

HAWAII COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

February 8, 2006 – 10:05 a.m.

County Council Room

25 Aupuni Street, Room 201

Hilo, Hawaii 'i 96720

Present: Karl Kawahara, Vice Chair (who acted as Chair) [“KK”]
Kerry Inouye, Member [“KI”]
Wayne Joseph, Member [“WJ”]
Ann Lum, Member [“AL”]
Patricia K. O’Toole, Deputy Corporation Counsel [“PKO”]
Mary Crosson, Secretary [“MC”]

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KK: The monthly meeting of the County Board of Ethics will now come to order. I am the Vice Chair, but I’m going to begin things because the Chair is not here yet, and we know that people are waiting. Are there any statements from the members of the public here, before we start the proceedings? If nothing, then we move on. The minutes of the January 11, regular session, has been circulated. What is your pleasure?

KI: I move that we approve and file the minutes of the regular session.

WJ: Second.

KK: It’s moved and seconded that the minutes of the regular session be approved and filed. Any discussion? Hearing none, the minutes will be—all those in favor, say aye.

KI: Aye.

WJ: Aye.

AL: Aye.

KK: So moved, the motion’s carried. Minutes of the January 11, executive session, has been circulated also. What is your pleasure in regards to that?

KI: I move that we accept and file the minutes from the executive session.

WJ: Second.

KK: It’s moved and seconded that the minutes of, of the executive session, be approved and filed as circulated. Any discussion? Hearing none, all those in favor say aye.

KI: Aye.
WJ: Aye.
AL: Aye.

KK: Opposed? Motion carried. The minutes will be filed as circulated. Communications—there are a couple of communications. Number one, a memo to all departments, boards, and commissions from Lincoln Ashida dated December 28, 2005, re attorney-secretary assignments at the official—Office of the Corporation Counsel—and b, Communication No. 2005-84, the *High Road* publication of the Hawai‘i State Ethics Commission.

KI: I move that we accept and file both communications, 05-83 and 05-84.

WJ: Second.

KK: Moved and seconded, to be filed, the communications. Is there any discussion? All those in favor, say aye.

KI: Aye.
WJ: Aye.
AL: Aye.

KK: Opposed, nay? The communications will be filed as circulated. Under New Business, we have several petitions to consider, and at this time we may want to change the order of the New Business—

PKO: You can take Lincoln, the one for Mr. Onizuka, first.

KK: Again, my hearing is not too good.

PKO: Yeah, the first one is not related like the rest of them are, so.

KK: Under New Business, Item a, Petition No. 2006-01, Lincoln Ashida seeks an opinion concerning the appointment of Kona resident Claude Onizuka to the Hawai‘i County Liquor Commission. Lincoln?

ASHIDA: Good morning, Vice Chair Kawahara, members of the Hawai‘i County Board of Ethics. My name is Lincoln Ashida. I’m the Corporation Counsel for the County of Hawai‘i. Good morning. This morning I represent—excuse me, the Hawai‘i County Department of Liquor Control is represented by the Honorable Jan Pakele, who’s present also in this chamber this morning. They are our client. We brought this matter before the Board of Ethics in an abundance of caution. What had happened was, when we were in the process of filling various positions on Hawai‘i County—various boards and commissions in our County, Mr. Onizuka’s application came before the Department of Liquor Control for the purposes of appointing him to the Liquor Commission. Frankly, there was not any issue or any problem that _____. During the course of processing his application,

frankly to Mr. Onizuka's credit, he's present here today—he raised concerns or a question regarding, through Ms. Pakele, because of the fact that after Mr. Onizuka had retired from American Savings Bank in Kona, his second career, so to speak, is he now works with the Oceanside 1250 Partners, is that correct Mr. Onizuka? And I didn't know Mr. Onizuka before this. We've never met before, you know, just this board and commission activity, _____ I had the pleasure of meeting him. In corresponding with him, through Mr. Kelly, I learned that he is not directly affiliated with the Clubhouse of Hokulia, who apparently has a liquor license granted through the Department of Liquor Control, but it's not yet active. Basically you have Mr. Onizuka, who is sort of employed by the parent company, so to speak. He doesn't have any input or activity with the daily operations of the Clubhouse at Hokulia. At that point, when we discussed it informally, we concluded that there wasn't going to be a problem, and it just wasn't an issue. But like I said, to Mr. Onizuka's credit, and because, you know, in an abundance of caution, we wanted to be sure. That's why we're here before you today, just to verify and to ensure that there isn't any violation of the Hawai'i County Code of Ethics. Like I said, it's in—our interpretation, and I represent the Liquor Department—we don't believe there is. That's why we're here today, just in an abundance of caution, to verify that. We want to make sure there's no controversy surrounding this, any type of—you know, anything said or alluded to, that there's any impropriety or any appearance of impropriety, and that's why we appear before you today. I'm more than happy to answer any questions, and will submit both Ms. Pakele and Mr. Onizuka to ask, if you have any questions.

KK: Thank you, Mr. Ashida. Do the members of the Board have any questions?

KI: Yeah, I have a question. Mr. Onizuka, it states here that you are an employee of Oceanside 1250.

ONIZUKA: Yes.

KI: May I ask what do you do as an employee?

ONIZUKA: My position is Director of Community and Public Affairs. Basically what I'm doing is getting community groups, offering them tours of the property, to acquaint the public with the property, so that they're—what they hear and read in the media is not, you know, totally true. I think a lot of people have not seen the project, and that's what we want to expose them to.

KK: Any further questions?

AL: I have a question on the—in Section 281-11(b), where it says “no person shall be a member of any commission or board who is or becomes engaged or is directly or indirectly interested in any business for the manufacture or sale.” So is it an indirect interest? What is it?

ONIZUKA: *(inaudible)*

AL: Indirect interest.

ONIZUKA: Yes.

ASHIDA: That is a very good question, because that's really at the heart of any issue that would be relevant. I think I've stated our position in my letter dated January 4, that I think the proper analysis is looking at the degree of _____. Because I think if you take anything to its logical extreme, you could say that I'm related to you, Ms. Lum, somehow, down the road, you know—

AL: --six degrees of separation?

ASHIDA: I think what you should look at are factual considerations. I'm glad Mr. Onizuka, you know, came here today from Kona to answer your questions, because I think the factual questions like Mr. Inouye had very, very important and relevant. What exactly do you do there, you know? Do you have any say in the day-to-day operations with respect to that liquor license? You know, so, I think that it's a matter of degree. It's a matter of what you collectively as a group feel more confident in. Again, that's our position. You have your attorney here who you know, can--if you have any specific questions about that, you can address it with her. Ms. Pakele looks like she just needs to say something, so.

PAKELE: I do. 1250 Oceanside, is who is the employer of Claude Onizuka, is the lessor to our licensee, which is the Club at Hokulia, which is a non-profit entity. Direct interests would be whether or not Mr. Onizuka influences the day-to-day operations. The indirect, as I see it, would be whether or not 1250 can influence the Club at Hokulia in its operations, in its operations involving liquor. As I see it, Mr. Onizuka is not an officer or director of 1250 Oceanside Partners and by his statement does not have anything to do with the actual liquor service involved in the premises. Does that—

AL: --that helps.

ASHIDA: I'm going to hire Ms. Pakele as our next lawyer in our office.

KK: Any other questions? Mr. Joseph?

WJ: I think my only question would be, if an issue should arise from the Clubhouse to the Liquor Commission, what would then be your position?

ONIZUKA: Well I think if it involved anything to do with the Club at Hokulia, then I would excuse myself from that case.

WJ: Thank you.

AL: Or anything else to do with that whole development, right?

KK: I don't have any questions per se, but I just would like to publicly say that I know the person—Claude—personally. We grew up in the same neighborhood and of course Jan and Lincoln are personal friends.

PAKELE: We are younger, though, right?

KK: What?

PAKELE: We're younger though, right?

KK: Yes. Jan's husband and I are on the same board at the credit union and so forth, so we have connections, but I will try to render as fair a decision as I possibly could under the circumstances. If we have no further questions, we'd like to thank you for being here and your concern regarding this matter.

ASHIDA: Are you going to—Mr. Chairman, are you going to—does the Commission vote, render a decision now, or at the end of the meeting?

KK: I believe at the end of the meeting. We're still awaiting the arrival of Mr. Williams—

PKO: Well actually, he will not vote, because he has not seen or heard this, so I think it's customary that we do it right after we hear the matter.

KK: Are you ready to vote? Can we vote on the matter right now?

PKO: Yes.

KK: Are you ready to vote on this matter?

WJ: I'm ready.

KK: Okay, in the matter of Petition No. 2006-01, regarding Claude Onizuka's application to be on the Hawai'i County Liquor Commission, all those in favor of—

PKO: --I think you should ask for a motion to find there is no conflict of interest in the service, and then I will draft a proposal for you to vote on at your next meeting. I mean, if that's the—either there is or there isn't, but.

KK: Give me some words, there. You know, I tell you, my hearing is really in bad shape.

KI: I move that we accept—not accept, but I move that we say there is no conflict of interest in Mr. Onizuka serving on the Liquor Commission.

AL: I'll second.

KK: Moved and seconded that we find that there is no conflict of interest in Mr. Onizuka serving on the County Liquor Commission. Is there further discussion, or any clarification to the motion?

WJ: I would just want to add, provided he excuses himself should anything from his employer come before the Liquor Commission.

KK: Are you giving that as an amendment to the motion?

WJ: There may be a conflict if he was to vote on anything that should arise to the Liquor Commission through his employment.

KK: Are you offering that as an amendment, or--

WJ: Yes--

KK: --as a precautionary measure?

PKO: I can put that in the opinion, and you can review it next time and vote. I'll put something about he will not vote on Oceanside matters if they should come up.

KK: So it doesn't have to go in as a formal amendment right now? Okay. I think that is, you had established that _____ awhile ago. Okay, all those in favor of the motion, say aye.

KI: Aye.

AL: Aye.

WJ: Aye.

KK: The Chair votes aye. Those who object, nay? Motion carried.

ASHIDA: Thank you very much.

KK: Thank you. Now here is where we're going to deviate from the—could you explain yourself more on that?

PKO: Okay, it's just a suggestion, but we have I believe the next three petitions are basically the same issue, and we have Mr. Ganigan's continued petition, which was on the same issue, so I'm wondering if we should finish up Mr. Ganigan and then discuss whether the others that are still pending could be heard together, or, you know, hearing from them and their counsel. And perhaps, if they hear what decision you make in Mr. Ganigan's case, it might affect how they proceed with their own case. It's just a suggestion. You can go in the order it's in.

WJ: So was Petition 05-11 withdrawn?

PKO: Right. So there are two left, two new petitions on the same issue, and then Mr. Ganigan's continued one.

KK: What is the pleasure of the Board?

WJ: I'd like to hear the first petitions prior to hearing Mr. Ganigan's.

KK: So we go in the order that it's stated here?

WJ: That's my preference.

KK: Mr. Inouye, do you have any preference?

KI: Let's go ahead.

KK: Go ahead with the way we have it on the agenda? Ms. Lum?

AL: That's fine, the agenda's fine.

KK: Okay. So we'll just go ahead with the order as it is—the order of business as it is stated. So item b under New Business, Petition No. 2005-09, Robert Cambra seeks an opinion regarding alleged unfair treatment and conflict of interest involving training and promoting of employees within the Department of Public Works. Could the respective members please have a seat. Would you introduce yourself? We know who Mr. Kamelamela is, but the others, just to familiarize ourselves again.

CAMBRA: I'm Robert Cambra. I work for the County Roads _____.

KK: Robert Cambra.

PKO: Robert Cambra.

CAMBRA: I'm Robert Cambra. I work for the County Roads in the Waimea Division.

KAMELAMELA: I'm Joseph Kamelamela, representing Hiram Keliikoa and Stan Nakasone. I had a request. Because the complaint seemed to be stating, like Robert Cambra's and Mr. Gilman's, should we just do it at one time? Because at this point it would be the same, and I think it seems a good way to do this—

KK: Is Mr. Gilman here? Is Mr. Gilman here?

KAMELAMELA: Yes.

KK: Is there any objections to hearing both? Hearing none, then—

PKO: --I think you should ask Mr. Cambra and Gilman if they object. If they don't object, I don't see a problem.

KK: Have you discussed this prior? No? Do you have any objections?

CAMBRA: No, I'm just here to find out if a violation did occur or not, so basically it doesn't matter.

KK: In other words, you're consenting to having Mr. Gilman here? Okay.

PKO: And Mr. Gilman needs to come up and say what he thinks about it.

KK: Can we have your -

GILMAN: Regarding this, I would like to sit alongside of him.

KK: Okay, let the record show that both people have consented to testify at the same time.

KAMELAMELA: At the Board's discretion, _____ opening statements, what I did, I actually gave Mr. Cambra and Mr. Gilman pre-hearing statements, and I'm not sure if that's been _____.

PKO: Use the round thing. It's for our recorder, but I don't think it's volumizing you.

KAMELAMELA: Oh, okay. Earlier I passed out pre-hearing statements of Mr. Cambra and Mr. Gilman. I'm not sure if they had opportunity to review it, but I'm just going to request that the _____ be limited to the ethical issue _____.

PKO: _____. Do you need time to read that before we begin, or are we ready to begin?

CAMBRA: I looked through it, and I understand a lot of stuff that is in here. I didn't read it completely. Like I said, I'm just here to find out if a violation occurred, because I feel that I've been affected by it, and you know, maybe if it didn't go a different way, the outcome might have been different.

PKO: And Mr. Gilman, do you need time to read that, or are you ready?

GILMAN: I read through it, and I understand what's happening over here. I think I'm ready to go.

WJ: Just for the record, Mr. Kamelamela, these are the same opening statements that were provided to the Board?

KAMELAMELA: Yes.

PKO: Ask if they want to give opening statements, Mr. Gilman and Mr. Cambra.

KK: Mr. Cambra, do you have any opening statement to make, aside from what—

CAMBRA: Yeah. The statement I have is that I feel I've been, what is it, I feel that I've been, that I was—it is an ethical violation, that I've been—missed opportunity to a promotion, because if the ethical violation did occur before, you know, things was done differently, I feel maybe the outcome would have been different. By saying that it relates—if the trainer did not—they had two trainers in the County. If an ethical violation did occur, and a different trainer came and did the test for the—the performance test—the outcome might be different because of different ways that they do it. Their style might have been a little different. Like say, one might go to this subject on the matter, or you would start on a different approach _____.

KK: Thank you. Members of the Board, are there any questions of Mr. Cambra?

KAMELAMELA: I think he's going to have an opening statement here.

PKO: Yeah, you know, the opening statement is not the evidence part yet, so you would _____ Mr. Gilman's opening statements, and then they would present evidence or witnesses, and then perhaps you could question them at that point.

KK: Mr. Gilman?

GILMAN: I feel that, like Mr. Cambra, what he's trying to say, I guess is that it wasn't fair on the audit or testing, that we got treated fair. We really don't want to go where we're pointing fingers on this subject, but if we didn't get our audit or we passed it in the right stage, if there were other ways where that—okay, you know what, you folks didn't pass and you folks would have the training, where we didn't get trained, because both of us have license to drive but we didn't get—we didn't pass our audit tests. And we didn't even get a chance to get trained by the County. _____. So that's where both of us stand, in that we're looking for fairness in this. Why did the other people who was below us get the training and pass? They went out and get the license, or their permit, to operate a vehicle.

KK: Do you have any questions of him? _____.

KAMELAMELA: I think the next step is that if we invite _____, because although I brought the pre-hearing statement, I want to make a short opening statement, if I may be allowed to do that?

KK: Yes, you may.

KAMELAMELA: Okay. Actually, the issue here is whether there's an ethical violation, and so I believe that the focus should be whether Hiram Keliikoa, who has a private business where he trains people to get commercial drivers' license, and who does not supervise either Gilman or Mr. Cambra, and who also doesn't decide who got audited prior to June of 2005, whether that's a violation of the separate section under the Code of Ethics, whether it's for conflict of interest or fair treatment. So that's the issue. Anything else doing with promotional impropriety, or

_____, those are not the issues for the Board. But we're going to limit it to that issue.

AL: I'd like clarification on what you just said. Clarification on what you just said. You said prior to June—he did audit prior, or did he not audit prior to June 2005?

KAMELAMELA: This is prior to June—

AL: --prior to June 2005, he audited or did not audit?

KAMELAMELA: No, people, the reason why I picked the date is because they don't have that practice any more, of auditing.

AL: Since June? Okay. I understood the opposite from what you just said.

KAMELAMELA: Thank you.

KK: Are there any questions here?

KI: Yeah, I have a question. Mr. Gilman, you said that the County did not train you for a CDL?

GILMAN: No.

KI: Does your present job require you to have a CDL?

GILMAN: No. But to be promoted, yeah, you would have to own a CDL, to be promoted to the next level, to operate a heavy truck or _____.

AL: And in order to be promoted, you have to be tested, which is audited, on whether your—

GILMAN: --abilities—

AL: --abilities. Even though you had a CDL, you had to be re-tested to see that it's in working order, or—

GILMAN: We have to pass the County—

AL: --the County test?

GILMAN: Well, it's—the County, if they're saying that okay, he can operate that machine, then—

AL: --that's what the audit is, right? Correct?

GILMAN: Saying that—yeah, he can operate or he cannot, or that person can or cannot.

AL: Can I ask clarification from somebody? The business is training anybody—I could go out and get trained by Mr. Keliikoa? Anybody can go and take that training?

KAMELAMELA: Actually, _____ Mr. Gilman, because I was going to present my side later on. And then I can provide the information, but--

AL: --oh, that's the way it is.

KAMELAMELA: But he can _____.

WJ: As a result of you not passing the audit, someone less senior than you-- (*TURNED TAPE #1 OVER*)

GILMAN: --his permit, then he went through the training to get his license, then from the license, when the promotion opened, he applied for it and he got promoted to that.

WJ: Now was the training conducted during regular County hours?

GILMAN: On that person?

WJ: That person.

GILMAN: No. It would be, as the audit—yes.

WJ: No, but the training.

GILMAN: No, not the training. He's out—

WJ: That person was given the training outside—

GILMAN: --outside—

WJ: --and that person is within your Department, which is?

GILMAN: Kona Roads.

WJ: And who was that person trained by?

GILMAN: I believe he was trained by Hiram, which he's the Safety Coordinator.

WJ: Isn't there training during the calendar year provided to County employees, to upgrade, and so they have an opportunity for promotion?

GILMAN: I don't know.

WJ: Is training ever offered to you during a calendar year, on the job, so that it can help you—

GILMAN: --that would have to go, the training list would have to go through our supervisor first, then he would say okay, let's put in these names to be on the list to train, in order.

WJ: Was that list provided?

GILMAN: That list wasn't provided at the time, no. They were just recently—

WJ: --to your knowledge, was anyone on that list? To your knowledge, was anyone on that list to be trained?

GILMAN: Right now, no. I didn't see or hear of a list at that time.

WJ: But there is a County trainer, right, that's provided to you.

GILMAN: Our supervisor has to put in a memo saying he wants these certain people to be trained on certain equipment.

WJ: For a CDL?

GILMAN: For a CDL or—

WJ: --or just for that particular equipment?

GILMAN: It goes to non-CDL also, for like grass cutters, because that's another promotion. Because we're all laborers, so from the laborers we've taken another step forward, and when we do another step forward, to operate machines, we have to have a trainer. And from the training, then after that we go through our audit.

WJ: And to your knowledge, who is that County trainer?

GILMAN: To my knowledge, it's Hiram Keliikoa.

AL: Is there only one County trainer?

GILMAN: Yes. That's what I believe—

WJ: --in the area in which you work at?

GILMAN: In our Department.

WJ: In your Department, is there only one trainer?

GILMAN: Yes, our Department.

KK: Is there any other way that you can get this training, besides from Mr. Keliikoa?

GILMAN: I would have to go out on my own and _____.

KK: He does it on non-County time, doesn't he?

GILMAN: Yeah, you like--what she was saying, if she want to get trained, she can go to Hiram and ask him, oh, I want to get trained, and you what have to—there's a fee to it.

KK: My question is, is there any other way that you can get this training, get your license?

AL: From the County?

KK: Instead of going through Mr. Keliikoa, is there any other way, whether it be County or private?

GILMAN: You can be private, if the private company has those machines, yeah, then you come on board, and you saying that yes, I had training, or I ran these machines. And you would have to show proof of it.

WJ: And that would be a charge—

GILMAN: If you're working for another company and—

WJ: --Any idea what the training would cost you?

GILMAN: For me, no. I don't have any idea. I didn't go through any private company or a private person to be trained or get my license.

WJ: Did you expect the County to train you? Did you expect the County to train you, since you were the senior person?

GILMAN: Yeah, they was training, and they are training, you know. Like the next person who's coming up, and if he does pass his _____, if he has his CDL permit, he can be trained _____.

AL: I need a clarification. In order to be trained on all the different machines, the basic thing you have to have is the CDL?

GILMAN: No, not basically all machines—it's just truck driving—

AL: --a certain level?

GILMAN: Yes.

AL: So you have to get your CDL and then you can operate a—you can be trained to operate a big trucker, or something?

GILMAN: Ten tons and over. Or is it twenty-ton and over?

AL: Okay.

CAMBRA: The County requires you to have a CDL to run multiple equipment. You don't need a CDL to run loaders, graders, or _____. The County requires you to—you have it so you can do multiple tasks. I guess the way they meant it is, take it to the job, do it, bring it back. But it's not required. The union contract states that—I'm not sure under what section, but it's in the union contract—that they endeavor to provide training for upcoming promotions and _____.

WJ: And is your situation the same, did you fail your audit?

CAMBRA: My situation is a little different, because I did the test, and I didn't pass the audit. But my situation is _____ audit form. Hiram's way of doing it, when he comes out to you, he goes straight to the air brakes. I'm not sure what _____, but from the last time I heard, you do the pre-check first. In my situation, I failed the performance test, but when I failed, someone came, a person I know that works _____, he's a friend of mine that's named Benevides. He came in and I was _____ by my desk, I shook his hand and said hi. I went back and I _____. So I failed. This was when it first started. So what I'm saying is an ethical violation came out, and this thing didn't come out, I might have had an outcome that is different, or if had one different auditor, _____ Santos, I think is, the County part and all that. If he came out, if he did the pre-check differently and _____ might have been one different outcome, because if you fail the air brake, you fail it outright. _____ if it came to the pre-check, you know, you might not fail, _____, that is my situation here. So if a violation did occur, I feel that it might have been a different outcome from the performance test. That's my situation.

AL: That actually sounds to me more like a union or business issue rather than an ethical. _____--

CAMBRA: --_____. Hiram trained the junior guy that works with us, he's Alfred DeMello. He got trained by Hiram. I'm not sure if him or if Hiram had somebody working for him, and he went up for the same promotion I went, and Hiram gave the test. So I'm saying if he's doing this on the outside and he's doing the promotions, you know, that is where I feel a conflict is. _____ why he's doing that, did he violate the—

AL: --You were both tested by the same person.

CAMBRA: The same person.

AL: And Mr. Keliikoa had actually had the other person in classes—

CAMBRA: --I'm not actually sure if he trained him personally or if he had someone, hired someone to train him, I'm not sure on that.

AL: But that person went to Mr. Keliikoa's school?

CAMBRA: _____. And this is where I'm trying to figure if an ethical violation did occur, that, you know, the outcome might have been a little different. I'm not here to say that he didn't do his job, because I think he did. But I'm saying the outcome might have been different if they caught him at a violation ahead of time, and something else was done about it. That is where I stand on _____.

AL: Thank you.

WJ: And your years of seniority?

CAMBRA: I have one guy over me, but I think he signed a paper, and it's known that he won't—

WJ: --how many years senior?

CAMBRA: I have twenty—fifteen, I'm sorry.

WJ: Fifteen years.

GILMAN: It's going to be my sixth year next month.

WJ: And the person you're talking about that was promoted over you has how much seniority?

GILMAN: Pardon me? Over me--I believe he has three years, maybe more or maybe less—somewhere around there.

KAMELAMELA: Do we have to put his name?

AL: He mentioned a name?

KAMELAMELA: _____.

KK: You know, I'm trying to get set in my mind what the ethical violation is here. And would one of you—someone—give me an idea of the sequence that you go through in order to, you know, the training, the CDL, which, you know, what is the order?

CAMBRA: First of all, if you're working for the County, if you're the senior person in the County, they should—I think they do it once a year—ask if you want to be trained by a trainer. They have a training list, by seniority and _____. And if you got your name on the training list, when your time come up, you get training. For me, I wasn't on the list. I found out that I wasn't on the list. A guy named

Nakamura was on the list before me. I found that out, so I went on my own and I hired a lady named Edda, and she has a trucking business in Kona. She trained me, since a promotion was coming up at the end of the year and I was trying for that, so I _____ before the promotion came up, and I was denied because they said I wasn't trained by a certified trainer. So they finally audited me, and I didn't pass the audit _____ trained by the County of Hawai'i.

KK: And Mr. Keliikoa is the person that does the audit?

CAMBRA: Yeah, he does the auditing. He audited and I didn't pass, and then he trained me. So what I'm getting at as to the violation, is he trains people on the outside—he has a training, trucking business that he trains people—and he works for the County. He's a trainer. He audits and _____ promotions. I went on the outside but I had them train me, because I didn't pass, so I guess the time span, of six, eight months—

KK: --You went on the outside to do what?

CAMBRA: To get my—

KK: --your training—

CAMBRA: --license. So I was the senior person in the baseyard. So I just wanted to try and get, see if I could get ready for the upcoming promotion. But what I'm saying, you know, basically it comes down to is, he's a trainer for the County Roads, he do auditing, performance tests, and all that, prior to getting hired. I went on my own. The guy that got the job over me, he got his training through Hiram, so what I'm saying like, the conflict is, he got his job and I only got _____ the performance test, the interviews and all that. So if this was an ethical violation and it didn't happen that way—the union has filed a grievance, and they won—not won, I think there's a settlement agreement. And part of the settlement is—

KAMELAMELA: --Again, we've been letting him talk about employment issues, but the fact that there has been a settlement with the union doesn't play here, because the Board of Ethics is not here to decide how management is to run the Department. I just want to really focus in on ethical violation only, and that's all.

AL: I have a question, just to be clear in my mind. Mr. Keliikoa is a County trainer—I understand it's like part of the time he's a County trainer and part of the time he does auditing, testing?

KAMELAMELA: He doesn't do audits now.

AL: But at the time of this—what's the question--he did audit and—

KAMELAMELA: Prior to June, 2005.

AL: Okay, so he trains people and then audited them, and he also trained in his business. And those people were in the County—he was then the auditor of those people that he had trained in his business?

KAMELAMELA: Well, that's why _____ to testify, because _____, I don't think it's going to help.

AL: But could I have an answer?

KAMELAMELA: I'm not going to answer for Hiram, because—

AL: --Yeah, that's—

KAMELAMELA: --because he's the one that _____ testimony, and they're going to have their opportunity to bring whatever testimony they need, because part of it—they're telling me there's certain things that they don't know about. So I don't want to put words in Hiram's mouth or their mouth.

AL: I'll wait on that, then.

KI: Mr. Cambra, you say that the County is supposed to provide training to the senior person?

CAMBRA: It's in the union contract.

KI: It's in the union contract. Do you have that contract?

CAMBRA: I have the book. I can look it up _____.

KI: Does the senior person—

CAMBRA: --endeavor to train the senior person in the baseyard for upcoming promotions. My understanding is, too, what they come up is if they have people that they can audit, you know, they use their people instead of the trained people because it's easier. But now the training—you know if these people go to him on the outside _____ they get trained. I don't know if--_____ if there's an ethical violation that I feel that I was affected by.

GILMAN: Can I say something? From the beginning of how this thing goes, it goes in steps as Labor I and a Labor II, then it comes into a promotion, which is an EO 2 position, where you don't need a CDL to run a grass cutter, a roller, or a backhoe. You don't need a CDL to run those machines, but the CDL part, when you need it, is to operate 10,000-ton truck, or 16,000-ton truck. That's when you need that CDL. And that's where we're at, on that promotion, on the CDL part, to operate, why we didn't have a fair chance to get trained. Even when we went through the audit, we didn't pass our audit. Can there be training for us, because we didn't pass it?

KK: Any comments or questions? The more I hear of this, the more I feel that this is an in-house problem which is not germane to an ethics board hearing. And if we delve any further into the evidence, we'd be getting into areas that are not, really not our concern. This is my own personal opinion, but I don't know, the way I look at it, it seems like we have to show that Mr. Keliikoa did in fact use his personal training as a means to deny, you know, non-students a chance at promotion.

AL: Karl, I think there is also, isn't there, a portion that says appearance, to avoid the appearance of conflict. And while we don't have to accuse somebody of a conflict of interest, we do have to look if there is an appearance to the community, no—no appearance of conflict?

KK: No, I'm just stating my own opinion. No problem.

GILMAN: I've been told by a certain person who got that promotion, before he got promoted, and when he was a Laborer below me, and when he took the next step forward, which was operating a grass cutters and stuff, and at that time he used to come up to me and tell me—

KAMELAMELA: --Just for the record, I'm going to object to this hearsay, because like there's no way to--we can even, you know, confront this person.

AL: Yes.

KAMELAMELA: And I don't mind if they base it on their own experience, but when they—I think I'm _____. But if they're going to actually say what this person says or what that person did, I don't know—it's just confusing the issue.

KK: Well I tend to agree with you. You must remember, you're a professional lawyer, and they are lay people as far as law is concerned. I understand where you're coming from, but can we hear him a little bit more and _____ follow your line of thinking.

GILMAN: That certain person who got promoted two times over me, he used to come to me and tell me to my face, I'm going to get that position and what are you going to do about it? And more than twice _____ do that. I used to get upset with him. I just put my head down and I walk away. So if this is a chance for me to do something about it, and when I go back and if he ever comes to me and tells me, what did you do this for, all I'm going to say is, remember what you used to always tell me, what I'm going to do about it? So now I'm taking action. I'm doing something about it. I just—you know, it really ripped me apart when every time he used to always come to me and tell me, what you going to do about it? It's just like he's taunting me.

KI: I agree with you in how you feel. I agree with you. However, I don't think this is the avenue right now to take care of that problem. I would be frustrated, too, but this is not that avenue.

KK: Do you all belong to the same union?

GILMAN: The same union.

KK: And the avenue--you have resorted to the union's machinery for, to determine your, you know, case?

CAMBRA: Yes, like I was trying to say earlier about the union decision. It did come to the union, and I believe there's a settlement came out of it that I learned of last week, was it the 3rd or the 4th, and I don't know the details of it, but I know part of the details is that they did stop auditing, or he won't be giving the performance test anymore on the issue, on this issue. You know, I just found it out last week. What I was getting at is what happened before that, prior to that, in May of 2004, when I went up for a promotion, you know. And I feel if this thing was caught and solved then, you know, it wouldn't have come to this point where _____ a violation or not.

KK: Would you apply again?

CAMBRA: Yes, I would.

KAMELAMELA: Again, I think that the union settlement, because it's not a part to be decided on, because I can also tell him that the Mayor didn't sign the agreement yet, so—so there is no agreement, until the Mayor—so I could just _____ but we shouldn't be going there.

PKO: Okay, so maybe if they are finished presenting whatever they feel they need to present, we could move on to the other side. I don't know if they're done, but—

CAMBRA: I'm done with mine.

PKO: You're done with yours. And how about you, Mr. Gilman?

GILMAN: I would like to know why Brandon Nahale pulled his papers. What did he say?

PKO: Why did the other petitioner withdraw—

GILMAN: It's in here, he was—he pulled his papers, and it says feel free to call me for any questions.

WJ: That's beyond our—

KI: --yeah, we don't have that. All we have is a letter saying that he's pulling his papers out.

KK: That's an internal problem –

PKO: So other than that, are you finished with your testimony?

GILMAN: Yeah.

KK: Is there anything else?

KAMELAMELA: I do have some short questions for both of them. _____.

PKO: Who do you want to question?

AL: I'm sorry, I was just asking procedure.

KAMELAMELA: Mr. Gilman, before June of 2005, you had your CDL license?

GILMAN: Yes.

KAMELAMELA: And prior to that, did you get audited?

GILMAN: Yes.

KAMELAMELA: And when did you get audited?

GILMAN: Oh—

KAMELAMELA: --to a position that required your CDL?

GILMAN: Not in 2005, no. I'm sorry.

KAMELAMELA: But prior to June of 2005.

GILMAN: I didn't get audited.

KAMELAMELA: Okay. So prior to—see, that's what I'm asking. Prior to June 2005, you had a promotion that required your CDL. Did you get audited?

GILMAN: No.

KAMELAMELA: Because you—because there wasn't any promotion at that time that _____ to get audited?

GILMAN: There wasn't a promotion. I can't really remember if there was or was not a promotion at that time, in June. But no, I did not get audited. I don't think that I got audited at all from 2005.

KAMELAMELA: Okay, before June of 2005.

GILMAN: Before June of 2005, I don't remember.

WJ: When did you get audited?

GILMAN: I feel that I got audited back in May, could be like in 2003 or 4?

WJ: So you just misunderstood his question?

GILMAN: Yeah.

WJ: So, May 2003 or 4?

GILMAN: Or 4—I can't remember when, but it was awhile back.

KAMELAMELA: Okay, and so when you got audited back in May 2003, and that was for a promotion that required a CDL?

GILMAN: That was promotion.

KAMELAMELA: That would require a CDL?

GILMAN: Required a CDL at the time, yes.

KAMELAMELA: And the person who audited you at that time was Hiram?

GILMAN: Uh huh.

KAMELAMELA: And did you pass or fail the audit?

GILMAN: I failed.

KAMELAMELA: And why did you fail?

GILMAN: On that part, my understanding was I couldn't do a downshift when operating the truck—the downshift. That's my understanding.

KAMELAMELA: He told you that?

GILMAN: I heard it from my supervisor.

KAMELAMELA: And who was your supervisor at that time?

GILMAN: Casuga, Ben Casuga.

AL: So was there training, then, offered to you after that failed audit?

GILMAN: No. No.

WJ: Was anybody in the baseyard being trained subsequently, following May 2003?

GILMAN: There was training after—I've been told I would go on the back burner, on the back of the list, because of people who got their license, who was after me, they got audit and they passed.

KAMELAMELA: And the person that told you, who was that—your supervisor?

GILMAN: Yes.

KAMELAMELA: And Hiram is not your supervisor, is he?

GILMAN: No.

KAMELAMELA: And you never took Hiram's class, right?

GILMAN: No.

KAMELAMELA: And you knew that Hiram was training people only for CDLs?

GILMAN: Yes.

KAMELAMELA: Okay.

PKO: On or off the job?

GILMAN: _____.

KAMELAMELA: Oh, off the job. Now you had understood that Hiram Keliikoa had a private business to train people to operate trucks?

GILMAN: Yes.

KAMELAMELA: Right, and to get their CDL?

GILMAN: Yes.

WJ: How did you know that?

GILMAN: Like what goes around in the County, all the word of mouth, you know, saying that Hiram is training.

WJ: Any fliers, business cards?

GILMAN: I didn't really see any, but I know of people in our department—(TAPE #1 ENDED – INSERTED TAPE #2). I don't believe he did train.

KAMELAMELA: In fact, he never solicited his business to you?

GILMAN: To me personally, no. But I just knew that's his business. Because he bought the truck from Ada, or Ida. This lady who used to do it in Kona. And I know her daughter personally.

KK: Okay, to get things clear in my mind—I've been hearing and not hearing some things, so, Mr. Cambra and Mr. Gilman, you are—

KAMELAMELA: --Actually, I just finished Gilman, because I still have questions for Cambra.

KK: What is that?

KAMELAMELA: I still have some questions for Mr. Cambra.

KK: Okay, shoot.

KAMELAMELA: I finished my questions with Mr. Gilman.

KK: All right, go ahead.

KAMELAMELA: Mr. Cambra, who told you that Ada _____, is that right, was not training—was not certified?

CAMBRA: I got a letter from, I guess Civil Service, with the _____, reason denied—I don't have the letter with me—reason denied was I have a speeding ticket and I wasn't trained by one certified trainer.

KAMELAMELA: And in that letter from Civil Service—

CAMBRA: --I guess.

KAMELAMELA: --from Civil Service, did the letter state that she was not a certified state trainer, _____.

CAMBRA: No.

KAMELAMELA: But this is a letter you got from Civil Service, right?

CAMBRA: Civil Service.

KAMELAMELA: It's not a letter that you got from Stanley Nakasone.

CAMBRA: No.

KAMELAMELA: It's not a letter that you got from Hiram Keliikoa.

CAMBRA: No.

KAMELAMELA: That it—that letter did not come from the Department of Public Works.

CAMBRA: Right.

KAMELAMELA: And in May of 2004, you was being audited by Hiram. You knew after the test that you'd failed, right, you had failed the test, the audit?

CAMBRA: I knew, yeah, right after the, right after the driving.

KAMELAMELA: And you had mentioned to us that somebody that you knew came and talked to you. Correct?

CAMBRA: _____ talked to me about—

KAMELAMELA: --maybe not talked, but you saw somebody that—

CAMBRA: --Oh, not on the audit. The audit is different. I got audited, and I didn't pass the audit. The County of Hawai'i trained me for one week on _____. The guy came to talk to me when I was doing my performance test for the—

KAMELAMELA: --the performance test, okay. And it was the performance test that you—

CAMBRA: --I failed. Then the junior guy got promoted over me.

KAMELAMELA: And—sorry. You failed because—

CAMBRA: Air brakes. I didn't pass the air brakes.

KAMELAMELA: The air brakes. You failed because during the performance test, then after you had saw, who, your friend—

CAMBRA: _____.

KAMELAMELA: You lost track of where you were, right?

CAMBRA: Yes, essentially.

KAMELAMELA: And you also believe that being tested on the air brakes—that's critical in finding out whether a truck can be operated safely. You agree with that, right, that _____ the air brakes?

CAMBRA: Yes, that is automatic failure. I know that.

KAMELAMELA: You mentioned Alfred DeMello. Did you talk to him?

CAMBRA: I may _____ talked to him.

KAMELAMELA: Okay, that's the question. Did you talk to him and ask him whether he took the class from Hiram?

CAMBRA: I think I mentioned to him, but I'm not sure.

KAMELAMELA: Okay. To make one point clear, you knew that failure to do the air brake correctly would be an automatic failure. You knew that before Hiram did the performance test, right?

CAMBRA: Yes.

KAMELAMELA: And that's something that _____.

CAMBRA: Well, yes, I guess. I'm not sure. I'm not sure.

KAMELAMELA: Okay. But that's something that you read, prior to the—

CAMBRA: --I knew it. I'm not sure how I knew it, but I knew it. My thing is not that he did or didn't do his job, that Hiram did not do his job. That is not why I'm here. I am here stating that because, if there's an ethical violation, if they caught it before this, you know, the outcome might have been different, because, you know, Hiram, when he do the performance test, he do the air brakes first. If Manuel Santos did it, he might have done the pre-check first. And you know, what I'm saying is not that he didn't do his job. My concern is I believe if there was a conflict of interest, I feel that I might have lost the opportunity for a promotion, because by doing the test—at the exact same time the guy came up to me, might have been different results, a different ways that they can _____ the test, than how they did the performance test. That is—

KAMELAMELA: --You agreed with me, that failing the air brakes in the performance test is automatic failure.

CAMBRA: Yes.

KAMELAMELA: And that's an objective standard, right? If anybody had failed the air brakes, that person wouldn't have passed the performance test, too, right?

CAMBRA: I guess.

KAMELAMELA: That standard applies to anybody who _____.

GILMAN: But he failed because he when shake his friend's hand. That's why he failed.

KK: Mr. Keliikoa is here. Do the members of the Board—

KAMELAMELA: I don't have any further questions for Mr. Cambra.

KK: I would like to know if he may answer questions directly from the members of the Board, if they have any.

KAMELAMELA: I would call Stanley Nakasone, Mac Asato, and Hiram—

KK: --after that.

KAMELAMELA: Yeah.

PKO: Can we take a break? We've been going for an hour.

KK: All right. We'll take a ten-minute break.

(Break taken from 11:15 a.m. to 11:25 a.m.)

KK: The regular meeting of the Board of Ethics will reconvene at this time. Are there any questions of Mr. Gilman or Mr. Cambra? No? As I said previously, I've been hearing and not hearing. My left ear is really shot from a cold, but to surmise. Mr. Gilman and Mr. Cambra, you are here to get an opinion on the ethics of the situation involving Mr. Keliikoa, that he used his position unfairly, which prevented you from being promoted to a higher position. Is that it in a nutshell?

CAMBRA: I'm saying unfair. I'm not saying that it's unfair. I'm just, you know, saying that if a violation did occur, I'm not saying that he did _____. My thing here is that if a violation did occur, by being a trainer on the outside and training inside and doing the performance tests. Not that he personally _____ unfair to me on the promotion, on the performance test. I'm just here to seek an opinion if a violation did occur, the outcome could have been different, you know. In other words, why didn't they catch it and do something about it before all this when happen.

KK: You are personally involved, and you are representing yourself for your personal case and not anyone else's—

CAMBRA: --yes—

KK: --situation. Do you feel that his having a private business outside of County time, administering, training people, and when he does the testing or auditing later on, those of you who did not use his training facilities were denied—well, were not promoted. Isn't that the gist of the problem?

CAMBRA: No.

KK: I'm lost.

CAMBRA: No, what I'm saying, Section 2-24, conflict of interest, that is why I'm seeking an opinion, if a conflict did occur, because you know, he's a trainer _____

and he do the performance test, when you have somebody on the outside, somebody that he's trained, and he's up for the same promotion, you know, I wanted—that is what I want to know if it's a conflict. No to say that he's unfair or _____ in doing the performance test.

KK: Sorry, I'm lost.

AL: I'm hearing that, to put it maybe in other words, that because a person was in the class—was trained outside of County time, but was trained by Mr. Keliikoa, when it came time to audit, there was a possibility of favoritism or that he knew that person better, or that he knew—maybe you didn't do too well now but I know you can do it because I saw you do it Saturday—that kind of thing?

CAMBRA: More like he has the authority to do something—the authority to do it or not. That is not what I question. Right now my only question is if it did occur—it seemed like here, or anyplace else you go, everybody has rules. Policemen have rules, lawyers have rules.

AL: Did he just violate the rules.

CAMBRA: Yeah. I'm just trying to find out of that is a violation or not, that is my concern. If everything is good _____.

KK: Okay, well, I think we have a similar understand of what happened. Maybe I'm expressing it in a different way. Anyway, be that as it may, then your case was handled by internal means by the UPW—I assume the UPW.

CAMBRA: Um hmm.

KK: And some decision has been made on the case, one of which was that Mr. Keliikoa will no longer do auditing. Is that—now, if we rule somehow, or determine, or render an opinion that your case is in fact valid, that Mr. Keliikoa's actions are unethical, would that give you an inroad into getting retroactive pay or promotions or anything like that?

CAMBRA: Not at all.

KK: You're doing it simply for—

CAMBRA: For fairness and—

KK: --for the record, too—

CAMBRA: --yeah, for the record, and so hopefully none of these things will happen again. If it does come out, you know, maybe they can go seek an opinion before something like this comes up. I just want it on the record, so—

KK: --I'm sorry for throwing my pen down. I—it just kind of blew my mind in a way, because I thought this is what you're looking for.

CAMBRA: No, I wasn't looking for—

KK: --Okay, I'm sorry. Any further comments or questions? Do we understand—

AL: --so what you're looking for is an opinion on the principle of the thing.

CAMBRA: Yes, so you know, it may not happen again.

AL: So you can _____, or people in that business can say, oh well, we'd better think about this, or we'd better ask before we do, like the Liquor Commission person asked.

CAMBRA: Yes, the whole principle—

AL: --changed the whole thing from happening.

CAMBRA: Yes, you know. If you go to my baseyard and ask anybody there, I always—for the 20 years I worked—or 15 years I worked—I was always for fairness. That's my—that's the way I _____. I always used to fight for that, and they know that. That is where I stand.

WJ: I'm glad both of you took this means of recourse, but I know it's difficult coming here and having to say these things, especially since you went through your union and did it in other ways. But it took a lot of courage for both of you to stand up and ask for us to make a determination, so I appreciate you coming and bringing this forward.

PKO: Are we going to hear from any other witnesses?

KK: You may—yes?

GILMAN: Can I say something? The thing that Robert is trying to say is, we're looking for fairness, where that both of us did not pass our audit. How could that work, where that we could be trained by the County so we can get that position that we were trying to apply for? Is there training?

PKO: You know, I just want to say that this Board is here to determine if there are ethical violations. I think maybe there's some misunderstanding as to what we can or cannot do and whether your department is treating you fairly or offering you training. It's not _____ of the Board. So neither of you are saying yeah, there's an ethical violation, at least I don't hear it.

AL: Well I think he's saying he—

PKO: --He wanted to know if there is one. Our petition is they're supposed to allege that there is one.

WJ: --and I think I've heard enough to have cause that there might be a possible violation, so I'd like to hear from Mr.—

KAMELAMELA: --If you feel that way, if you're prejudging the matter, Mr. Joseph, before I get to actually put on evidence, then I don't think that—

WJ: --My position was, I think—

KAMELAMELA: --No, you had just told me, you know what section, what direction we're going to go, I've heard enough.

WJ: I've read each section.

KAMELAMELA: No, it doesn't matter, but I haven't put on any facts—

WJ: --I'm waiting.

KAMELAMELA: But you had just told me that I've heard enough, I'm ready to make a decision.

PKO: No.

KAMELAMELA: Maybe I—

WJ: --I don't know where you heard that from, but it didn't come out of this mouth.

PKO: When I was saying I didn't think they were saying there was an ethical violation, he said he understands what they're trying to say, and he's ready to hear from you now. Our rules actually provide for a two-step process, first to determine if there is any question at all, and then proceed to a hearing if there is.

KAMELAMELA: His whole demeanor and manner of his is something to be concerned. So I get the feeling that he didn't want to hear it, you know, which I think is unfair, that we're not able to present everything that we need to present. That's what I'm saying.

PKO: And do you want to request him to be removed? I think you misunderstood. We could ask Mary to review what he did say.

KAMELAMELA: No, I think I will accept his representation, you know—

KK: --You're going to accept his what?

KAMELAMELA: But it's just that, this is not the first time that I did this for a case like this. _____ Chairman Williams said some things that I thought shouldn't have been said. So I apologize if I _____.

WJ: I accept your apology.

KK: Okay, can we proceed now?

KAMELAMELA: Can you please state your name.

KELIIOA: Hiram Keliioa.

KAMELAMELA: And what is your title?

KELIIOA: Safety and Driver Coordinator—Safety and Driver Coordinator.

KAMELAMELA: And what does that entail?

KELIIOA: Training, safety, all types of equipment.

KAMELAMELA: Would that include the use of _____ types of equipment?

KELIIOA: Yes.

KAMELAMELA: Can you state what type of equipment?

KELIIOA: Dump trucks, _____, bulldozers, backhoes, rollers, forklifts, any type of equipment that we _____.

KAMELAMELA: Before June of 2005, you used to conduct the audits and performance tests on County employees prior to them being promoted.

KELIIOA: Yes.

KAMELAMELA: And would those audits include the use of certain types of equipment that do not require a commercial driver's license?

KELIIOA: Yes. The EO1 series, that's the grass cutters, _____. The EO2 series, that's the dump truck, for which you need the CDL, and you've got the backhoe _____, the dozers, truck tractors, _____.

KAMELAMELA: Tell us when you were first hired by the County.

KELIIOA: That was June 16, 1982.

AL: '82?

KAMELAMELA: When did you first become in charge of training _____?

KELIIKOA: In 2002 I was hired as a _____. Before that I was temporary.

AL: For how long?

KELIIKOA: Three years.

KAMELAMELA: Now at some point in time after 2002 you went out to Ka'u, is that correct?

KELIIKOA: Correct.

KAMELAMELA: Why was that?

KELIIKOA: I got promoted to a supervisor at Ka'u.

KAMELAMELA: And how long did you stay _____ in Ka'u?

KELIIKOA: Maybe a year.

KAMELAMELA: So you left that position for what?

KELIIKOA: To come back and be the safety coordinator _____.

KAMELAMELA: Now at some point in time, you started a private business prior to June of 2005?

KELIIKOA: Right.

KAMELAMELA: And when did you start this private business?

KELIIKOA: About two and a half years ago. In 2003, I believe.

KAMELAMELA: And where is this business located?

KELIIKOA: 107 Keawe Street. _____. The old Bank of Hawai'i building.

KAMELAMELA: And the private business, what did you do?

KELIIKOA: The CDL and equivalent training and driver's ed. _____.

KAMELAMELA: Okay, so the equipment training and the driver's training, that's all related, students trying to get their driver's license, is that correct?

KELIIKOA: Their CDL.

KAMELAMELA: Just the CDL. So when you do audits for the County for like bulldozers and things like that, you don't have a private business related to that at all, is that correct?

KELIIKOA: A private business—

KAMELAMELA: --related to train people on the outside for bulldozers, grass cutters—

KELIIKOA: --I don't, but I do if they request me to.

KAMELAMELA: Okay.

AL: You can do that.

KELIIKOA: *(inaudible)*.

KAMELAMELA: But you have never trained any of the County employees for anything else except for the CDL?

KELIIKOA: No, I don't have the equipment.

KAMELAMELA: And for your business, the Keawe Street address, that's a private location. You use your own resources?

KELIIKOA: Yes.

KAMELAMELA: Do you do that on County time at all?

KELIIKOA: No.

KAMELAMELA: How do you advertise?

KELIIKOA: The newspaper and telephone book, _____, fliers.

KAMELAMELA: Have you gone to any County employees during work time or at the work place to solicit?

KELIIKOA: No.

KAMELAMELA: Just to talk about your private business a little more. Are you a certified CDL trainer?

KELIIKOA: *(inaudible)*

KAMELAMELA: Before June of 2005, there had been some testimony that you had either audited people or did performance tests of County employees on County time, is that correct?

KELIIKOA: *(inaudible)*

KAMELAMELA: Can you tell us how you get the information as to who is to get audited.

KELIIKOA: The overseers, when they do need someone to be trained, they put out a request to the superintendent, and what happens is they put it all together and they see which one should be prioritized first. They go by districts, and then after it's all prioritized, I get the list and then _____.

AL: Excuse me, you're given a list of people that are to be tested?

KELIIKOA: Yes.

AL: Somebody else supervises and puts together the list?

KELIIKOA: Yes.

AL: You don't have any input into the list.

KELIIKOA: No. _____.

KAMELAMELA: So when you talk about the overseers, who are you talking about?

KELIIKOA: It's the district bosses _____. There's five to six.

KAMELAMELA: There's about six districts. And when you talk about superintendent, who are you talking about?

KELIIKOA: Stanley.

KAMELAMELA: Stanley Nakasone. Now does Stanley Nakasone have any financial interest in your business?

KELIIKOA: No.

KAMELAMELA: Did you have any kind of—prior to June of 2005, personally tell Stanley that you had a private business?

KELIIKOA: No. He didn't even know.

KAMELAMELA: He didn't know?

KELIIKOA: He didn't know.

AL: I'm sorry, you said he did not?

KAMELAMELA: He did not know.

AL: He did not know.

KAMELAMELA: And you said he _____.

AL: I'm sorry, I still don't understand. You asked if Mr. Nakasone knew whether you had a private business, and you answered—

KAMELAMELA: --sorry, _____ question.

AL: I'm just not hearing it.

KAMELAMELA: Okay, actually I had asked him—I think I asked him, did you tell—

AL: Oh, tell—

KAMELAMELA: --yeah, tell Mr. Nakasone (*TAPE #2 ENDED SIDE A – TURNED OVER – SIDE B TURNED OUT BLANK*)

FROM MC'S SHORTHAND NOTES:

Mr. Kamelamela said that Mr. Keliikoa had mentioned that he was certified with the County to do audits and performance tests on people who are trying to get a promotion.

Mr. Kamelamela handed out some exhibits to the Board members and secretary. He also gave Mr. Cambra and Mr. Gilman copies. He asked Mr. Keliikoa to explain what Exhibit "A" is, and Mr. Keliikoa explained that Exhibit "A" is the audit form he uses, a guideline he follows, to audit the drivers to see if they can safely and correctly operate the equipment. He also explained that this form is what he used in the past, as he doesn't currently do audits.

Mr. Kawahara asked if this was a standard County form, and Mr. Keliikoa said the form was based on a federal form.

Mr. Kamelamela asked Mr. Keliikoa why he used to do the audits and performance tests, and Mr. Keliikoa answered that it was to make sure the drivers correctly and safely operated the equipment and that he wanted to make sure that County drivers on the road were driving safely.

Mr. Kamelamela asked if there were certain things on the list that, if a person failed, would be an automatic failure, and Mr. Keliikoa responded that the air brakes, and anything to do with brakes, and downshifting, under "D" in the form were that way, that you had to be able to use the air brakes and downshift in order to control a vehicle. He said that 90% of the drivers start to panic if they're not able to get the vehicle in gear.

Mr. Kamelamela asked Mr. Keliikoa if he had anything further to say regarding the air brakes. He said that Mr. Cambra had questioned why his performance test started with the air brakes and explained that it is part of the pre-check and that since it takes about 40 minutes to do it right, he tests drivers on this first.

Mr. Kawahara questioned whether other trainers might stress different areas of the test.

Mr. Keliikoa remarked that other people got trained by other trainers, and they were able to pass the tests. He said every trainer should be doing the same things he does and that the DMV does the examination in the same exact way he does it.

Mr. Kamelamela asked Mr. Keliikoa about Exhibit "B." Mr. Keliikoa explained that federal guidelines need to be followed when testing or auditing a driver and said that his own form was basically the same thing.

Mr. Kamelamela asked Mr. Keliikoa about Exhibit "C," and Mr. Keliikoa explained that it was his training record listing the individuals he has trained.

Mr. Kamelamela explained he had several more areas to cover. He asked Mr. Keliikoa if he knew who Mr. Gilman and Mr. Cambra are, and Mr. Keliikoa answered that he did. He was asked if he knew who their supervisors were, and he answered that Mr. Cambra's supervisor is Willie Perez and Mr. Gilman's is Ben Casuga.

Mr. Kamelamela asked him if he supervised them, and he answered no.

Mr. Kamelamela asked him if he had ever solicited to them his business, and the answer was no.

Mr. Kamelamela then asked him to explain, with regard to Mr. Cambra, why he failed him in the performance test. Mr. Keliikoa explained that Mr. Cambra did not do the air brakes correctly. He also said that someone had come and shook his hand and then he didn't do the test correctly.

Mr. Kamelamela asked if Mr. Cambra had asked to be re-tested after he failed, and Mr. Keliikoa answered no.

Ms. Lum asked how long a person needs to wait to be re-tested, if they fail. Mr. Cambra said that if you fail the performance test, someone else gets the job and you would have to wait for another opening, that there is no second chance.

Mr. Kawahara asked who determines who fails. Mr. Keliikoa said that is determined when he gives the test and that the results go to his boss, Stanley Nakasone. He said that when it comes to the air brakes, you cannot play around and that once you fail, you fail. He said examiners do the same thing when they license people and he follows that procedure.

Mr. Kamelamela stated that Mr. Keliikoa is following the federal guidelines. He also clarified, as Ann Lum had concerns, that somebody else was vying for the position. Mr. Keliikoa stated that regarding Mr. Gilman, he did not pass the test due to the shifting, as Mr. Gilman had said. He said that the other thing he looks at in testing is the demeanor of the person in back of the wheel. He tries to notice whether they look afraid.

Mr. Kamelamela asked Mr. Keliikoa if there was anything else he wanted to say to the Board. He just said that he was responding to the petition.

Mr. Kawahara commented that the auditing procedure seemed subjective and depends on the auditor's judgment. He said not to take it personally, but he wanted to ask Mr. Keliikoa whether he felt he had done everything on the up and up, whether he had given them every chance to

prove their abilities without any regard to who had trained them. Mr. Keliikoa answered that he definitely did. He said that for Mr. Cambra, he had even tried to help him by lending him his CDL manual. He said he went out of his way to try and help people.

Mr. Cambra said that he was treated unfairly in the way he was given the test. He said people get tested in different ways, that not everybody gets tested on the air brakes first.

Mr. Keliikoa said he goes straight to the air brakes when he tests and that the form he made goes step by step.

Mr. Kamelamela said he didn't have a copy, that he could make it part of the exhibits.

Mr. Keliikoa reiterated that when he audits, he makes sure people do it correctly. He devised a form because people forget how to do the air brakes correctly.

Mr. Joseph stated that the only issue which concerned him was the training and testing of County employees. He said that the fact Mr. Keliikoa owned a business and was training people in that business who worked for the County was a possible violation. He stated that he thinks Mr. Keliikoa is an honest man and that he failed Mr. Cambra and Mr. Gilman for good reason. He doesn't believe that is the issue.

Mr. Kawahara stated that they were getting into the semantics of fair and unfair and that they were not here to determine whether it is legal or illegal, but rather ethical or unethical. He stated he was concerned that the issue has been resolved by the union and in the negotiations it was determined that Mr. Keliikoa would no longer audit personnel.

Ms. Lum stated that Mr. Cambra had asked for an opinion about whether there was a possible violation prior to June, when the auditing was still going on, and that Mr. Cambra really wanted to know, for his own heart and mind, whether there was a violation.

Mr. Cambra said that it had also been stated that the agreement was not signed off on yet, so it was not a done deal. He said he wanted this on the record, documented, so that something like this doesn't happen again.

Mr. Kamelamela said that the way the complaint was written, there is more than one issue. He said it's not just about an appearance of impropriety but whether there's an actual conflict. He said he wants to present everything so that the Board has everything, because it's not just one issue.

(TAPE #3A):

KK: Can I ask one question? I asked you before, and I know you gave me an answer. Either I don't remember--

KAMELAMELA: --transaction, and that's where we have to argue, well, even if you assume that there's an appearance of impropriety, does that meet the standards as set out _____, where one section, section 2-83(b)(4), it says there has to

be a substantial financial transaction that's involved. And so we have to argue, to me, to consider all of the potential issues before coming down to a final decision. So, what I want to do is present whatever facts that need to be presented so we can get all these issues. But it shouldn't be related at all to the union grievance that all the petitioners have, because that's not the issue. I just want to deal with the facts of the case, and so far the facts are compelling that there's no actual conflict. But I wanted to present more facts, so that I can also argue why we believe that it's either de minimis or it's not an appearance of impropriety. That's all I'm here for, to defend Hiram—and what's also clear, from the evidence, is that Stan Nakasone, who is not receiving any financial benefit from all of this, shouldn't be involved in it, too. I mean, that's clear so far, that he has no financial interest in what happens here. It is not his resources that—the direction is only Hiram. And I'm not sure why they're petitioning Stanley.

KK: Ms. O'Toole, did you have something to—

PKO: --Yes. I want to say, and what I was trying to say earlier, is that the petitioners are supposed to point out what section of the Code they think is violated and how, and why it's violated. I don't see anything about an appearance of impropriety anywhere in what is cited. So I think you need to maybe take time to review what they're saying is violated and, you know, then we can focus—when the testimony comes in, it's focused on the alleged violation. So—

KK: --that's what I was trying to do all the time.

PKO: Yes. But I hear Mr. Kamelamela say well, if it's an appearance—if it's not in the Code, why are we arguing about it. That's all I'm saying. I think we need to review what the Code sections they're saying are violated are, and let's stick to that.

CAMBRA: I have something that might _____. Let's say—I'm going to use the Corporation Counsel. And you guys work for the Corporation Counsel, and you guys are lawyers. Can you guys practice law outside? Pertaining to cases with the County?

PKO: No.

CAMBRA: This is what I've been trying to get at. You have rules. Every _____ has rules—

WJ: --if I could ask something? If we could recess ten minutes so that we can clarify the point here?

KK: Offer us your opinion.

PKO: You could ask for executive session to discuss something with your attorney, if you're concerned about what the laws and rights are. But you can't just talk about

it amongst yourselves. So just to clarify that, if you think executive session is necessary.

WJ: Once again, I just thought I'd iterate, that I only see one possible, one possible avenue of conflict here, and that one possible avenue is that he owns a business that he trains people on weekends, and those—some of those people are County employees that then go back to the baseyard and he does the performance and other tests on them, and they get their promotion. That's I think the only possible conflict, and I wanted to narrow our scope of this meeting just towards that. I'm not questioning your honesty and integrity in doing their audits and performance tests. I think you're doing a good job. But that's not the issue. The issue is your business and training County employees, and if we can just direct our focus onto that.

PKO: So your opinion—but then we don't know what the other testimony--

WJ: --Right, that's my opinion.

PKO: If he feels he needs to present evidence because the other Board members might be thinking otherwise, then—

AL: --My question is, on—I think it might be to you—on section 2-83(b)(4), that's the one they—soliciting, selling, otherwise engaging in financial transactions with subordinates or a person or business whom that employee inspects or supervises. So that relates to the business, because he is or possibly could be training somebody and receiving payment—I don't know whether we would call you supervising, but you were auditing. So that applies—I'm looking at that section.

PKO: Is he soliciting, selling, or otherwise engaging in substantial financial transactions.

AL: With?

KAMELAMELA: See, that's how I'm reading this.

AL: You're reading it as what?

KAMELAMELA: As with him. Is he soliciting? No. Is he selling? No. Is he engaging in any substantial financial transaction with him? That's how I'm reading it.

AL: And I'm looking at it in a broader sense, with anybody.

KAMELAMELA: He's talking about somebody else, who has initiative to go out and actually get training. This person doesn't know whether he's going to get a County job, and there is a checks and balances here, because he doesn't supervise them. He's not the one who—

AL: --his job is not a supervisory position?

KAMELAMELA: No, it's not. He doesn't supervise. Both of them have testified that he doesn't supervise.

AL: But it does come under the employee inspects.

KAMELAMELA: _____ the employee is engaged in financial transactions. They've never taken his class before. They—it's the relationship that they have. It's like a student and a teacher.

PKO: I can only tell you that the only time I saw this question come up before the Board, it was a department head who was planning to enter into a business with a subordinate of his, and he asked if that was appropriate or not. And he put the section that was under question.

CAMBRA: Under this section here, it doesn't say, you know, one person. It doesn't say me. It doesn't say you. It pertains to the whole matter. You know what I mean. If it's in general, _____, not just the one person.

GILMAN: There is County employees that might say that, to get their license. They went and take the test for the permits, but he trained them for their license. And they were employees _____. Then when they—the opportunity came out for a promotion, they applied.

KK: You wanted to say something?

KELIIKOA: I was just going to say that I test them on the truck for an EO 2 position, I test them on the truck, and I also test them on other equipment, which is the backhoe _____. I never trained anybody on that on the outside, that works for the County, you know. So I cannot _____, and you have to pass both to get considered for a promotion.

PKO: I think someone's asking, are we planning to take a break or are we going to go through lunch?

GANIGAN: Can I ask a question? Last time we didn't go lunch, we stayed all the way til three o'clock _____.

KK: That was last time. That's another matter. But Mr. Kamelamela, I'd like to ask one question that might have pertinence. Are you permitted, or can you tell us whether that settlement within the union is settled or not, or is it—you know—you said he no longer does auditing. I think it has some bearing on what my thinking might go, if it has been settled within the union.

KAMELAMELA: Okay, I—actually, it shouldn't have even been mentioned. It should not have been mentioned here, because it's something that's in the process.

AL: But I think we do need to know whether it's permanent, that he will not be auditing, or if it's just temporary til something happens and—

KAMELAMELA: --no, it really doesn't matter, only because—

AL: --okay—

KAMELAMELA: --only because if it changes, then at least there's something in place.

AL: Yes. I see. I see.

KAMELAMELA: And that's why it doesn't matter.

AL: Because we're acting on what happened before.

PKO: Is he agreeable to not testing people that he has trained?

AL: Or is the County agreeable to him not—is his job agreeable to him not ever testing somebody that he's trained.

KK: Because you know—

KAMELAMELA: --He didn't get a final resolution on that.

PKO: So, but I have seen ethics complaints resolved by some kind of agreement. I'm just exploring, is that—if he's not going to do it and he doesn't care if he does it, then that might be a resolution. Otherwise, let's just go on ahead.

KK: Because if an agreement was reached, in my mind that means that somebody else saw that this has been not an equitable situation. Somebody else thought this was unfair, too, not only, not only these people, or some members of our Board. Do you see my line of reasoning? If in fact the union came up with some solution, saying that Mr. Keliikoa no longer will be doing auditing, then some compromise was made in a back room somewhere, then somebody else obviously found that this was not a fair situation, not an ethical situation. One member at least, over here, felt that that was the situation.

KAMELAMELA: I think Mr. Joseph is saying that maybe there's a potential appearance of impropriety, and so he wanted us to direct our _____ from that. But that's where he's coming from. But I see _____ somebody saying there's an actual conflict, then he needs to testify, so to me, let's _____. Not just the issue that one member of the Board proposed. And also, when I read the Code of Ethics and complaint, it doesn't state anything about appearance of impropriety. Because you know, it leads to all kinds of judgment, and it would prevent—the department itself would _____ would do certain things that it sees as being in the best interest for the public. Because as we heard from him, to me it's objective standards that are being used to ensure that the public safety is protected. So we're—we're at the same issue from different directions, I

think, because I'm also saying, in this case, no. You know, you shouldn't say that there's an appearance of impropriety, because you don't have all the facts in this case. You know, he's not going to use his position as a position of power to deny somebody _____. To me that's kind of what Mr. Joseph is talking about. Is there an imbalance of power here? I don't think so. I mean that's just one of the things _____.

KK: You know, this is all argument. You've been using the word appearance, and you said that there's the word appearance in there. I thought I saw the word appearance.

AL: I'm trying to figure—I saw it someplace—

PKO: --But as I said, the discussion _____ violation, do not say appearance, and I have looked before—

AL: --because I read all this recently and I'm a new member, you know, but I'm thinking it might have been in the Sunshine Law booklet about appearances and so on, so it might have—I'm interested again, in this (b)(4) in 2-83(b)(4), and, you know, it's—shall use—okay—including but not limited to the following—soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person, blah, blah, blah, or business whom the employee inspects. So it's—I'm interpreting that as saying that it could be in conflict if the employee engages in a financial transaction with a person whom they inspect, which sounds like it was something that was done in the past. It doesn't say anything about whether it influenced him in his inspection or did not influence him in any inspection—it doesn't say that at all. We have to judge whether there was any influence, if engaging in a transaction with somebody who they later inspect. That's this. That's one of the rules.

PKO: Shall we continue with the evidence, or are we taking a break?

WJ: I'd like to continue.

AL: I don't know—I'll do what everybody else wants.

WJ: I've got a question for Mr. Gilman. When're you getting your CDC [sic?] license?

GILMAN: When I getting it?

WJ: Yes.

GILMAN: I had it for about 12 years.

WJ: No, when you got audited.

GILMAN: Oh, when I was—that was for a promotion.

WJ: Was it a CDC?

GILMAN: It was a CDL.

WJ: CDL, I'm sorry.

GILMAN: CDL.

WJ: It was CDL.

GILMAN: Yes.

WJ: And—I'm trying to figure this out myself. You said you don't train certain people on your weekend business?

KELIIKOA: *(inaudible)*

WJ: Certain skills—

AL: --the backhoe and—

KELIIKOA: No. I don't have the equipment to do it.

WJ: Okay. So was Mr. Gilman trying to get the promotion based on what you teach on the weekends?

KELIIKOA: I didn't know he was getting a promotion.

WJ: When you went up for the audit.

KELIIKOA: The audit.

WJ: You audited him, correct?

KELIIKOA: Right.

WJ: On what you audited him on, _____ training County employees on the weekends, what you specifically audited him on. Did you train County employees on the weekends?

KELIIKOA: Yes.

WJ: I just wanted to clarify that. I think that's—the real issue is training on the weekends and auditing people in the County that don't fall under your purview of weekend training. And I think that's the _____ complaint. Basically it's about—

KELIIOA: Should I refuse their right to come to me, then?

WJ: The people on the weekend, you mean?

KELIIOA: Yeah.

WJ: The County employees? That's the big question. I think that came up in November.

AL: I think we would rather it have been he refuse to audit them.

WJ: That might have been a good decision.

AL: I mean, it can't be made now, because it's over, so I don't think—

WJ: --but there might have been a possible conflict of interest.

KAMELAMELA: You know, so actually, what we're hearing is just arguments. I just want to get what I'm supposed to get in, and then you know, we can argue our hearts away.

WJ: Actually, I wasn't trying to argue. I was trying to clarify for the purpose of focusing in on part of the problem or _____ the confusion _____.

PKO: Do you have any other witnesses you're going to call?

KAMELAMELA: *(inaudible)*

KELIIOA: Like I said, you know, I don't _____ train guys on the heavy equipment, which you need to know to take the test to get a promotion. The only thing I've done is train guys in the County outside for a CDL license.

AL: And that is your—the business, is the CDL?

KELIIOA: Yes.

AL: Wait, one more—I'm confused now. But you do, you did, audit the County employees for the CDL also?

PKO: Joe wants to call a witness.

AL: Just make sure I have it—sorry.

KK: Do we need more evidence, more witness?

AL: I think he should be able to. I think he should be able to.

KAMELAMELA: I think I'll do the shorter one first so he can testify and leave. So, I'll take Mac first.

ASATO: Good morning, everyone. My name is Mac Asato. I'm an overseer at the Hamakua roads department, Highways Division, Department of Public Works.

KAMELAMELA: And how long have you worked with the County?

ASATO: This year makes 26 years.

KAMELAMELA: And where are you currently employed at?

ASATO: The Hamakua baseyard in Honokaa.

KAMELAMELA: And how long have you been there?

ASATO: I was jut promoted there in January of this year.

AL: Last month.

ASATO: Yes. January 4th.

KAMELAMELA: Have you personally observed Hiram Keliikoa solicit his services on County time, on County property?

ASATO: Throughout my dealings with Hiram, I have never heard or saw him solicit any business for his outside personal business at the County level towards anyone.

KAMELAMELA: What is your understanding of his business, that he does on the outside?

ASATO: From what I've heard from the employees, he has a business training people for CDL certification, so they can get their licenses. When the employee told me this, I had to approach Hiram to confirm if they're correct. So when I approached him and I asked him, he said yes, he was going outside and, you know, not too many people really knew about it, just from _____, like that, I guess his family. So I thought, okay, good for him, you know.

KAMELAMELA: I have another question. Do you know who Ganigan is?

ASATO: Yes, I know Richard Ganigan.

KAMELAMELA: And how do you know Richard Ganigan?

PKO: You know, he isn't part of this hearing.

KAMELAMELA: No, but I wanted to just have him testify, then he can leave. Okay, well, do you know Mr. Cambra?

ASATO: Yes.

KAMELAMELA: And you know Mr. Gilman?

ASATO: Yes.

KAMELAMELA: How do you know them?

ASATO: Well I know Mr. Gilman, he works for the Kona road division, and as far as Mr. Cambra is concerned, I was one of his supervisors at the North and South Kohala road department prior to coming to Hamakua. I worked with Mr. Cambra for almost four years.

KAMELAMELA: Nothing further.

CAMBRA: I have a question. Mac, in the four years that I worked with you, wasn't I always concerned about fairness in the baseyard? If there were questions and stuff on fairness?

ASATO: Yes, you did.

WJ: Did you bring this issue up with him?

CAMBRA: _____. I just wanted you to know where I stand, you know, with my personality _____.

AL: Where were you before you were in Honokaa, before Honokaa?

ASATO: Before January, you mean?

AL: Yes.

ASATO: I worked out of the North and South Kohala baseyard in Waimea.

AL: Waimea, okay.

KK: Any more questions?

AL: Thank you.

KAMELAMELA: We'll call Stanley Nakasone. Before we have Stanley testify, this is Exhibit "D" (*handed it to AL*). I know I don't have a copy of it, but I wanted to make it part of the record.

PKO: Did you mark it "D"?

KAMELAMELA: I'll do that right now.

PKO: Okay, you can pass it and they can just look at it.

AL: Thank you.

KAMELAMELA: Shall we continue? I know that you testified before, but for the record,
_____.

NAKASONE: My name is Stan Nakasone.

KAMELAMELA: And what's your current position?

NAKASONE: Superintendent of Highways.

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

NAKASONE: Fourteen years.

KAMELAMELA: As superintendent, what are some of your duties?

NAKASONE: Some of our duties? We respond to _____ emergencies, construction work,
bridges, canals, flooding. _____.

KAMELAMELA: Now, do you supervise Hiram Keliikoa?

NAKASONE: Yes.

KAMELAMELA: When was Hiram first hired?

NAKASONE: I don't now.

KAMELAMELA: When did he become the driver training coordinator?

NAKASONE: I heard him testify that, I think it was, 2002.

KAMELAMELA: Initially. In 2002. _____. And was he promoted?

NAKASONE: He was promoted. He applied for a certain position and he was selected.
_____.

KAMELAMELA: And after that did he take another position?

NAKASONE: Yeah, his position became vacant _____ position, and we advertised that
for about two or three times and there was no applicant, and he applied
_____.

KAMELAMELA: So he was rehired as a trainer.

NAKASONE: Yes.

KAMELAMELA: So as a trainer, what was _____.

NAKASONE: He does all our training in our Public Works _____, Highways Division. _____ tools that we use, CPR, first aid. He trained employees on equipment. He audited them by law. He also does certification. What I mean by certification is _____, comply with the law, _____.

KAMELAMELA: Okay, so he not only trained but you said that he certified certain things to comply with the law.

NAKASONE: Yes.

KAMELAMELA: You mentioned auditing. Before June of 2005, Hiram used to audit the performance tests of individuals for promotions. Is that my understanding?

NAKASONE: Auditing and performance tests are two different things. (*TURN TAPE OVER TO #3B*)

NAKASONE: --we hired an employee to come from Keaau side, private sector or whatever, and come to the County of Hawai'i with a license, a CDL license. What Hiram does is he's auditing to see that you have the skills and abilities to safely operate the equipment that is within the class. _____ pertaining to the position. What they're talking about, both Cambra and Gilman, is a position for EO 2, who drives two or more pieces of equipment, and it's not only the CDL truck. He also has to qualify on the loader and the backhoe _____ be able to operate this position.

KAMELAMELA: So a person could pass the test on the loader and the backhoe and fail the CDL _____.

NAKASONE: If we look at the performance exercises, which _____ in relation to the _____ and the loader, any one of them that they fail, either one they fail, that's it. They had one more section of this promotional process and that's where we have the _____ and we look at the results of this performance on the truck, _____ the loader, backhoe, _____, and then we take a recommendation, _____ scored the highest, and then we submit them to the department head and he has the final decision _____.

KAMELAMELA: And who is the department head?

NAKASONE: In today's case, it's Bruce McClure.

KAMELAMELA: Back in—prior to June 2005?

NAKASONE: 2005? I think it's McClure, or Dennis Lee.

KAMELAMELA: Dennis Lee and then McClure, right. Before—is Hiram doing any type of auditing and performance tests as of today, currently?

NAKASONE: No, we stopped that in June of last year.

AL: Excuse me, I didn't hear. So performance testing and auditing—

NAKASONE: Only auditing. We stopped the auditing—

AL: --oh, auditing—

NAKASONE: --in June of last year.

KAMELAMELA: What was the purpose of the audit?

NAKASONE: It's to—when you auditing, an individual comes from the outside with a license, and you audit the individual, it shouldn't take more than half a day. You audit the individuals to make sure that they can be able to perform or operate the piece of equipment efficiently and safely in that position. It includes the loader, backhoe, and _____.

AL: _____ ask another question?

NAKASONE: I'm sorry?

AL: Ask another question? If the auditing is only—what's called auditing is only done on a person coming from outside? It's not done on a current employee?

NAKASONE: No.

AL: I'm sorry.

NAKASONE: A current employee goes out and gets training. When he comes back, he informs his supervisor that he has his license. Then, once a year, in January or February, I get—like Hiram explained—all the overseers _____, and then at that time we set priorities. It's not just because you go out and you _____.

AL: But the auditing happens either with the outside person or the employee that wants to do something different.

NAKASONE: That's right.

AL: Thank you.

KAMELAMELA: You mentioned about the overseers and you getting together once a year, and that's, you said, to set up priorities. So when you talk about priorities, what kind of priorities _____?

NAKASONE: The overseer comes in every year and they know that they have this _____ and they set their district priorities for training _____. Their priorities, number one, can be they want to have training on a _____ truck. Some of them want training on the jackhammer, some of them on the loader, some on the _____, some on _____. Then what I do is that—there's five districts—six districts. So, you don't have time in one year to do all that. So what you do—it takes about four to six weeks—six to eight weeks—to train one individual. And when I look at Hiram's schedule, he has first aid and all his other stuff, so—and he has _____ that are required by law. So he gives me six months. The rest of the six months, he does other things that are required by law. So if you look at that, you only can train three or four people. What we do, what I do, is that—

KAMELAMELA: --that's three or four people a year.

NAKASONE: Yes.

KAMELAMELA: Okay.

NAKASONE: So what I do is that I sit down, I _____ the overseers, and their schedule, I look at _____, I look at what we have and what is needed, and I set the priorities.

KAMELAMELA: Is Hiram involved in that process of setting priorities?

NAKASONE: No.

KAMELAMELA: So after you set the priorities, is there a list that gets made up?

NAKASONE: Yes, I make a list _____.

KAMELAMELA: And what happens to that list?

NAKASONE: I call Hiram in. I show him the list of our priorities. He brings in his calendar, and we set the priorities _____. And when we set these, Hiram get needs, too, yeah, he got _____, so that's why we sit down.

KAMELAMELA: So he's expected to do all of the training _____ during normal work hours?

NAKASONE: Yes.

AL: I have another question. Now that Hiram is no longer auditing, do you have another person doing that? Is that an open position, or?

NAKASONE: The reason we stopped auditing is because we sat down with the union _____ last year sometime, and we came to sort of an agreement of how we're going to do this. Because prior to Dayton--the director of UPW--prior to him coming on board, it was Gary Rodrigues. And during Gary Rodrigues' time, we would allow the auditing. We sat down and we were allowed to do this. _____ because if you don't audit, _____ privatized _____ contractors. It would privatize the job. We had an agreement with the union at that time, a verbal agreement, that they would rather us to keep the temporary assignment to the junior person than to go outside. We had some of that _____, and then when Dayton came on board, he had a different approach to it, so I stopped that because we'd talked about that and we agreed to _____ and we were going to work out a compromise.

KAMELAMELA: And the compromise was because _____.

AL: What?

NAKASONE: The compromise was because senior employees—you hired new laborers and they came in with licenses, and some of them were _____. A lot of them would come in already licensed. And to audit them is only a couple of hours. To train them takes _____, and we get our jobs to do. So as management we'd look at that. It's more efficient to audit them because then you can get them on the road and get our jobs done, and so we've been doing that. And we were bypassing senior guys. There's no time for training. There's not enough time to train. And _____.

WJ: I'm still confused. Who does the auditing?

AL: Nobody.

NAKASONE: No one right now.

WJ: No one does the auditing. Okay, but people can still get promoted?

NAKASONE: Promotion is—yes, yes—

WJ: --without being audited—

AL: --they're auditing with the people coming in—

NAKASONE: --yes. If you have your CDL license and we get one job opening right now, you can apply for it. Like in this case here, had Harry Jose that got promoted.

KAMELAMELA: Now at some point in time, because Hiram had a private business—

NAKASONE: --yes.

KAMELAMELA: And he wasn't the one who actually told _____. Do you recall when that happened?

NAKASONE: No, I don't.

KAMELAMELA: So when you heard that Hiram had a private business, what was your understanding at that time of his private business?

NAKASONE: He was training for the dump trucks.

KAMELAMELA: Dump trucks. And the purpose was to get what?

NAKASONE: CDL license.

KAMELAMELA: So when you found out that he had a private business for CDL _____.

NAKASONE: (*inaudible*)

KAMELAMELA: And what did you decide to do after you talked to him?

NAKASONE: I wanted to see what he trained on. I wanted to see if he was using any kind of County resources to do his private job. And so I had a discussion with him, and he told me what he was doing. And at that time I felt there was no conflict, and the reason I say that—I still feel way, because to qualify for an equipment operator position requires two more pieces of equipment. He only _____ trains with one. _____, and so I felt that it was no conflict.

KAMELAMELA: You heard statements being made by one or two Board members that there may be an appearance of a conflict. Do you feel that there is, given the circumstances?

NAKASONE: I really don't think there's a conflict. If there was, we wouldn't be here, because I would be the one to stop Hiram anyway. But I need to say this. I don't think the government, or a commission, or any board should stop anyone from pursuing their dreams. I don't think that. I think that if a person wants to better themselves in their lives and their families, go ahead. That's what this country's for, to do that. And I don't think this Board or any commission should make a decision on opinions or somebody's feelings. I think that it should be that it is there, that it's a clear-cut violation of the law. Because people should be allowed to pursue their dreams. That's what it's all about. I believe that. And I don't think _____.

WJ: I agree with you. And as long as they don't interfere with other people's dreams.

NAKASONE: Sure.

WJ: That's when you might have a problem.

NAKASONE: Sure.

WJ: But I agree with what you're saying—

NAKASONE: --_____ make sure that there is a specific law that has been violated. Not by opinions, my feelings or your feelings. It has to be specifically by law. And when I read the Code of Ethics thing, and when I talked with Hiram, I don't think there was. If there was, I would be the one to stop it. Because I don't want to put us in a bind, or _____ department, or division in the department. Because yes, he does training on certain equipment. He can train all of them in the Highways Division. None of them would be qualified to get the position, because they had to pass _____. Not only that, they got to come in front of an oral panel to tell all their experiences they've had, and you know, because they're _____. You pick the best individual for the job. And so it is not one criteria that determines the man who gets the job. In my opinion, _____, no, there is not a conflict. No, there is not. If there's _____, and he trains both _____ equipment, yeah. We wouldn't be here. _____. I would be here.

AL: But if it's a conflict for two, why wouldn't it be a conflict for one?

NAKASONE: Because I don't want to stop somebody from doing their job.

AL: Their business.

NAKASONE: It has to be a clear-cut violation.

AL: So you see the second thing like a check, a check to keep things in balance.

NAKASONE: Well, I don't want to go into opinions and feelings. It has to be a clear-cut violation of the law, and I don't think there is a clear-cut violation of the law. I don't think financially he gained anything _____. In fact, Hiram, excuse me for saying this. I know Hiram. He gives employees discounts. And you know Hiram's _____, for example, \$500. That's a lot of money when you live from paycheck to paycheck. These guys, if they get their license, moonlight. And I don't blame them. They go out and moonlight so they can provide for their families. See, if Hiram is giving them a discount _____ moonlight. So for me, I look at all of these before I make a judgment. And employees that go to Hiram, they benefit because they pay less. They also going to _____ because they can better themselves and families by _____. I really wish this _____.

WJ: So just out of curiosity, what would you say to your own employees who feel unfairly treated?

NAKASONE: That's their opinion, okay? My opinion is they have a chance to take the performance exam, and they failed. You don't blame nobody else. You failed.

In Dickie's case, he _____ training. He didn't want to be an EO 2, he wants to be an EO 1. Til today he tells me that. He's not interested in being a truck driver or _____. In Cambra's case, _____, he failed. If you fail, you fail. You are _____ with how the administration is running, _____. This is not _____. You have grievance procedures to go through, we went through.

AL: But they're still asking for an opinion on the ethics.

NAKASONE: Yes, I realize that. And that's why I'm saying that it's _____ for a position. You don't apply _____. You apply for a position. In this case Hiram does train for a piece of equipment. But when you apply for a position _____ two or more pieces of equipment, and he doesn't train them on all this, because he doesn't have it. How do I know that? Because I went to look at his operation, before I made a decision. And that's why I'm saying that I don't think there's a conflict.

CAMBRA: I have a question. My question is, when someone's up for a promotion, if you fail _____. You don't go to the other _____ so you have no chance of showing that you can _____.

NAKASONE: You're right. The reason for that is because, my memory tells me that how we used to do precheck before, when you first came on board. He'd precheck before and he put one guy on a piece of equipment, and he came back white as snow. And I asked him _____, and he said I almost got into an accident. What's the problem? You remember that? And he said the guy didn't know how to downshift. When you use the term downshift, it's when you're going downhill, all right. If you mis-shift with one load on, no way in heck the brake is going to hold. You're going to _____ something, or you're going to get into an accident. No way. That's why he do the downshift. _____. So I told Hiram, you no juice nobody. You no give nobody a break. You do it across the board. If you cannot do it across the board, don't apply for the job. You cannot give nobody a break, because safety is the concern. And you know what, if somebody get into one accident, it might be your family. You cannot allow that. And so I told Hiram, you're going to change that. You're going to change it. You're going to make sure everybody knows the safety aspect first before you put them on the road. You'd better learn from this. And that's why he does the brakes _____.

GILMAN: I've got a question for Stanley. You know, saying that I didn't want that position.

NAKASONE: What position?

GILMAN: Applying for EO 2 driving, that I'd rather be the EO 2—

NAKASONE: --EO 1—

GILMAN: --EO 1, I'm sorry. There was an incident similar to that, similar to that position whether another person who didn't want it, to perform that duties, that certain duties. And you made them write a letter saying I do not want it.

NAKASONE: I did not make them. The union says that I cannot take their word for it, it has to be in writing.

GILMAN: I'm sorry. I thought it was—

NAKASONE: --no—

GILMAN: --I didn't know it was from the union. It's just the way that people talk, I guess.

NAKASONE: No, no, no. _____. We could just talk like this and we honor our words. _____.

KK: You know, Mr. Nakasone, you stated that if you fail, you fail. Is this subjective, or—is this subjective?

NAKASONE: You use the term subjective. Explain subjective.

KK: Meaning, answers could go a different way. Or, the person who is giving this audit, can take different answers in different ways. This is pretty (*holding up Exhibit "A"*) objective—pretty straightforward.

NAKASONE: This is by law. When Hiram and I sat down to make this, _____ list, I told him we've got to follow the law. We cannot _____ too much, and the reason for that is because, if something happens, the records that Hiram does train them on will be confiscated. So no, you asked me if our opinion is subjective. _____ no.

KK: The reason I asked it is because it seems like this is the basis of their complaint, that this audit was done maybe subjectively, because they didn't take training from Mr. Keliikoa.

AL: No, _____.

CAMBRA: Not my complaint.

KK: Not your complaint?

CAMBRA: My complaint is that if something was—if you--there's _____ conflict of interest—

KK: --That's the basis of the conflict of interest—

AL: No.

CAMBRA: No.

WJ: It's his weekend business. It's his weekend business.

KK: Right, and that he favors those that he trained—

WJ: --I think we already substantiated that—

CAMBRA: --it's not—

KK: --Maybe I'm not hearing well.

WJ: Section 4, 2-83(b)(4).

KK: I have that in front of me.

AL: That's the second page of, second page of Mr. Cambra's complaint _____.

CAMBRA: Maybe I can clear a little bit of this up. I'm not here to stop him from doing what he's doing—I'm not here to stop him from doing what he's doing. (*KK motions that he cannot hear him*) I'm not here to stop him from doing what he's doing or what they are doing, but if there's a conflict, you know, if there's a different way they can approach when they do performance tests, you know, if he trains on the outside and comes up for a performance test, if there's somebody else that can do the performance test, you know, instead of him. That is what I'm after, something—a resolution in that matter.

KK: Why did you bring up this complaint in the first place?

CAMBRA: Because of—

KK: --because you failed—

CAMBRA: --no, it's because of conflict of interest.

KK: You don't care whether you failed or not, that's not your concern?

CAMBRA: No—see I failed—what I'm saying, if was one conflict of interest, and somebody else gave the performance test, the outcome might have been different. _____ . That is my—you know, if there was a conflict, it might have not happened, when it did happen. It might have happened later.

KK: You have a very noble--noble reason for being here. You're not worrying about your own individual—

CAMBRA: --Yeah, I'm—

AL: --He wants the record—

KK: --Wow.

CAMBRA: I want it on the record and I want it to—if something like this happened, I don't want it to happen again.

KK: You sure?

NAKASONE: --I hate to say this—

KK: --I cannot believe that.

NAKASONE: Mr. Cambra, Mr. Gilman, and Brandon, although he's not here—there's someone in back of this, and it's the union, that happened to do this.

KK: I'm all for fair treatment and trying to see these things not recurring, but I wouldn't—are you here on your own time today, you're taking vacation time?

CAMBRA: Yes, I am.

KK: I'm flabbergasted. I'm reading this wrong, probably, because three others have disagreed with me, but—correct me, where am I—

WJ: Look at section 4.

AL: Read section 4.

WJ: Right at the top. Right at the top.

KK: I know this, this is the ideal. I'm asking why are they before us? Just for the future? Aw, come on.

KAMELAMELA: Anyway, can I continue questioning—

KK: --no more gestures, please.

KAMELAMELA: Anyway, you indicated that you didn't want to get the County in a bind. What do you mean by that? That when you talked to Hiram--

NAKASONE: --oh, okay—

KAMELAMELA: --you had indicated that you didn't want to get the County in any bind.

NAKASONE: I told Hiram you cannot juice. When I use the word juice, you no can cater to anybody. _____. I even asked Hiram questions like, if that was your friend, how would you feel? We went through the whole thing. I wanted Hiram to understand that the decision that he makes has to be right, because if somebody goes on a piece of equipment, _____, and I want him to understand

that. If something happens, there's an accident, he goes to court. His record goes to court. Everything has to be in line. That's what I mean by don't put the County in a bind. Because you guys represent us. And we cannot be negligent in the performance of _____, especially _____ highways. There's laws to be complied with. And when they scrutinize the books, all the laws going to come up to see if we're complying by it. So we'd better be straight.

KAMELAMELA: So after you had this long discussion with Hiram, did you believe that there was any reasonable basis of a conflict of interest?

NAKASONE: No.

KAMELAMELA: Did you receive any financial interest from his business?

NAKASONE: Not at all.

KAMELAMELA: Do you want to say anything else to the Board?

NAKASONE: *(inaudible)* *(TAPE #3 ENDED. INSERT TAPE #4)*.

KK: . . . the County of Hawai'i versus County employees.

KAMELAMELA: Yes.

KK: Right. So one is a higher rank but both co-workers in essence. And yet one is represented by the Corporation Counsel, and the other ones, they're on their own. He has the advantage of all the legal expertise. You have him ask all the right questions and with his legal background and everything. They're on their own. I find this rather unfair, but I don't know—

KI: I believe the UPW is their union, and they have their attorneys.

KK: I don't know.

NAKASONE: I give you my opinion—

KAMELAMELA: --No, no--

KK: --He has the advantage of legal background. Do not answer, he advised his client.

AL: Excuse me.

KAMELAMELA: Vice Chair, _____. I know that you _____. I'm only here because we're supposed to represent officials that _____ in their employment.

KK: Is it because of his supervisory capacity?

KAMELAMELA: Well, it's because he works with the County and a lot of issues that they were bringing up were issues that pertain to union issues. And it's up to their union representative whether they're going to represent them or not. I'm not here to try to gain an unfair advantage, and I'm sorry if it's perceived that way. I'm just trying to do the best I can to represent—

KK: --I understand that—

KAMELAMELA: --the interests of those that I represent.

KK: And you would be remiss if you didn't do whatever you can for them. I'm just wondering why they can't be represented by Corporation Counsel, too.

KAMELAMELA: Because they have lots of other issues that is related to union contracts. It's like a bargaining unit agreement, and other things that we mentioned. So it's up to the union representative to make a decision as to whether they're going to be represented or not. So it's not—they could have gotten representation from _____, I don't know. But then it wouldn't be from us.

CAMBRA: This conflict of interest is _____ is not a union matter. This is a Board of Ethics, if a violation did occur or not. You know, it's not a union matter. _____. I did go to the union for advice in how it pertains to do stuff.

KAMELAMELA: So did you have anything else that you wanted to tell them, besides what's already been _____.

NAKASONE: I just feel that there is not a conflict of interest, because you apply for a position and not for _____. The position requires two more pieces of equipment which he does not train on, and I feel that that's only one aspect. And you also have the _____. So even if he trained all the County employees, they still cannot get the position _____ get training some place else _____ or come in with experience already. So that's why I don't think it is.

KAMELAMELA: Any further questions for Mr. Nakasone?

GILMAN: I get one question, Stanley. To get to that point where I got my license, my CDL, and I did not pass my audit, don't the County have something where that—because I didn't pass it—where that I could go on a training?

NAKASONE: If you never pass your audit, besides the audit, you need to pass the _____.

GILMAN: I showed it to Hiram when I did my audit.

NAKASONE: *(inaudible)*

AL: Is this something that involves us, though?

WHO? When we was going need the training, he never like. _____.

AL: But I don't think—it's really hard to separate what we're trying to do here.

PKO: Is Hiram the only person who can test, when you do the promotional test?

NAKASONE: No, we can go privatize. And then we also can ask Civil Service to use their trainer.

PKO: So you would either have to hire someone from outside the County or borrow from another department?

NAKASONE: Yes. I have a problem with that—that's his job. That's why he got paid.

PKO: It is his job.

NAKASONE: Right, he's got to do it. That's his job, that's what he's getting paid for. If I _____, but that's his job. I cannot see not having to do his job.

CAMBRA: Prior to Hiram coming on board as a trainer, Manuel Santos was the one that was doing the training for the County. Now he's with Civil Service?

WHO? No, before _____.

CAMBRA: He would at least be able to go.

NAKASONE: We're getting into all this kind technicalities, when the law changed. You know, the law changes because there's an accident _____. The law changes, we change with the law. _____.

KK: Do we have any more questions of any of these gentlemen here?

PKO: You could ask if they want to make closing arguments _____ if not today, or later, or whatever.

KK: Is there any final words from any of you, any closing words that would give us further insight into your case?

CAMBRA: No.

KK: No? Mr. Gilman?

GILMAN: No.

KK: And Mr. Keliikoa, having heard all this, do you have any other -

KELIIKOA: No.

KK: Nothing? Okay.

KAMELAMELA: Sorry, I misunderstood. _____.

NAKASONE: I just hope that this Board looks at the laws, and not about opinions and feelings. These are _____. I think you'll treat them fairly. _____ . I really believe that. I also believe that there is no conflict in Hiram's case, but I really do hope this Board looks at the laws and seek specifically if there's a law violated, and not by opinions or feelings. But I think that our employees should be able to pursue their dreams, and so does Hiram.

KK: Thank you. And one final word—I've got to get this out of my system. You people all work together in the same department. After all that's been said today and in the past, and whatever decision we render, you still have to work together.

NAKASONE: I understand.

KK: I hope, I hope that these discussions are just taken as what they are and you can work together, because you are working for us, let's face it. Everybody. And if one of you jam up on the job, it jeopardizes the people. All right? So I'm not—I'm not—I'm being bossy, but that's how I feel in my heart. Okay, if there's no final words—

AL: --Mr. _____ indicated—did you have any—

KK: Yes, you—

AL: --Oh, okay, thank you.

KK: Okay. Thank you for taking time out from your day to meet with us. Yes, Mr. Kamelamela?

KAMELAMELA: Yeah, I'm not too sure if this would be helpful, but did you want us to submit something in writing, or do you want _____ now?

AL: No, I think—

KK: --What's in writing, I—

AL: --I'm fine. Do you want this in writing, _____?

KK: Anybody—do you need something?

WJ: No, I'm good.

KK: Okay, so members of the Board, are we ready to make a decision today?

PKO: Well, I think he wants to make a closing speech.

KK: Oh—

KAMELAMELA: --Yeah, I just want to say some closing comments.

KK: Okay.

KAMELAMELA: There are actually a lot of sections that were stated in the complaint as being a violation of the Code of Ethics. Actually section 2, 3, and 4 were _____, and that he had cited a section on—it's clear to me, given the facts that we have today, with regards to Stanley Nakasone, there is no conflict. He has, he has no financial interest, that's clear. _____, what Hiram does, because of Hiram's business. So some of the things to consider is that because he has this type of business, has he been getting some kind of unfair advantage. Or is he severely compromising somebody else's position? I know that although under the Code of Ethics, and even under their complaints, they haven't raised—there isn't something called appearance of impropriety, but at the same time, when you look at the Code, there's _____ that you liberally construe the provisions to determine whether there is a violation or not. In a situation like this, it's kind of unusual, because the department themselves feel that what Hiram did is appropriate. So there is a built in trust that Stan has of what Hiram does. There is a lot of basis for that, because we know that Hiram has experience to be a trainer. He also has a lot of experience to operate, and a lot of experience to certify people because he's knowledgeable and trained. So looking at it from Hiram's side, then, would he be thinking of getting an unfair advantage because he has this business? I would say no, because from what he's doing, he's ensuring that the safety of the public is of the utmost importance. And that should be the overriding situation here. Although they may feel that they're being compromised--but there's a balance that we need to look at in a situation like here, where we have a person, who's actually using objective standards. Hiram testified that he uses federal guidelines to ensure that the public interest is foremost and utmost. It's not his—it's not in his best interest to be gaining things if he was to fail in pointing out what's important. So although they may feel that they may have been deprived of certain benefits, or they may feel that other people, you know, shouldn't be subjected to the same thing, this isn't the case in that situation, because Hiram doesn't supervise them. Hiram doesn't get really involved in the process of who gets tested, and when he finally tested or audited, or another performance test, he doesn't do it because of his line of business. He does it because it's the right thing to do. You heard Stan Nakasone say, after he discovered that Hiram had a private business, you're not here to juice. You'd better do the right thing. Public safety is number one. So this is the kind of case that on the facts itself, we shouldn't find that there is an appearance of impropriety. But if you find that there is an appearance of impropriety, then it should be de minimis, because it's not like he's substantially gaining anything from it. He's not. He's making sure that the public interests is of paramount concern. And that's what we're dealing with here. So I would ask that the Board dismiss their complaints and find either that there is no conflict of interest, or if

there is an appearance of a conflict of interest, I would seek that the Board find that under the circumstances of the case, it's de minimis. Thank you for your time.

KK: That word—you used the term de minimis right now. Try explain that again to us.

KAMELAMELA: Oh, sorry. De minimis is—

WHO? --minimal.

AL: Manini.

KAMELAMELA: I'm sorry.

AL: That's okay, _____.

PKO: It's _____.

KK: Thank you.

AL: Mr. Kawahara, I wonder if we couldn't separate this, and if we did it would be in order to dismiss Mr. Nakasone, because Mr. Nakasone doesn't _____.

PKO: They're asking for an advisory opinion on two people, so it's not dismissing. The opinion would be that after Mr. Nakasone—

AL: --okay, as to Mr. Nakasone that there's no conflict, there's nothing to be in conflict about. He doesn't _____. Do you see what I'm saying?

KK: Yeah, I see what you're saying, but I'm not sure—

AL: --we could dismiss that part, finish that. And then deal with the issue with—

KK: --Did he mention by name the conflict?

AL: Yeah, Mr. Nakasone is mentioned in the petition. But my understanding is we're really dealing with this section of the business and the auditing of the people that were trained in the side business. And as I see it, Mr. Nakasone has nothing to do with any of that.

PKO: Well I think I'm going to write an opinion, whatever you guys vote on both of the people. So continue your discussion on the whole petition.

AL: On both petitions.

PKO: Yeah.

AL: As far as—I keep going back to number 4 here, engaging in substantial financial transactions with a person whom the employee inspects or supervises in their official capacity. And it does seem to me that at that time—I'm not saying he didn't inspect them fairly—but at the time he was inspecting people that he did engage in business with. It's not a question of—my understanding of the petition is, it's not a question of whether he was fair, not Mr. Nakasone--Mr. Keliikoa--was fair or unfair in his testing, but whether in fact there is a conflict because he has a business, a financial transaction, with a person who he has later tested.

KK: Any further comments from anybody? Do you want to make a motion to—

GANIGAN: _____, because nobody heard me. _____, because I'm in the same _____ with these guys.

AL: We have to do you separate.

WJ: Yeah, we have to deal with you separately.

GANIGAN: You can't do one judgment on the same thing?

AL: No.

WJ: No.

AL: Anybody else?

WJ: Yeah, I believe there is an appearance, and—

AL: --it could happen, or it would—

WJ: --if an employee provides—

AL: --it would seem to another employee that it might be happening. I could see that. And we're not here to judge the legal and illegal, right? It's whether there is, whether it fits into any of these criteria.

KK: Is there a motion to that effect?

AL: I don't know quite how to state it.

KK: I know, it's going to be real _____ how we word it.

AL: That we render an opinion. We can't use appearance, right?

PKO: It's not in there.

AL: Possible? I don't know how to qualify it. That there is—

KK: --Why don't we take a break and formulate an opinion, and then come back and vote on it.

PKO: If you want to write out words yourself, but you cannot—

AL: --let me just take a second here.

KK: I know it's a very difficult thing to write out clearly.

AL: That, let's see—

KK: We can take a short break if you need some time to set that in your mind. A five-minute break. Don't discuss it with anybody, _____.

BREAK TAKEN FROM 1:47 p.m. to 1:52 p.m.

KK: The meeting of the Board of Ethics will resume after a short recess.

AL: So we're waiting for my motion here?

KK: Who would like to make a motion?

AL: I move that we render an opinion that Mr. Keliikoa's business, when he trains and tests County employees, trains and tests the same County employees, is a financial transaction with a person he inspects in an official capacity and that's under section 2-83(b)(4).

KK: It's been moved, and I cannot repeat the exact words, but—

AL: --you want me to repeat it?

KK: Is there any second, before we discuss this?

WJ: I'll second.

KK: Can we have counsel look at it for clarity and for –

AL: Let me check something.

PKO: You're just quoting that one section, right?

AL: Well, I cut out some words.

KK: Could you read it again so that everybody can hear it? It's a very complex _____.

AL: Do I move, or I make a motion, I make a motion that we render an opinion that Mr. Keliikoa's business, when he trains and tests the same County employees, is a

financial transaction with a person he inspects in an official capacity, and I'm really citing section 2-83(b)(4).

KK: It's open to discussion now—

PKO: --I think you need to—well, let me think. B, you need to read b as well, is he using or attempting to use his official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment for oneself or others, and then it lists, included but not limiting to the following, and four is one of the following. But you need to find first if he's using or attempting to use his official position to grant unwarranted privileges, exemptions, advantages, et cetera, for others. And then four is just an example of how you might do that.

KK: Are you saying that—

AL: --No, I'm not saying, I don't say that part.

KK: _____ guessing at what she's saying, there needs to be further—

PKO: The real violation is up there in b, and then these are four examples of how you might be found to violate that _____.

AL: Okay.

KK: Is it secondary to the motion to have that language?

AL: Well, because –

WJ: I'm not sure if it's his official position to secure _____.

AL: Yeah. I don't think so, no I don't think _____.

KK: Is it advisable or _____ legal to postpone this decision for another time until we can—

AL: --I think that I have to withdraw the motion, because it doesn't fit these.

KK: Yeah, apparently we're having a very difficult time getting the proper words, and in a matter such as this, the proper words are necessary.

PKO: You know, if you don't believe there's a violation, but you want to caution that you know, in the future, blah, blah, blah—

AL: --Is there a way to do that?

PKO: We can write it up however we want to, but you know, what I'm hearing you say, I guess, is that you don't think that he did secure—

AL: --that I don't think he used the position to secure advantages, and so on. But I think there needs to be a—caution is a good word, that it could appear, or it could seem unfair.

PKO: Yeah. Well, I could draft something, but my concern, I guess, is that we can't tell the department how to allocate their manpower, _____, or what to do, and so it would only be like, can you consider in the future doing it this way or that way. And I don't know exactly how to say it. But I guess your concern is if Hiram is testing one of his own students, would that be it?

AL: And, you know, that the unfair advantage—wait, where did I see this—okay, in number two, under 83(a)(2), it's almost like the opposite, which might intimidate subordinates in the discharge of their duties, but it's almost like it seems to intimidate the people who don't take his class. (*TURN TAPE OVER TO 4B.*) So I have to withdraw the motion.

KK: Advise me. Would it be wrong for me to ask the maker and the seconder of the motion to withdraw the motion and make another motion to have you draft an opinion which we can vote on at the next meeting, whether we need to pursue this line of thinking right now? I think we're going to—

KAMELAMELA: May I offer a suggestion. There's a—because it might be a matter of legal advice, if you want to go into executive session because of that, you know, kind of hash things out.

PKO: Meaning you want to have the audience leave, and we just discuss it amongst ourselves. But I would say it seems like she's trying to withdraw the motion, so—

AL: --I think I need to withdraw the motion, because it doesn't fit the _____.

PKO: But I would not be comfortable writing an opinion without you telling me what you want it to say, basically, at least in broad terms, you know.

KAMELAMELA: So that's my suggestion. It's totally up to you.

AL: I will officially withdraw the motion.

KK: Would you withdraw your second?

WJ: I withdraw it.

KK: There's no motion on the floor right now. So, you still need time to—

AL: I would like to pursue some form of caution to—

WJ: --My thinking would be that under section 2-83(b)(4), there is an appearance of impropriety, but it is minimal, and there is no clear violation of the Code of

Ethics. And having said that, it would be just to caution Mr. Keliikoa that this is an appearance of impropriety within the County, but no clear violation can be found.

KK: Based on your guidelines, would you like to make a motion to ask the Corporation Counsel to draft up an opinion based on some of the guidelines you offered right now?

AL: And also in that caution, I think that one of the reasons for the caution is how it appears to fellow employees.

KK: Okay. Is that kosher enough? Are we on legal ground?

PKO: I'll try and you can review it at your next meeting.

KK: Because it is my personal opinion right now, and my opinions usually differ from some of you others' opinions. From what we've been discussing today, and at the previous hearing, I think we all got the message.

PKO: Okay, so is there a motion, second, and you vote on this?

KK: So would you like to make a motion—

WJ: --I'd like to make a motion that section 2-83, letter b, section 4--there appears to be impropriety, but it is minimal, and that to avoid a possible appearance of impropriety, that it is requested that Mr. Keliikoa not test those individuals that he trains on weekends, in his business.

KK: Okay, it's been moved—

PKO: --Do you want to say that, because I think the evidence is there's no one else can do it unless they hire out or whatever.

WJ: I think in past testimony we found out that he only trains a handful anyway, and if that's the case, the County can hire out and provide performance tests. And that would erase any appearance of impropriety. And that there has been no clear cut violation of the County Code of Ethics.

KK: Do you second?

AL: I'll second that we—

KK: --and that this opinion be drawn up by—with those general guidelines in mind. Okay. All those in favor of the motion, say aye.

KI: What about discussion?

KK: We've been discussing it. Okay, do we have any discussion?

KI: Yeah, I feel this could open up a can of worms, if we do it this way. If you're going to deny Mr. Keliikoa from doing his job, then what happens when County employees with CDLs obtained from the County work weekends for Kona Trans, Mihara—

AL: --But we're not addressing that.

KI: But now it becomes open. It can be addressed, because they got their CDL from the County.

AL: I think we're just saying that a person that he trained, he can't test.

KI: But that's his job.

AL: No, I mean a person that he trained in his business.

KI: That's his job, to test them. Unless they hire another safety trainer or whatever, that is his kuleana. And if you're going to privatize it, then they got to come up with funds. Am I not right, Mr. Nakasone?

WJ: But he's not auditing now anyway, right?

AL: No, but he could again. It's his job, they don't have anybody else to do it.

WJ: But we're only talking about the people that he trains on weekends, which is minimal. But I understand the can of worms.

KI: Right. Because now he can train them, but they're bringing up this complaint.

WJ: Because there is an appearance of impropriety. There is an appearance. And I can see how they perceive it.

NAKASONE: I need to _____. We pay their license. In essence, we pay for the license.

WJ: Right, I know this. I know this.

NAKASONE: We're talking about plumbers, electricians, drivers, _____.

KI: The County pays for their certification.

NAKASONE: It might be a conflict of interest here, because we own the license. They go out and they make money out of our license. All right. So he's right. I never like bring it up because, you know, like he says it's going to be a can of worms. Your decision is very important, because they do have to come up with _____, saying that if we buy the license, you guys can go and moonlight. Period. _____ talking about a whole bunch of people. And I don't want to go

there, because you guys think the County employees make money. A lot of them got to get a second job. _____, and I don't want to go there. If you're going to render an opinion like that, it's going to _____. We own the license. We pay for it 100 percent.

KI: They pay for their physicals and everything, for them to have the CDL.

AL: So if we caution Mr. Keliikoa that there can be an appearance—

KI: The only other suggestion I have is if Mr. Keliikoa is going to audit one of his students that he taught privately, that he have a second walk with him through the audit to just—I don't know. I'm just throwing that out. It's not really our concern.

NAKASONE: Yeah, it's a management thing. But in our proposal to the union to resolve this _____, so the union is _____, because you guys _____ the answer. _____ too, because that's our license, all right. This is our license. We paid for the license. We paid for 100 percent of everything. And they use our County facilities or equipment _____. You want to talk about conflict of interest, that's it.

AL: What if we caution him but it seems to _____ minimal impact idea.

PKO: So basically you're saying there is no violation of the—

AL: --No, we're saying there is no violation of the Code of Ethics.

PKO: It may appear that to other employees, but it's not a violation.

AL: So that's—but I would like the wording to somehow caution Mr. Keliikoa _____.

NAKASONE: Because he does not call the shots. The department, Public Works _____ I cannot do that. After three o'clock, I cannot go there. I cannot even caution him, because that's his business. What we've done is we've asked the union _____, but I cannot do that.

AL: _____ his business.

NAKASONE: That is correct. It's beyond our scope.

AL: So we have an opinion that there's no clear violation of the Code of Ethics.

KI: Period.

WJ: Can I reword my motion? I'll take another stab at it.

NAKASONE: We're all sitting in the back here, waiting for your opinion. Since Kerry brought it up, _____.

WJ: Kerry brought up a good point. So, let me withdraw my original motion and say that—

KK: --Do you withdraw your second?

AL: I withdraw, withdraw the second.

WJ: Inasmuch as section 2-83, letter b, section 4, shows possible appearance of impropriety, shows a possible appearance of impropriety, it is minimal and there is no clear violation of the County Code of Ethics, seeing as Mr. Keliikoa does not solicit individuals into his business. Period.

KK: That's your motion?

WJ: That's my motion.

KK: Did you get it down? Is there a second to that motion?

AL: I need the motion read again.

WJ: _____ section 2-83, letter b, section 4, there are appearances, or an appearance of impropriety—

AL: --in regards to—

WJ: --in regards to—

AL: --Mr. Keliikoa.

WJ: Mr. Keliikoa. There is no clear—

AL: --While there is an appearance, there is no clear violation?

WJ: There is no clear violation of the Code of Ethics, insomuch as he did not, or at least these gentlemen did not prove, that he solicited any subordinates into his weekend business. Period.

PKO: I guess the problem I have with that is that four is it could be either, any one of those three things. So you're only saying that one did not exist, but what about the other two? Isn't the basic thing—let me try to—he did not use or attempt to use his position, you know, up where b is. There is an appearance that he may have engaged in a _____, because he inspects and supervises people he has trained, but there is no clear-cut violation of that.

WJ: But I'd also like the wording in there that there was no evidence that he solicited subordinates.

PKO: What about selling or engaging in substantial financial transactions?

AL: He did engage in financial transactions.

WJ: I think the key word is solicit—I'm preparing for Mr. Ganigan later—in which if he can prove that solicitation did occur, then we might have a violation of the Code of Ethics. And so I'm leaving that door open.

KK: You're making your—

WJ: --And I'm saying there's no violation based on the testimony you've heard today.

KK: Is there any second to the motion?

WJ: I know it's a little wordy, but –

KK: If I don't hear one soon, I'll call time.

AL: I don't think it's a complete motion. I mean, I don't think it's going to work. I think that we do need to refer that question _____.

KK: We can discuss the merits or the demerits of the motion after it's—

AL: --I'm not going to _____. But we can't discuss it until I second it?

KK: No. Normally you should. You can amend it—

AL: --Okay, okay. I'd better second it so we can discuss it.

KK: I'm about ready to call time.

AL: Okay, I better second it so we can discuss it.

KK: Okay, it's been moved and seconded, the motion that you made there. Now it's open for discussion.

AL: I think we would say again, what you were saying about _____, while the employee did not—

PKO: It is not shown that he used or attempted to use his official position to secure or grant unwarranted privileges, exemptions, advantages, et cetera. However, you know, referring to four, you feel there's an appearance of impropriety in whatever was described in four, but it is minimal and not a violation.

AL: I would like to have that. Do we add it in there? Is there an amendment to the wording, or – so we’re changing the wording. I don’t know how to do this. It’s gotten too complicated for me.

WJ: I amend it to exactly what she said.

AL: I’ll amend the motion on the floor—

PKO: --He has to amend it with his—

WJ: --I would like to offer an amendment and follow Corporation Counsel’s advice in wording it. Did I get that right?

AL: Okay, what did we do with that—wait a minute. So now it reads, while it is not shown that—

PKO: --You know, you can meddle with it after I present it.

AL: Okay, okay. Thank you.

KK: You were amending it—

AL: --and I’ll second it.

KK: It’s been moved and seconded to amend the motion—

AL: --to the wording—

KK: --do we understand what the amendment is about? Do we understand what the amendment is about? Okay, all those in favor of the amendment, say aye.

AL: Aye.

WJ: Aye.

KK: Opposed?

KI: Opposed.

KK: Chair votes aye. The motion is amended as worded. The vote is three to one with member Kerry Inouye dissenting. Okay, now. Correct me if I’m wrong, we are going to present it—and she’s going to write an opinion based upon this motion. Are you ready for the question? All those in favor of the main motion as amended, say aye.

AL: Aye.

WJ: Aye.

KK: Aye. The Chair votes aye. All opposed say nay.

KI: Nay.

KK: The motion is carried. Okay. Now the next matter. All right, we need to move on to Petition No. 2005-11—it's withdrawn. Petition number—unfinished business. Number 2005—

KAMELAMELA: May I ask a question?

KK: Yes.

KAMELAMELA: We haven't dealt with Stan here.

AL: I thought we did.

KAMELAMELA: No, that was only Hiram's.

AL: I thought we did the motion to dismiss it—oh, no, we didn't. No we didn't, that's right. We didn't finish that _____. So is it _____ to do that? Where are we, how do we word that? That we render an opinion that Mr. Nakasone, there's no violation of the Code of Ethics by Mr. Nakasone. So I move.

WJ: Second.

KK: Moved and seconded that we find that Mr. Nakasone, and correct me if I'm wrong—

AL: --has no violation—

KK: --no violation—

AL: --of the Code of Ethics, is not in violation of the Code of Ethics.

KK: You'd better make your motion clearer.

AL: Okay. I move that we find Mr. Nakasone is not in violation of the Code of Ethics at this point. He's not in violation of the Code of Ethics.

KK: We find that Mr. Nakasone is not in violation of the Code of Ethics at this time. Okay, that's kind of the motion—

PKO: --as alleged in the petition. As alleged in the petition.

AL: As alleged in the petition? Okay.

PKO: Petitions.

AL: Petitions.

KK: Moved and seconded. Are we ready for the—is there any discussion to the motion? If none, all those in favor say aye.

AL: Aye.

WJ: Aye.

KI: Aye.

KK: The Chair votes aye. Any negative votes nay? None _____. Unfinished business. Continued hearing on Richard Ganigan's petition. Thank you, gentlemen, for your time. I assume you have the same—

KAMELAMELA: Well, Hiram's here, but from whatever testimony was provided before, I don't want to repeat it at all.

KK: Do you want to recap whatever happened before, or—

KAMELAMELA: --No.

KK: You don't have to make any opening statements, that was already done.

KAMELAMELA: No opening statements.

WJ: I think I was the member of this Board that asked for the extension to allow Mr. Ganigan an opportunity to show any evidence as to solicitation done by Mr. Keliikoa, and I think that's where we should start.

KK: Okay, Mr. Ganigan.

GANIGAN: The solicitation stopped. I asked several workers that was in the lunch room with me that day. They're scared of losing their jobs, because Nakasone called. Those two guys that just walked out, and several others, that's why they withdraw from this case, because he threatened them over the phone--if they don't pull their petition, they will be fired. I am no longer an employee from the County, since I have filed that petition and they were threatened. On December 14, on the 15th, I was terminated. So I do not work for the County no more. And that's what's going on right now.

WJ: Well, were you able to bring in fliers or business cards from Mr. Keliikoa?

GANIGAN: No, nobody would cooperate with me and give me whatever they had. It's only me against him. What he said in that lunch room that day when I was sitting there eating lunch, it's between me and him. And that's hard to prove because they're

scared and running because of Nakasone threatening and of my termination. So they're scared of losing their jobs and for just take care of their families. They're running scared.

WJ: I hope that you understand that without that proof, that that's why—

GANIGAN: --Yeah, I screwed—

WJ: --that's why I extended the hearing—

GANIGAN: --I can't do nothing about it because they're running scared. You can't blame those guys for doing that. I got a mortgage to pay. I'm really struggling right now. These guys don't give a crap behind me. But I'm standing my ground. And I'm telling the truth, you know. I'm telling the truth, what I heard. Why would I make up something like that? He solicit, he did what he did, and now he's denying, and he goes to church, I don't. I'm not lying.

WJ: But unfortunately, without--

GANIGAN: --I don't have any evidence. That guy that walked out—he had a card, but he don't know where he put it. He misplaced it—

WJ: --any witnesses or—

GANIGAN: --I can't do nothing. They're scared of themselves.

WJ: I would have to again make the same motion that I did in the previous hearing, that without the evidence of solicitation, which was the key point, that there is no clear violation of the Code of Ethics, although there might be some appearance of impropriety.

KK: You are making that motion?

GANIGAN: I wish those two guys stayed here, so I could use them as witnesses, that they were threatened. But they walked out, so I can't do nothing about it.

KK: You are making a motion?

WJ: Would it be appropriate for me to make that motion at this time?

PKO: Yes.

WJ: Yes, then I am making a motion, the exact same motion I made last time, which is although there may be an appearance of impropriety, there is no—

AL: --without evidence—

WJ: --evidence towards any violation of the—

AL: --the motion needs to be changed a little bit to reflect that without evidence—

WJ: --Right. Because this meeting was postponed so that we could see evidence—

GANIGAN: --I can't get evidence if guys are getting threatened.

AL: But we can't—

KK: --So you're moving to postpone, or—

WJ: --No, no, not postpone. I'm making a motion that there is no evidence there is a violation of the Code of Ethics.

KK: So denying the allegations of the petition?

WJ: Since there was no evidence of solicitation and—

AL: --no clear evidence.

GANIGAN: Nobody would step forward, they're scared of losing their jobs.

AL: So no clear evidence, because he did testify but we don't have any –

KK: Okay, you were seconding the motion?

AL: I'll second.

KK: It's moved and seconded that we deny the—

AL: --with his wording, how was the wording?

WJ: Let me put that in wording.

AL: Do you have the petition and the other motion?

WJ: No. Let me try and say it again.

GANIGAN: It's clear what the solution is. He should pick what job he's going to keep. Going to do his outside work, or going to keep the County job. You can't have your ice cream and cake at the same time.

AL: But we don't need to say that.

KK: Do you understand what the motion is about?

AL: The motion—

KK: --Do you understand?

GANIGAN: Yes, I do.

KK: You do understand the basis of the motion. Okay, now we have a period of discussion. Is there any discussion?

AL: I would like—are we in the discussion phase now? I would like in this motion for Mr. Ganigan—

WJ: --Yes, Mr. Ganigan—

AL: --to respond to Mr. Ganigan's position that we do say no, like no clear or—

KK: --are you amending the motion?

AL: --no, I'm just, because _____. So we can use the same wording.

KK: Mary, do we have the—

WJ: --there is no clear evidence of solicitation. And that's why this meeting was postponed, to see if there was—

PKO: --Well, it's the same in that the top part of b is not—

WJ: --exactly.

PKO: Right.

MC: You want me to read what—

AL: Yes, please.

MC: Although there may be an appearance of impropriety—(TAPÉ #4 ENDED. INSERT TAPÉ 5) – Although there may be an appearance of impropriety, without evidence, without clear evidence of solicitation, there is no violation of the Code of Ethics.

PKO: Okay, good.

KK: Is that the substance of—

WJ: --that's it.

GANIGAN: There is another—lot of evidence, but I wasn't able to obtain it, they wouldn't let me take it out of their office. So, that's another _____. There's a lot of evidence in this case, but sorry I can't bring it, because they pulled out on me.

KK: Corporation Counsel, you know Mr. Ganigan stated that he no longer works for the County. Does this have any bearing on this case at all?

PKO: No.

KK: If originally he filed it as a member—he was working for the County. Now he's no longer employer for the County. Does that have any bearing at all?

PKO: No. Anyone off the street can ask whether a County employee is violating the Code. So he doesn't have to be—

KK: --I'm just asking if it has any kind of legal implications.

PKO: It doesn't.

KK: Is there further discussion? Are we ready for the question? All those in favor of the motion, say aye.

WJ: Aye.
AL: Aye.
KI: Aye.

KK: The Chair votes aye. Obviously there's no opposing view. The motion is carried unanimously. I am—

WJ: Mr. Ganigan, I sympathize with you, and I hope you've found other employment.

GANIGAN: No, I can't get another employment, because my case is still ongoing. The workmen's comp part is _____ bad. The County's very bad.

WJ: Thanks for taking the time to come down.

GANIGAN: Yeah. Thanks.

AL: Good luck, good luck.

KK: Item b, further discussion regarding disclosure of financial disclosures—disclosure of interest.

PKO: Okay, the Board asked me to find out information for them, and I believe Mary handed it to you, what the other counties do about requiring reporting of spouse and dependent children's income. I also got all the boards and commissions that the County has, and what they do. Because if you know—I believe Maui and the State specify which boards and commissions the Code applies to. Ours does not, and I'm not sure how many of you were on the Board, but the Board moved in a petition concerning Louis Kaouiwi that the Code of Ethics did not apply to advisory boards and commissions, so that advisory boards should not have to disclose any financial interest. It has been our office's position that we still would

like them to, but it's only voluntary in view of that opinion about this Code, so I'm thinking, do you want to—rather than just pick piecemeal, kind of look at it in the bigger picture and see if you want to specify which boards and commissions it applies to. There may be some advisory boards or commissions that the Code of Ethics should apply to and financial disclosure requirements should be given to them. So my suggestion—I try again, is that under the Sunshine Law, you can have a committee work on it and make a recommendation back to the full Board, so that you could appoint two people to—and they can meet without giving notice of meetings, as long as it's understood that they will report back to the full Board, make their recommendation, and then the Board subsequently will vote on this whole issue, which I'm viewing as broader than just spouse income or children's income, or, you know, and so--

AL: The thing that is at issue is whether certain boards and commissions even need to have any kind of financial disclosure?

PKO: Well, based upon your prior opinion, the advisory boards don't have to, because the prior opinion says that the advisory boards did not fall under the Code. Now, I think the way our Code was written, it, you know, it referred back and forth, back and forth, and it was confusing _____ correct decision, but do you want it to remain that way, or do you think there are some advisory boards that have important enough responsibilities that they should have to report? And then of course, Lincoln's saying that we should distinguish between boards and commissions and elected officers and department heads and all of that, so it's—I think it's not an easy decision to make and I think a committee maybe could _____ that, go talk to people, get more information, and then make a report back to the Board, but that's my thought. Otherwise, if you just want to know what the State and Maui and whatever do, it's in here.

KK: How come Hawai'i is this thick, and Kauai is this thick?

PKO: Well I only pulled one section, you know.

WJ: My blood sugar is a little low, so if no one gets upset, I'm going to eat this snack now. After that I'll need to take a nap.

KK: You said that the prior opinion was that advisory commissions do not have to file?

PKO: They don't fall under the Ethics Code. They don't fall under the Ethics Code at all. And therefore they don't have to file financial disclosures, gift disclosures—

KK: --_____ advisory.

PKO: Yeah. So do you want that to remain the state of the situation, or do you want to suggest the Code be amended to list which boards and commissions to which these things apply and, you know, what information do you want to require of people.

KK: It's a bad time to ask that question.

WJ: Really. Can we postpone this?

KK: I agree, I agree.

PKO: Well would anyone want to serve on a committee so that you can work on it and not just discuss it at meetings, is what I'm saying. If anyone is—you know, I could meet with you, we don't have to give them notice, we can just talk about it and come up with a recommendation, or say these are the issues which we see.

KK: Would you be amenable to that?

WJ: I think we should probably _____.

PKO: What?

KK: I don't know, that's one of the reasons why I opted to resign from this Board, because I don't want to do homework. It's too much.

WJ: It's too much _____.

AL: _____ who wants to do it.

KK: Well without having any committee or anything right now, unless you want to be a committee of one, it seems as though we can postpone this decision and we can think about it in the meanwhile without having to—I don't see anybody jumping out on a committee. Can we just postpone the decision and let Bob handle it next time?

PKO: Why don't you appoint him, since he's not here _____.

WJ: That's a good idea—I nominate the Chair.

KK: Well, I'll inform him—Mary, could you inform him that this decision was postponed and we'll take a vote on it in a little while, but—let's take a vote on it. All those in favor of postponing this decision on item b—we need a motion first.

KI: I think you've got to make a motion first. I make that motion.

WJ: Second.

KK: Moved by Mr. Inouye, seconded by Mr. Joseph, that we postpone this discussion of item b. Is there any discussion? Hearing none, all those in favor say aye.

KI: Aye.

WJ: Aye.

AL: Aye.

KK: And opposed? Chairman votes aye. All those opposed, nay? Motion is carried. And Mary, would you make sure—

MC: When did you want me to put it on the agenda?

KK: The next meeting, in March.

WJ: It's going to be busy for me.

KK: If he does his homework and comes up—can you talk to him about what you suggested today? Make sure that he knows why we postponed this thing.

PKO: Because the next meeting you have the impeachment petition. Are you going to have time to do both _____?

KK: It doesn't have to be. Did we say postpone til March?

PKO: You did.

WJ: I said April.

PKO: He said April and you said the next meeting.

WJ: Yeah, and then you said _____. It was my motion to—

KK: --I didn't hear that. April is fine. But anyway, let Bob know his penance for—

AL: So we postponed til April?

WJ: Yes.

PKO: But he can't be the committee, unless you're naming him the committee.

KK: It doesn't have to be a committee. He can just be thinking about what we discussed today. Okay.

WJ: Can I make a motion to move into executive session?

PKO: And it has to say why. That's just the law.

WJ: Because we have to review the disclosure of financial interest for—

PKO: --where personal matters will be reviewed.

KK: It was moved that we move into executive session.

KI: Second.

KK: You seconded that we move into executive session to consider the financial disclosures of these twelve people listed here. All those in favor, say aye.

WJ: Aye.

KI: Aye.

AL: Aye.

KK: Objections?

The Board entered into Executive Session at 2:43 p.m. and re-entered Regular Session at 2:55 p.m. A motion to re-enter Regular Session was made by WJ and seconded by KI. All members voted aye to re-enter Regular Session.)

KK: We are now back in regular session, and we need to vote on this. One _____ withheld approval by Mr. Joseph pending the full disclosure of some information in here. So would someone like to—

AL: Which one was that?

WJ: What is the name of that person?

KK: Well, I don't know if we can release—do we need to say that in open session, whose it is?

PKO: Their name is on the agenda anyway, so you can say the name. The name is on the agenda anyway.

KK: The person in question is Gary Yoshimura.

PKO: And then you want clarification on what section of the form?

KK: Clarification of section—item 5, listing real property value in the County. So would someone like to make a motion to accept –

WJ: I'd like to make a motion that we accept and file the financial disclosure statements on Jack Ferguson, Francisco Flattes, Stephen Frendo, Glenn Hudman, Tsukasa Ishii, Kelly Kurakazu, Ernest Matsumura, Stanley Momohara, Earl Reimer, and Jan Yokoyama.

KK: What about—oh, Ronald was the one.

AL: Second.

KK: Moved and seconded that we accept and file the applications, the disclosures of the people mentioned, with the exception of Gary Yoshimura, whose application needs further clarification. All those in favor, say aye.

WJ: Aye.
AL: Aye.
KI: Aye.

KK: Chair votes aye. Opposed, nay? Motion carried. Is there any further business? Announcement—the next regular meeting is scheduled for Wednesday, March 8, Department of Liquor Control, 101 Aupuni. We've had a long day. Any further announcements or motions?

WJ: I move that we adjourn.

KI: Second.

KK: The meeting is adjourned.

PKO: Did you vote?

KK: I think we don't have to—

AL: Aye.

KK: Anyway, all those in favor say aye.

WJ: Aye.

KI: Aye.

AL: Aye.

The meeting adjourned at 3:00 p.m.

Respectfully submitted:

Mary E. Crosson, Secretary

NOTE: BLANKS INDICATE INAUDIBLE OR INDECIPHERABLE SPEECH.