

# HAWAI'I COUNTY BOARD OF ETHICS

## MINUTES-REGULAR SESSION

September 10, 2003 ~ 10:00 a.m.  
Department of Liquor Control Conference Room  
101 Aupuni Street, Suite 230, Hilo, Hawai'i 96720

**Present:** Leroy Victorine, Chairman (CHAIR)  
Sharon Cislo, Vice Chairman (SC)  
Reeve Williams (RW)  
Kerry Inouye (KI)  
Bobby Jean Leithead-Todd, Deputy Corporation Counsel (BLT)  
Paulette Cainglit, Secretary (PC)

CHAIR: The meeting shall come to order. And this time we're going to follow the agenda which says Statements from the Public.

BLT: Mr. Chairman, there is no statement from the public.

CHAIR: There is no public. Okay, thank you. We will dispense with that. Approval of the minutes. We have the minutes circulated of August 13 regular session and executive session. What is your pleasure.

SC: I have a question on page 42.

CHAIR: Of...Regular or Executive?

SC: Regular. I think we've got Joel voting twice...or it's just a misprint.

PC: That was when they had...remember they said, "Aye" and then they said, "No," they shouldn't be saying aye, it should be nay.

SC: Right, but there's two JGs.

PC: Yeah...'cause first he said aye, and then he realized it shouldn't be aye, he meant to say nay. Both Bob and...

SC: But didn't Kerry vote?

PC: Oh. Kerry didn't vote.

SC: Or did you hear it on the tape and just not put it in there.

PC: Yeah...but I think everybody voted.

SC: Maybe we can check.

PC: But I'll check...yeah, I'll go ahead and check on that.

RW: He did... 'cause on page 43 he voted...all in favor.

PC: 42 or 43?

RW: 3.

PC: Oh, 43...I was looking at 42, sorry.

SC: So did we vote again?

RW: There's a whole procedural issue there that we went around, around on. My question was aye or nay, question mark.

BLT: Right.

RW: Nay was clarified.

BLT: So you ended up voting again is what happened.

SC: Okay...so it's okay.

BLT: Because the first vote there was some confusion over what the motion and what the correct vote should be.

CHAIR: If I recall correctly...actually we only had one Petition here...one issue of fairness or unfairness and so forth.

BLT: Ah huh.

CHAIR: We did it in two parts...we discussed in two parts...one that the letter of apology in content wasn't sufficient enough, but then was the whole action proper and timely...and the answer to that was no. So therefore, there was a violation...which is what we voted on.

SC: Okay.

CHAIR: Am I correct? Do you think that was a sufficient...

SC: Then it was in two parts.

CHAIR: That's the way we did the vote.

BLT: Let's just double check on that.

CHAIR: But, the issue was...we ended up saying there was a violation because of the timeliness.

BLT: Well, the vote on page 43 is referring to Communication 2003-26, not to the Petition. So we need to double-check those minutes if we need to correct that section. It might just be that they were inaudible.

SC: Okay.

PC: But I would have put a blank though.

SC: So what do we do then. Do we approve the minutes with the exception of page 42?

BLT: Ah huh.

SC: Okay then, I'll make a motion.

CHAIR: Well, if we were to, if we're going to find an error on 42, what should it then be changed to...or corrected to?

SC: To see if Kerry was able to vote or not.

PC: No, I think in that portion, just those two...on page 42, we're referring to right?

SC: Correct.

PC: Voted, and I think the Chairman detected some uncertain voters, so that's why he brought up parts of sufficiency on that issue of that part, and so we re-voted again right?

SC: I'm just looking at the...

PC: We voted again, but on the top of 43...

RW: Oh, I see what Sharon's saying. Petition 5-05. Be able to vote on it properly...is that it Sharon?

SC: Yes.

PC: Petition 5-05...yeah.

RW: 'Cause on 43 we went back to 2003-26.

RW: Boy, 'common we need a lawyer's eye on this thing. Do your symbolic logic scan of this BJ.

BLT: Well, part of the problem sometimes, is you're just dealing with what's on the tape, than what you can actually hear, and sometimes you can't hear everything.

CHAIR: Okay, I think the issue that we're talking about...the main issue is the fact is that we did vote on and determine that there was a violation of the code of ethics. In the middle of the page, it says...Bob asks, "May I ask a question?" So we have determined that Mr. Hatada had breached and has violated the code of ethics on this issue. My answer was yes, because of the vote that we did up there, that it was a violation.

SC: No, I think if Kerry didn't vote on that one.

CHAIR: But we had enough.

SC: Okay. But we all have to vote, is that correct?

CHAIR: Somebody can abstain, but we need a minim...we need a quorum or a majority of three out of five.

SC: Correct.

PC: It must be then Kerry, if you did vote, it must have...it wasn't on the tape.

SC: Because if Kerry didn't abstain, I just wanted to make sure that if he voted, it was on the record.

BLT: There should be a correction, and it should be there, because my recollection is that everyone voted on the issue. And everybody voted the same.

CHAIR: And nobody abstained.

BLT: Nobody abstained, so we need to make a correction on page 42.

CHAIR: Kerry your vote was? Violation or not.

KI: Oh, it was a violation.

CHAIR: That was your vote on that?

KI: Yes.

CHAIR: So we should correct this show that Kerry also voted.

BLT: Ah huh.

RW: Okay, good eyes.

CHAIR: Okay, with that correction...and do we have any other additions or corrections?

RW: Shall I make a motion to accept the minutes as with...noted with corrections?

KI: Second.

CHAIR: It's moved and seconded to accept the minutes as corrected. All in favor?

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: And the Chair votes aye. Executive Session minutes.

SC: I make a motion to accept the minutes of the August 13, 2003 Executive Session.

RW: Second.

CHAIR: It's moved and second to accept and file the Executive Session minutes of August 13. All in favor say aye.

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: Aye. Any opposed? It is passed. Okay. Communications. We all have received I believe the Communication 2003-4 from Lincoln Ashida, anybody not receive that? Got any questions on it? Otherwise I'll accept a motion to accept and file.

KI: So moved.

RW: Second.

CHAIR: It's moved and seconded to accept and file Communication 2003-37. All in favor?

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: Aye. Passed. Communication 2003-38. Again, from Lincoln Ashida having to do with training.

SC: Motion to file.

CHAIR: Motion to accept and file made.

RW: Second.

CHAIR: Second. All in favor.

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: Aye. Passed. 2003-5 letter from Bobby Jean Todd relative to phone call from Mr. Russi.

SC: What's that...I'm...?

PC: We're on 3.

BLT: We're on number 3.

CHAIR: I'm sorry, I'm sorry...let me correct that, yes. I have 39.

PC: We're on 41.

CHAIR: Correction, we'll do Communication 2003-41, Memorandum to All Department Heads, and County Boards and Commissions from Harry Kim regarding Confidential Communications.

SC: Motion to...

CHAIR: And it's self-explanatory.

SC: I make a motion to accept and file 2003-41.

KI: Second.

CHAIR: Moved and seconded to accept and file. All in favor.

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: Aye. Passed. Okay. Unfinished Business. Petition 2003-5, Thomas Russi and Christine Paul complaint against Wendell Hatada.

RW: I'd like to say that, I'd like to...Mr. Chair, say that I did receive an unsolicited phone call from Mr. Russi regarding this matter, informally, off the record. He was under the impression that I was amenable or somehow favorable to a gambling charge against Mr. Hatada. And when I told him that I wasn't so pre-disposed, that if he had a case to make he could state it in a following meeting... not that I'd want to see that, but that he could do that, and that we sort of had heard nothing in my judgment to warrant basis for a gambling ethical charge against Mr. Hatada. He abruptly hung up. And that was the end of it.

CHAIR: And he wasn't...he didn't treat you fairly?

RW: I was wondering whether I had received courteous treatment.

CHAIR: I must point out that at the last meeting he was very clear about not being covered by the ethics code. Okay, thank you. Any others?

KI: Mr. Chairman, I also received an unsolicited phone call from Mr. Russi. The exact date of the phone call I don't remember, however, it was a holiday. I remember that 'cause my wife was at home...she answered the phone. He also had the impression or was under the impression that I would be favorable towards a more harsh penalty or judgment against Mr. Hatada. And well, one of the things he wanted to say was that he thought I was one of the few board members that was willing to listen to his complaint fairly. And he did not say that the other board members would not listen, however, I guess, being that I didn't make any statements during the last meeting, he was under the impression that I would be favorable toward a more harsh punishment for Mr. Hatada. However, that is not the case.

CHAIR: Will these phone calls influence either of you, either for or against the vote that we'll take this under?

RW: No way.

KI: No.

CHAIR: Thank you. Okay. We can go on with Bobby Jean's letter 2003-39. The answer was that we will not put off in giving the answer, we will not delay the issue of the...his petition this morning, in order that he can attend another meeting.

SC: I'd like to check, he was already notified?

CHAIR: Pardon?

SC: He was already notified?

CHAIR: Yes.

SC: Okay.

CHAIR: I'll entertain a motion to accept and file.

SC: So moved.

KI: Second.

CHAIR: All in favor?

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: Aye. Passed. Communication 2003-40 is a letter addressed to us relative to Petition 2003-5, and its an objection to the request from Russi/Paul to delay further action, and this is written by Joseph Kamelamela. I think the issue is moot because we declined to do it. I'll accept a motion to accept and file.

SC: So moved.

KI: Second.

CHAIR: Moved and seconded to accept and file. All in favor.

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: Aye. And that is passed. Okay, so the issue now is the approval of the informal advisory opinion re unfair treatment.

BLT: Mr. Chairman, I'd like to note that there was a typo under the decision section of...the correct reference to the Code of Ethics should be Article 15, Section 2-83 (a)(3). There was typo when I hit five instead of three with my clumsy fingers. So, we have prepared a corrected...to correct that typo. It doesn't require an amended one, just correcting the typo.

RW: This...in the Decision or Conclusion section?

SC: In the Decision.

BLT: From the Decision.

CHAIR: Last line.

RW: What about the very beginning. I see also you cite 2-85(a)(3), Conduct of Officers.

BLT: Yeah. Those are mistakes too.

RW: Those are mistakes as well.

CHAIR: What is that one now?

BLT: The first page.

CHAIR: First page.

BLT: And that should be 83.

CHAIR: Okay. Section 2, so all the 85's should be 83's, right?

BLT: Yeah. 'Cause 85 refers to contracts.

CHAIR: With...and those typos will be corrected.

BLT: Yeah.

CHAIR: So with the typo corrections noted...I don't need to read this, everybody's got it. What is your pleasure.

RW: I move to accept that we find in form of the finding...finding of the informal advisory opinion...with the changes noted.

CHAIR: The motion is to process, if you will, the Petition with the changes noted from section 2-85, should be 83, which is just merely a typo. Do I hear a second?

SC: Second.

CHAIR: It's moved and seconded that we approve the Informal Advisory Opinion with noted changes. All in favor?

SC: Aye.

RW: Aye.

KI: Aye.

CHAIR: Aye. Any nays? It is passed. Anybody got any further business or items to bring up. That being said, or not said, as the case may be...next regular monthly meeting is scheduled for Wednesday, October 8<sup>th</sup>, at 10:00 o'clock.

BLT: Mr. Chairman?

CHAIR: Yes.

BLT: I can get another attorney to be with you, but on that particular date, I'm not available. So the question was whether the Board wanted to have the meeting on the 8<sup>th</sup> or we can do it the following week...on the 15<sup>th</sup>.

CHAIR: Would it have to be on a Wednesday?

RW: What about a Thursday or a Tuesday? Somewhere within that week.

CHAIR: Does anybody have problems with dates?

BLT: I can handle...I can handle a new date.

SC: With what?

CHAIR: With the date.

SC: The 8<sup>th</sup> is fine with me.

CHAIR: Alright. I would prefer to stay with Bobby Jean, rather than to go back and forth with attorneys, so...

BLT: And the 15<sup>th</sup> is fine, if you wanted to do it on the 14<sup>th</sup> a Tuesday. That would be...

CHAIR: 7<sup>th</sup>.

RW: You're going to be gone or would the 7<sup>th</sup> work?

BLT: Well, that week we could do it on the...well, how about the 7<sup>th</sup>?

CHAIR: Well, let me turn that around and say, how about the 9<sup>th</sup>? The reason is...

BLT: Oh, I'm gone the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>.

CHAIR: Oh, okay, alright, that's fine.

BLT: I'm on Maui.

CHAIR: The 7<sup>th</sup> okay for you folks?

RW: Okay with me.

SC: I'm okay with that.

KI: Yeah.

CHAIR: Okay, then let's do it on the 7<sup>th</sup>.

BLT: Okay.

RW: Paulette, please give us a reminder or jingle, so we know that. We're programmed for Wednesdays.

SC: Can you send the packets out...

PC: This will be a very...

SC: With some of these.

PC: Oh, okay.

CHAIR: Okay.

SC: Will the meeting be in Hilo then? Do we propose...

CHAIR: Probably so, unless some issue comes up that would be conducive to holding it in Waimea or Kona or whatever.

SC: Okay.

RW: Russi is not on the agenda as of yet.

BLT: As of yet...

PC: As of yet...

BLT: No.

CHAIR: And just...

RW: If he is, he can do anything he always does.

PC: Oh, I do know that Mr. Gimpel had requested if we could accommodate him and have the October meeting in Kona.

CHAIR: Well, it is my feeling that while...we would want to accommodate and so forth, if...and I'd like to be able to help Joel in this way. If we have another meeting like this that is...doesn't have much to do, I don't see where everybody goes to Kona for one person. Whether it be a Petitioner or a member of the Board.

RW: Yeah. I agree. I agree too. But if there's a conflict of a Petitioner or something that close touches this last one we did, then we'd certainly want to come over.

CHAIR: Yeah. Well, we have done this...we've moved things for the Russi's, Russi and Paul. We've done it for Mr. Tamaye in the past...gone to the scene. And we could very easily, if there was a Petition that was in any way complicated we needed to Ka'u, we could do that too. But, merely to have someone be able to be in presence, I don't really see an economical value.

RW: Yeah. Do a teleconference.

SC: Why can't we teleconference?

BLT: There are difficulties with the Sunshine Law on teleconferencing.

RW: Oh.

SC: I see.

BLT: Because you have to publish ahead of time where people are calling in from, and if...the biggest problem is if in the middle of the meeting his telephone connection should go down, you have to stop the meeting. And you cannot proceed with the rest of your business. And so we're still working out the kinks, but it's very problematic. We have all this technology and we're not able to take advantage of it.

CHAIR: Yeah. And in public meetings where the Sunshine Law applies, I have a great problem of even the concept of either telephonic or television conferencing for the very reason that she's talking about. Secondly, I think it's hard enough in business when we have these telephonic conferences and it's static, and you get all kinds of little things that show up, and what not. It's very difficult. I think...the issues that we deal with having to do with ethics are of sufficient importance, should be done on a face to face basis with everybody. It would be better for us to pick up and go to Kona even if it's for only one person, if It's important enough...my personal feeling. Okay. That being said, anything else? Okay, it's Tuesday, October 7<sup>th</sup>, 10 o'clock some...probably some place in Hilo will be determined.

BLT: We'll look for the availability either of this room the Liquor Adjudication Board room or the County Council room.

RW: This is a great room.

BLT: Convenient for us.

SC: Ah huh.

CHAIR: That being said, we can adjourn.

RW: I move to adjourn.

CHAIR: Any second?

SC: Second.

CHAIR: All in favor.

SC: Aye.

RW: Aye.

KI: Aye.

JG: Aye.

CHAIR: Aye. We are adjourned.

**(Meeting adjourned at 10:25 a.m.)**

Respectfully submitted,

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Paulette Cainglit  
Secretary

**Secretary's Note:** Blanks indicate inaudible word(s) on audio tape recording.