KELIIKOA: Right, depending on the type of equipment, some could take long, yeah, to train on. So it all depends. It can be—I can do a lot of _____ at one time on another type of equipment, or I have to do one person at a time.

CHAIR: Yeah. So if you're doing the backhoe, that might be a single operation, _____ one person, some other common kind of use—complicated piece of machinery, you can do a group of four or five—

KELIIKOA: --Right.

CHAIR: But you don't have any idea of how many?

KELIIKOA: Well, I would say—I know it takes two weeks for the truck, _____ weeks for heavy equipment. I would say—close to a year, close to 50, depending again on what type of—

CHAIR: --Five-zero? Half the work force?

KELIIKOA: Depending on what type of equipment _____.

CHAIR: Well I've gone a little astray, I've gone a little far astray from the ethical charge _____, so I can understand the context for all this and so on. But I got it. Thank you.

GANIGAN: Can I say something?

CHAIR: Yeah.

GANIGAN: What he said _____ only trained three people, County people, on his own time, with his job? He trained five. _____ credibility.

CHAIR: _____.

KELIIKOA: I've trained so many people, I don't even know how much people.

CHAIR: So I don't know, do you guys have any more questions--do you have any more questions? Mr. Kamelamela—questions—are we—gather our thoughts. Do you want to cross examine a little bit, or elaborate, or pull some more information out?

KAMELAMELA: _____ just a little bit more _____, since he didn't give me some answers, but—who determines who will get trained and what kind of equipment or _____. Who—your boss does? And who's your boss?

KELIIKOA: Stanley Nakasone.

KAMELAMELA: Okay. And so is there a list that's given to you, like a particular _____?

KELIIKOA: Yeah, they make out like a priority list. At the beginning of the year our overseer will _____, make a priority list of what type of training they need. And then they present it to Stanley, and then they go over it and _____ each district, what ones they need first.

KAMELAMELA: And _____ your private business, what is the color of your card?

KELIIKOA: Blue.

KAMELAMELA: Blue. Like a bright blue.

KELIIKOA: Yeah.

KAMELAMELA: Okay.

WJ: Do you have any cards with you?

KELIIKOA: Yup.

WJ: Can I see _____ card?

(Keliikoa hands Mr. Joseph a business card.)

KAMELAMELA: Well, actually I wanted to submit that in front of the—in evidence. How do you advertise?

KELIIKOA: Through the yellow pages, once in a while I put it in the newspaper, _____ fliers, and once in a while I'll put it on the radio.

KAMELAMELA: Radio. And these fliers that you make, where do you put those fliers?

KELIIKOA: Any place that is public that I can put it. _____.

KAMELAMELA: I don't have any other—

CHAIR: Do we need to go any further with this, as a Board?

PKO: Mary, I'm going to give this to you to mark it *(the business card)*.

CHAIR: Do we need to—I mean—

WJ: I've formulated my opinion.

CHAIR: I pretty much got it all figured out for myself, too. How about you, Karl?

PKO: Did you have any other witnesses?

KAMELAMELA: Well I have some other witnesses, but—who's very short.

PKO: And did you have questions for Mr.—

GANIGAN: No. I'm going to take him through—take care of him through the UPW.

CHAIR: I'd like to just speak to him, at this point. I mean—I have to say, up front, I think that there may be some issues here, you may have a basis for the grievance, but it's outside the purview of this Board. That's my personal sense of this. I really believe that—

GANIGAN: --_____.

CHAIR: Well, no that's not our role. We're looking for an ethical violation. You charged people, Jose and Keliikoa. I don't think there's been any case made, in my judgment, and I don't think there's any case made that there is any, in either of those grievances—that you charged—you have grievances, you may have those grievances, and maybe within your system, maybe it's with his boss, Mr. Nakasone, maybe it's with the County, you know, engineer, I don't know where the ball lies, but that's not what we're here to do, essentially.

GANIGAN: That's not an ethical wrong-doing, what he's doing? Having a job on one side—

CHAIR: --You want to speak to that?

WJ: I don't see it in your eyes.

CHAIR: Pardon?

WJ: I think you're in such a position that, since you're the only person that can train people from the County on this island, that when County employees come to you for pay on the weekends, I think you should turn County employees away, and not train the County employees for pay on the weekends. I see that as a clear conflict of interest, in those regards.

KK: Do you have promotional authority over whomever you train?

KELIIKOA: No.

WJ: Yeah, but you see, he's the only trainer on the island. And some people would view this as—

CHAIR: --There's other trainers on the island—

KAMELAMELA: --Yeah, there's other trainers.

CHAIR: I mean actually, if I could make a reply, I totally see where you're going with this, and I would say that would be great, great cause for concern, too. You've got like—he's got a monopoly going there, you know, on the key to upward mobility, right. But I mean, actually, if someone wants to go—Richard, if you want to go learn how to run a backhoe, to pay someone to teach you to run a backhoe, it isn't like he's your only option, is it?

GANIGAN: Yeah, but I _____ instruction _____ how to run those machines, but they never came and audited me. That's how the County procedure goes—

CHAIR: --But that's not—as I say, you may have a systemic grievance here, you know, that's outside the realm on his particular charge. You're bringing some ethical charges against two individuals which you represent, right—

KAMELAMELA: --Right—

CHAIR: --Jose and Hiram, Keliikoa.

WJ: Maybe I don't get it, because he is in a position that he's employed by the County to train people, and then to train County employees on the weekends for pay does raise an issue of conflict. And I think we should address that.

KAMELAMELA: Okay, so then let me ask some other questions, then, because to—just to clarify, because what Mr. Kawahara said is that he had no—he is not the one who promotes people, is that correct?

KELIIKOA: Correct.

KAMELAMELA: Right. And the people that he trains, it's people who come to you, right? You don't go and ask County guys to come to you, right? And now, who else do you train in your private business?

KELIIKOA: Companies.

KAMELAMELA: What kind of companies are you talking about?

KELIIKOA: Honsador—they just called me again.

CHAIR: A trucking company?

KELIIKOA: _____. And again I mentioned _____.

KAMELAMELA: So you discriminate against people, you know, who wants to better themselves?

KELIIKOA: _____.

KAMELAMELA: Now, in light of Mr. Joseph's question, then I'm going to ask another witness to provide more information.

PKO: Will you allow him to call the other witness?

CHAIR: Sure. He had a question—you want to entertain a quick question at that point, on this one point before we go off on another—Mr. Ganigan, you had a question, you want to _____ from him.

KAMELAMELA: Oh, okay.

GANIGAN: As him being the County trainer, and being the outside trainer, the day they return back to work, they get audited right away and move up to the next position that's open. Because he's the trainer. So he knows how he trained the guy, whatever, so he's just going to pass the guy with blue colors—

CHAIR: --Oh, he's also the inspector licensing—

GANIGAN: --yeah, the guy that's going to give them the thing get back to work, audit them that they're able to drive the truck. He's the trainer, he's the County trainer, so when they're trained off of work by him and return back to work, they'll get audited right away. They have no problems.

CHAIR: Does that ever happen?

KELIIKOA: I don't do—I do the auditing, but I don't decide when they get audited. Like I said, my boss tells me when I go and audit the guys _____. All I do is just train. That's my job.

PKO: What does audit mean?

CHAIR: Yeah, what does that mean, audit?

GANIGAN: That's to see if you can run the _____--

CHAIR: --check them out, equipment check.

KELIIKOA: Equipment check, sorry. Make sure he's safe to operate.

KAMELAMELA: So Mr. Keliikoa, you only give the training classes, right?

KELIIKOA: Yes.

KAMELAMELA: Now, you don't give them the CDL, right?

KELIIKOA: No.

KAMELAMELA: They have to go and—

KELIIKOA: --the police station, have an examination, and pass that to get their license.

CHAIR: So you're not the testing coordinator, then, as well, to verify that they have the skills.

KELIIKOA: No, auditing, that's what it is. If they have the license.

CHAIR: Oh, if they have the license. You have to have a license—

KELIIKOA: You have to have a license. I can't give them the license.

CHAIR: You're just talking the CDL now, right?

KELIIKOA: Right.

CHAIR: What about testing to see if—suppose you were to train somebody on the backhoe, and then you—as a part of your job, do you come up there and see if the guy can run the backhoe?

KELIIKOA: Correct. Correct.

CHAIR: You're the person—like yes, can, no, cannot.

KELIIKOA: Right.

CHAIR: And therefore, then it becomes—

KELIIKOA: --I make sure that they—

CHAIR: --then they get their _____, and they get their qualification stamped, and they're eligible for promotions, right?

KELIIKOA: That's right.

CHAIR: I mean like I say, I think there are some systemic issues here, that's for damn sure, you know, but I don't know about individual ethical things. I mean, I look at it this way. If you're a community college instructor teaching carpentry, and, you know, and you're a student in carpentry and you go to him, 'cause you want to get into the next level, you know, on the outside, and you don't have three semesters to spend—is that up and up, is that an okay thing? He's the only guy, you know, on the island that teaches carpentry, so that's why—I'm looking at it like that, too. And I realize it's a small island, you know, and I don't know that—I don't know that—I see what you're saying. You're concerned. I'm concerned, too. He's got like—he's got the market cornered right there. But on the other hand, he has skills, that if he can go make money with his skills on the outside for trucking companies, for Subaru telescope, for some kid—your daughter wants her Driver's Ed license or what have you—if he can get all that done, that's -

WJ: But he's only training three to five County employees, then my advice is simply _____--

KI: --on his own time.

CHAIR: Oh, I see.

WJ: Then my advice—

CHAIR: --Scratch 'um—

WJ: --would be, don't train any County employees on the weekend, because it does not—

GANIGAN: --_____ the whole thing—

WJ: --it does not look kosher.

CHAIR: Appearance of conflict of interest.

WJ: Yes.

CHAIR: If not conflict of interest.

KAMELAMELA: Yeah, but then he's basing it on certain sections that doesn't address the issue. You know, if you look at the sections that he complained about, it doesn't say.

WJ: And I have, and I think it does. You know, and that's why I'm pushing in this. I think it does.

CHAIR: So is that you're only hanging—sticking point right there? That's your only—

WJ: --Oh yeah, that's my only sticking point. If you did not train any County employees on the weekends, I wouldn't have a problem with—

GANIGAN: --I wouldn't have, either.

WJ: --and I think that's the way that you should do this—

KAMELAMELA: Okay, so—so then, we take it to another issue. What if a County employee goes to another place to get a CDL, then we're back to square one.

WJ: And they should. They shouldn't go to him on the weekends. They should go to someplace else.

KAMELAMELA: Yeah, but that's not what the—that's not what the provisions that's being cited to be talked about. If, when you look at these provisions, like 83, clearly there's no violation.

CHAIR: All right.

KAMELAMELA: Okay—

WJ: --I don't see that. I read it differently from you.

KAMELAMELA: No, but—

GANIGAN: --because if it was somebody else that wasn't working from the County, and they went to their own private guy, and he wasn't working from the County, then you don't have a conflict—conflict of interest.

KAMELAMELA: I—okay, well, I’m just going to bring more witnesses, then, because like I totally disagree with your way of looking at it—but that’s okay, because reasonable people can disagree.

CHAIR: Yeah. Maybe we need—maybe we need to take a break and readjust, what do you think? Do we need to press on? Going to press on?

PKO: It’s up to you guys. How much longer do you—

KAMELAMELA: --Well, I have to press on, because I have to go to the County Council on a couple of _____, but I’m just going to make some short _____ with the two other witnesses, and then, you know, we can discuss why it’s not a violation.

CHAIR: In which case, I’m going to declare a five-minute break, and I’ll be right back.

KAMELAMELA: Okay.

(Break from 12:50 p.m. to 1:00 p.m. Mr. Ganigan is missing.)

CHAIR: Sorry, he’s a no-show. We’ve got to postpone this _____.

WJ: I don’t think we need to postpone this. You took a five-minute break. Everybody was here. The five minutes are up. I say call it to order and—

CHAIR: --_____ enough time.

WJ: Let’s take care of business.

PKO: I guess.

CHAIR: Let me let you guys get organized, and I’ll do one more search here.

KAMELAMELA: Yeah, I think I’ll search _____.

(Waiting a few more minutes while searching goes on for Mr. Ganigan.)

CHAIR: Could we reconvene, please? Okay, so Mr. Ganigan got a request that we take a recess for a few minutes, he got a phone call. It has a bearing on this? Bearing on this, per se? I don’t know how much time you folks have.

KAMELAMELA: _____ and see where the County Council is at.

CHAIR: You want to go upstairs and check on that? Is that happening upstairs?

KAMELAMELA: Yeah—no, but they—but you know, as far as a 15-minute break, I'm not sure why, why there is a need to. I'd like to just go through it and then let the _____, because Mr. Hermes _____ should be short.

CHAIR: Yeah, we can actually do business and defer a decision.

KAMELAMELA: Right.

CHAIR: We can do that, so—you going to take it right now? I mean, who's going to answer the phone for you?

GANIGAN: That's why.

CHAIR: You've got to be over there to answer the phone? Do you need to be here to hear all this?

GANIGAN: I guess so.

KAMELAMELA: So I—we request that we start _____.

CHAIR: Okay, let's start. Real fast.

KAMELAMELA: Okay, for the record, what is your name?

HERMES: My name is Nick Hermes.

KAMELAMELA: And what do you do?

HERMES: I'm the personnel management specialist for the Department of Public Works. I manage all _____ aspects, to include recruitment, labor relations—

CHAIR: --Training—

HERMES: --training, organizational development, etcetera.

KAMELAMELA: Now, Mr. Ganigan here has said that he was never trained _____ Mr. Keliikoa for _____. Is that true?

HERMES: No, it's not true. I have in my possession documentation—not with me, in my office, that he was trained on a piece of equipment called the truck hat, which is essentially a modern grass cutter.

GANIGAN: Excuse me, Nick. That wasn't him. That was the guy from the mainland. I have the paperwork in here, too.

HERMES: Okay, I mean—but—

GANIGAN: --it wasn't _____, he was on vacation. The guy from the mainland came from that company to train us at—

HERMES: --Let me rephrase that. I have a piece of paper that says that he is trained to operate the grass cutter, okay. Can I just explain the context here? With any given baseyard at Highways, you have different classes of work. You have your Laborers, which is general manual labor. You have your Equipment Operator I's, which for simple _____ purposes, is grass cutters. And you have your Equipment Operator II's, which are certain types of dump trucks, half-loads (?), and whatnots. And then your Equipment Operator III's, which in most baseyards is the senior Unit 1 position. Those are like your 18-wheelers and graders, more sophisticated, complicated use of equipment. I mean right now, Mr. Ganigan is currently competing for a promotion in his own baseyard, and he qualifies for that because he got training on a piece of equipment. So in terms of his upward movement, I mean, he's right there in the running. You know, and he's the senior person in his class of work, which, you know, in terms of—on a contractual basis with his union, you know, gives him, you know, all things considered equal under the merit system, gives him the upper hand for that position, which is a promotion.

CHAIR: Forthcoming.

HERMES: Forthcoming.

KAMELAMELA: Now for—I know that you mentioned Equipment Operator. But to be qualified for Equipment Operator, do you need a CDL?

HERMES: At the Equipment Operator II level. It's not applicable for the EO I position, which is grass cutters.

CHAIR: Which would explain how Jose got all the way up there, 'cause he got a CDL, is that it?

HERMES: Right.

CHAIR: So he had additional skills which allowed him to compete for a higher level job.

HERMES: He wasn't promoted within our department. He pursued an open recruitment that he applied for and gained employment with the Solid Waste Division in Environmental Management.

KAMELAMELA: Okay, I don't think there's any further questions.

CHAIR: Thank you.

HERMES: All right.

KAMELAMELA: I'm going to call Mr. Nakasone. Okay, can you please _____, and can you please tell us what your position in the County is.

NAKASONE: Superintendent of Highways.

KAMELAMELA: And how long have you been the Superintendent of Highways?

NAKASONE: Fourteen years.

KAMELAMELA: Now, does your department have a policy against County workers, that they shouldn't work on the outside?

NAKASONE: No.

KAMELAMELA: Now, I wanted to ask you a question about Section 2-84(b) of the Hawai'i County Code of Ethics. Can you read it, just for the record, and then I have a question.

NAKASONE: You mean read it out loud?

KAMELAMELA: Yeah. Well, because we have to put it on the record.

NAKASONE: Okay. No officer or employee shall acquire financial interests in any business or other undertaking which that officer or employee has reason to believe may be directly involved in official action to be taken by the officer or employee.

KAMELAMELA: Okay, so what is your understanding as to what kind of circumstances would apply, under a section like that?

NAKASONE: Either your own a business, or you have an interest in a business, and this business does business with the County, that has something to do with your _____, then I got into a construction business and the County rent your equipment, you know, from my department, _____.

KAMELAMELA: Now, you had a chance to read the petition made by Mr. Ganigan, right?

NAKASONE: Yes, I did.

KAMELAMELA: Can you tell us what your opinion is about that—do you think there was a violation as, as he pointed out, of the County Code provisions?

NAKASONE: Pertaining to—

KAMELAMELA: --yeah—

NAKASONE: --Mr. Keliikoa? No, I don't think so.

KAMELAMELA: And why not?

NAKASONE: Although Hiram owns a business, he does not—he is not the person who determines who gets promotions. He is not the person who determines who gets trained. He is not the person who determines who gets audited. He is not in that function, or in that capacity, to do that.

KAMELAMELA: Okay, that's all the questions I had.

CHAIR: Board? Any more questions, Board?

(WHO?): Okay, thank you.

CHAIR: Thanks. *(TAPE ENDED – TURN TAPE OVER.)*

GANIGAN: I'm going to appeal this case, so I can call my witnesses next time.

PKO: You don't appeal. You have to ask for a formal advisory opinion. This is an informal advisory opinion.

CHAIR: Which we'll probably render, I think, you know. And then you'll be free to read that, and if you think, I violently disagree, then—but I don't know that—who makes this opinion—

PKO: --You. No. If he gets a formal advisory opinion—

CHAIR: --We can't issue that, can we?

PKO: No, you do, that's in your rules.

CHAIR: Oh, yeah.

PKO: The informal first. If the person is not satisfied with that, he can ask for a formal hearing. Then the formal decision is given to the boss. If he decided that there was a conflict, you would give it to the head of the department to deal with that person. If you decide there isn't a conflict, then –

CHAIR: Um hmm. We don't want to hold you up in your phone call, but, you know. I mean, we're free as far as I'm concerned. We don't need—

PKO: --Are you leaving?

GANIGAN: Ah no, I'm getting a call.

CHAIR: You're free to stay or go. But I mean—we have the _____.

NAKASONE: Okay, thank you. Thank you very much.

CHAIR: You know, the—

(Two men enter the room.)

GANIGAN: --let me _____--

CHAIR: Okay. You want to bring—you want to bring some witnesses to the table?

GANIGAN: Yup.

CHAIR: Okay. I guess--we need to—Board, do we need Mr. Keliikoa to be here this morning, or do you want--

KAMELAMELA: No, well he's—he's a party, so—

CHAIR: --Okay. Call your witnesses. One at a time. Pull up a chair and please state your name, and who you are, what you do.

PALEKA: Daniel Paleka, UPW business agent.

CHAIR: Are you familiar with his complaint—have you read the complaint?

PALEKA: Yes.

CHAIR: Do you have a copy of that in front of you—of your complaint?

PALEKA: I have to inform the commission that at this time, I cannot make any statements. All the questions should be forwarded to the state director. We've been advised not to speak.

CHAIR: Okay, well let me just explain to you what I think we're doing here, as the Chair of the Board of Ethics. I think we're determining whether there's been an ethical violation, two sections, he's charging against two individuals. At issue is fair treatment, one—fair treatment and conflict of interest. And basically the fair treatment charge was leveled against Jose, basically, as an example or as the target of his grievance. We determined pretty clearly that there's nothing to that. The other one was if there was a conflict of interest by Keliikoa because he's a County trainer and he's running a business on the outside, which _____, and you know, and take his course, pay to take his course, for CDL training, _____, maybe heavy equipment as well, _____ gets himself an advantage. And so the allegation is that he is basically not training them—if you want my training, you buy my training, I guess. I guess that's kind of a gross simplification of what the allegation is, you know, and thus far we're a little hung up on that conflict of interest between member, and only in that, only in that he feels like, you know, he's got his outside business, he trains CDL guys, it's only three to five folks a year at the County that are getting that training—paying for that training. Maybe he should just shine those folks and just deal with his other customer base out there, and thereby be squeaky clean and have no appearance. Because he

doesn't schedule the training, from what we've been able to determine. He does not schedule the training or have any hand whatsoever in the employment practices. And we know that much. We also know that he is now a Laborer II up for promotion for, what—entry-level equipment, that's why you're—you're under consideration for that. And we further—I guess finally we think that—we think that there's a—his grievance says that over the years, he's been watching people go by him, go by him, go by him, and that maybe there's a systemic problem as well. We're not here to address the systemic issue, but you guys may want to talk about it in your—what do you call that, what's the term when you negotiate that union—management and labor get together, what do you call it? Arbitration, yeah. We're not an arbitration board. We're just looking at specific violations, you know, according to his allegations, by individuals who violated the County Code of Ethics. Okay, that's where we are in this thing, right now. So, what's—if you can't make statements, what do you want me to do with this gentleman?

GANIGAN: I don't know.

CHAIR: Well, I don't know. If you don't have anything to say, or can't have anything to say, or don't want anything to say, I mean—I guess you should call the next witness, huh?

KK: Mr. Paleka, what's your position again?

PALEKA: A business agent for United Public Workers.

KK: United—

PALEKA: --Hawai'i Division. We've been advised that if you want to ask questions of the union, that those questions be directed to the state director. That's all.
_____.

CHAIR: You have no questions _____? Do we have any questions?

WJ: I just am curious in one question. Does the UPW represent both individuals?

PALEKA: We represent Mr. Ganigan.

CHAIR: But you're a UPSW [sic.] member?

(WHO?): _____.

CHAIR: You're an HGEA member? Okay, I got it.

WJ: That was my basic question.

CHAIR: Okay. You got another witness? Thanks for coming. _____.

NOSAKA: Alton Nosaka, UPW business agent, Hawai'i Division. We've been advised that if you guys have any questions pertaining to matters with the union, they should be directed to our state director.

CHAIR: Okay. Duly noted. Thank you.

GANIGAN: Is Lincoln Ashida around?

KAMELAMELA: No, he's not.

CHAIR: I don't think so.

KAMELAMELA: He's on vacation.

CHAIR: But again, you know, if you want to take this further, we'll take this further. If you're requesting a formal advisory—right now we're just making it a simple ethics—you know, a simple ethical violations. Two charges, two individuals. That's all we're doing right now. We're not _____, which is your focus, I think, you know, promotions within the Department of Public Works, they're inequitable, and so forth. That's not our focus whatsoever, you know. That's not our _____. So if you don't have any questions of us, and we have no questions of you, we're good to go. Thanks. Anything else you want to bring up?

GANIGAN: I'm going to take this to a formal.

CHAIR: Okay.

PKO: Well, there no decision yet.

KAMELMELA: Yeah, they haven't made, they haven't made a decision yet.

CHAIR: Yeah, you know, we really haven't made a decision essentially.

KAMELAMELA: Because they still have to rule on the petitions _____.

CHAIR: Yeah. Hope our protocol's okay. We're in—well, we're in open session.

PKO: Yes.

CHAIR: Okay, so—do we have enough information to make a decision and take a vote? I mean, what's your sense? Do we need to delay? Do we need to act? Okay, what do you say?

KI: I think we need to act.

CHAIR: I do, too. What do you think?

KK: Act, yeah.

WJ: I have one—

CHAIR: --Sure—

WJ: --one final question. In light of all of this, would you consider stopping your practice of taking County employees on your weekend business?

CHAIR: From the department—County employees from the department, or County employees from other departments? If Wayne's saying—look who your customer base could be, Parks and Rec? Possibly. Could be Environmental.

KELIIOA: I'm open to _____.

CHAIR: Yeah. So what do you want him to do—just stay away, as it were, from public works?

WJ: It's—well, the biggest problem I have with this is that he's a County employee that trains people—

CHAIR: --in his own County—

WJ: --in his own County, and then as an outside business he accepts money from County workers to do what he's paid to do, and I have a problem with that.

KAMELAMELA: Well I have a problem if you're asking him to _____, that goes to his livelihood and which to me doesn't violate any laws—

WJ: --and that's fine. I'm prepared to vote.

CHAIR: We can vote, we can all vote. So, would you help me?

PKO: Before a vote, someone needs to move one way or the other.

CHAIR: Yeah, well, I want a motion, basically, that we act on the charges on the complaint. Was there a violation on these issues—fair treatment, Jose, conflict of interest—

WJ: --I'd like to make a motion that there was no violations on the fair treatment issue concerning Mr. Jose.

CHAIR: Is there a second?

KI: Second.

CHAIR: Is there any discussion? I'll call for a vote. I'd like a show of hands—all in favor with that motion?

WJ: Aye.
KI: Aye.
KK: Aye.

CHAIR: Chair votes aye. Unanimous. Second—secondly, we need to talk about the conflict of interest motion. I'd like to hear a motion that there was or was not a conflict of interest, specifically as it pertains to Keliikoa.

WJ: I would like to make a motion that there is a possible conflict of interest and that this matter should be discussed further at our—at our next meeting on December 14.

CHAIR: Is there a second to that motion?

KI: I'll second that.

CHAIR: All right. All in favor, vote aye.

WJ: Aye.
KI: Aye.
KK: Aye.

CHAIR: Ayes have it. That motion is carried. We've opted to defer that second component, that second charge, until our next meeting.

MC: You said aye?

CHAIR: I'm deferring—abstaining—

PKO: Is there more evidence you want, more witnesses, or just time to think it over?

CHAIR; I'd like _____--

WJ: --I want him to bring in his information, concrete information about some of the allegations, such as the business cards, _____ if you could bring in witnesses—

CHAIR: --Witnesses, yeah-

WJ: --to further substantiate that, I think there's a case for conflict of interest.

CHAIR: Okay. So accordingly—

KAMELAMELA: --Well, just to put the Board on notice, I know that I'll not be here in December.

CHAIR: We're not going to have a—this is not going to get resolved in December, so there's no great sense of urgency.

KAMELAMELA: Okay.

CHAIR: It'll spill over to January.

KAMELAMELA: All right.

CHAIR: We're not going to have a quorum. He's resigning—

WJ: --No, Karl's going to be here for the next meeting.

KK: Yeah, you were out doing something.

CHAIR: You decided to bite the bullet? Oh, good.

WJ: Yeah, we will have a quorum.

KK: If the Mayor consents to my staying on for another month.

CHAIR: Oh, I know he will.

KK: I have his letter, a formal reply, and Pat is going to try to get a dispensation.

PKO: Okay, but Joe, you won't be able to attend for the entire month of December?

KAMELAMELA: I'm on vacation.

CHAIR: Well, unfortunately you're gone, you're out of the loop.

KAMELAMELA: Well, no, because of the way that the Board—

CHAIR: --We can maybe set it around your schedule.

KAMELAMELA: Because I'll be gone from December 2nd to the 22nd (?)—

CHAIR: That's not going to work.

KK: Does that make my issue moot?

PKO: And you can't do it?

CHAIR: Unless we can proceed without his presence, do you want to proceed without his presence?

KAMELAMELA: No, I need to be here, because if—if he's now given opportunity to present information which I believe may be untruthful, you know, I'd be having these

guys talk some more, because—I know that he’s angry and upset and, you know, so I need to be here.

CHAIR: Okay. So we’ll defer this action until our next regular scheduled meeting, probably to your availability, which will be January.

KK: Okay. I—you know, I’ll say I’ll hang on til the disposition of this case.

CHAIR: Thank you.

KK: Whatever time they need. I might—my time is not that, that critical that I can’t, you know—

WJ: But we should say, we might have to meet on December 14th for other business.

KK: Yeah.

CHAIR: Yeah. We’re just—no, we just need us to defer this.

WJ: _____ our next regular scheduled meeting.

CHAIR: Oh, sorry. Yeah. So the January meeting. Defer it to the January meeting. Okay? Suitable?

KAMELAMELA: Yes. Thank you.

CHAIR: Okay, let’s move right on to the next agenda. You’re welcome to stay or leave, as you like. We’ve got a whole another agenda to go through here. What do we got—a few more things. Are we in executive—

MC: You’ve got to move—

CHAIR: I need a motion to move into executive session.

KI: Move to executive session.

CHAIR: Seconds?

WJ: Second.

CHAIR: All in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: We’re in executive session.

(Entered Executive Session at about 1:20 p.m. Returned to Regular Session about 1:22 p.m.)

KI: Move to regular session.

CHAIR: Seconds?

WJ: Second.

CHAIR: Favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: Chair votes aye. We're back in regular session. Let the record show that we just reviewed the financial disclosure statement of Rodney Watanabe, a member of the Planning Commission, and do we have a motion to file this?

KK: So moved.

CHAIR: Second?

KI: Second.

CHAIR: All in favor?

KK: Aye.

KI: Aye.

WJ: Aye.

CHAIR: Filed. Finally, the next regular monthly meeting is scheduled Wednesday, December 14th at the Department of Liquor Control conference room, 101. We already know that Mr. Inouye will not be there. We look forward to seeing everybody else there. Do we need a motion—any further announcements? Any announcements? Any business?

WJ: Except Mr. Inouye won't be there?

CHAIR: That's right. That's right. He won't be there. _____. Motion to adjourn, is there a motion to adjourn?

KI: Move to adjourn.

CHAIR: Seconds?

WJ: Second.

CHAIR: Favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: We're adjourned.

(The meeting adjourned at 1:25 p.m.)

Respectfully submitted:

Mary E. Crosson, Secretary

NOTE: Blank lines indicate inaudible words or voices on audio tape recording.