

HAWAI‘I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION¹

Wednesday, June 10, 2009
10:00 a.m. to 11:48 a.m.
333 Kilauea Avenue, 2nd Floor
Hilo, Hawai‘i 96720

Present: John E. K. Dill, Chair
Ann Lum, Vice Chair
Marilyn Nicholson, Member
Diane Gentry, Member
Arthur Martin, Member
Renee N. C. Schoen, Deputy Corporation Counsel
Adrienne Heely, Deputy Corporation Counsel (Maui)
Mary E. Crosson, Secretary for the Board

Also present: Dan A. Cole; Timothy Rees; Emily Naeole; Lincoln Ashida;
Katherine Garson; Michael Udovic; Nancy Cook-Lauer; and various others

1. CALL TO ORDER

10:00 a.m. Chair Dill called the meeting to order.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

Two people had registered to make public statements: Timothy Rees and Dan Cole.

CHAIR: Why don't we call up Mr. Rees, pertaining to Petition No. 2009-2 and 2009-3, is that correct?

REES: Yes, sir, that's correct.

CHAIR: Okay, could you state your name?

REES: My name's Tim Rees.

CHAIR: And your comments?

REES: On the first one there, I oppose the—well, I shouldn't say I oppose it. I certainly support Mr. Cole's right to petition the Board here. I'm going to state that I would hope that this Board deals rationally with this, that I would hope that the members of this

¹ Minutes in italics are verbatim. Blanks indicate indecipherable or inaudible speech.

Board understand that we ask members of the community, general members of the community, to serve on the County councils. We don't expect them to be law scholars. We don't expect them to be linguists. Our County Code does expect them to treat people fairly and with courtesy, and if the people of our County have also very thoughtfully included an impeachment process, and I speak in support of the impeachment process. It's very important. But there is a threshold that has to be met to cut out the whackos, the nut cases, to cut out anybody who might say, I'm going to impeach any damn council member I want to because I don't like the color of their hair or the way they talk. I don't like the inflection, I don't like the color of their skin. So that threshold is 200 signatures—it's roughly 200 signatures. It works out to that. It's actually I think 2% of the registered voters, and I'm not sure if it's those that voted in the last election in that council district, but it works out to about 200 signatures. A very simple threshold that merely allows you to rationally present your case to a judge in the circuit court. Now if a person files an impeachment petition, they pay the money at the circuit court. This isn't a free process—I believe you have to pay a fee unless you claim poverty. It's about—I think it's about \$250, the filing fee. So ask yourself, what kind of character of a person would think that that rule shouldn't apply to them, the 200-signature threshold? Why would any person put money down and say I want to try to impeach a councilmember, but I'm just going to put my own name on this, because it's something I feel so strong it has to be brought forward.

CHAIR: Okay, hold on, can I interrupt you for a second?

REES: Sure, you can.

CHAIR: I understand completely what you're saying about the process, and we're all Americans here and we believe in it—I hope we do. But I have to keep things specific to this Ethics Board and the rules we're ruled by, okay. I understand the district court is involved with the impeachment process, and we have nothing to do with that, okay. I'm all for that process as well. Hold on, almost done. So if you have something specific to what's on the agenda and what—how it relates to the Ethics Code or our rules that govern us, then go ahead and state those—

REES: --Well certainly I do, or I wouldn't be here, sir.

CHAIR: Let's focus on those.

REES: Thank you for your carefulness in bringing me back in focus. As you well know, these quotes were given to one of the local newspaper reporters regarding the impeachment process Mr. Cole brought against Emily Naeole. So I don't know how my comments got so far out of focus there that you couldn't realize the relevance.

CHAIR: Well, the relevance that I'm concerned with, and this Board is concerned with, is Section 2-83, fair treatment, of—that's covered under the Ethics Code. We're not governed under district court proceedings or rules. I don't even know, or begin to pretend to know, you know, how the impeachment process should work, and I'm glad you're enlightening us on that. I'd just like you to try and focus on what—how it pertains

to the Ethics Code, what we're dealing with today, and the petition items you listed down. Okay?

REES: Okay. The complaint was that the man was not treated fairly.

CHAIR: Right.

REES: Okay.

CHAIR: So if you could focus on that.

REES: And was treated discourteously.

CHAIR: Okay.

REES: So okay, I'll—it takes two steps in the Webster's American Heritage Dictionary to get from the word whacky to frivolous. Now the filing of a lawsuit, an impeachment is a form of lawsuit, it's a form of legal procedure. It is considered frivolous if you do not clearly state your reasons. They are very easy thresholds. Misadministration. Maladministration is a little bit harder. Nonfeasance and misfeasance. These are very easy thresholds. They are very easy things to accuse someone of and prove that they actually committed those acts and are deserving of impeachment. But you must state these clearly in your pleadings in your complaint. I read through the whole case history there. I'll guarantee you that the word whacky was bandied about through the whole court system. It was bandied about through the whole public, saying wow, this is a whacky filing here. So when you speak of courtesy and fairness, human beings use language in relevance to each other, in relevance to all of our circumstances. Whacky, to me, is a comment that has been made about myself and my testimonies--and maybe even you feel that yourself right now, it's quite possible. In the English language it is not taken as necessarily a negative connotation. It's far less down the line than saying somebody's crazy or somebody's mental, you know. You say, well it's kind of whacky. But that's the process, let's let it go through, let's see what happens. And I'm going to leave it at that. Let's just hope that we have rational folks here to decide these matters. And on 2009-3, this complaint--this is a whole different matter, and here, if what Mr. Cole is claiming is true, then I wholeheartedly support him, that I don't think it would be proper for Mr. Ashida--again, if these facts that he's stating here are true--to go to a department, the police department, and say take no action on a complaint that was filed against himself. And I honestly have a hard time believing those facts would be true, because I know Lincoln Ashida somewhat from being an acquaintance at Council meetings, and I don't think he would slip that low. But again, I don't know the facts—

CHAIR: --To interrupt you for a second again, I don't see where he used those words, take no action, specifically. My opinion, just to answer what your opinion is, any time—and we've dealt with this in the past—any time a public official is—hold on—is—there's a claim made against them, and it's filed with whatever department, I feel that there's reasonable guidelines to allow for them to respond to the accusations against them. Okay. That's part of the process. Go ahead.

REES: Well, sir, I feel a little bit of a contentious bone here between you and myself—

CHAIR: --No, not at all—

REES: --And if you're just trying to keep me on track—

CHAIR: --We both want--

REES: --I find it on the front page--

CHAIR: --respectful and rational people—

REES: --of the complaint—

CHAIR: --Wait, hold on, we want rational people and rational decisions being made here. And I want rationality to be driven by what is actually submitted. So go ahead.

REES: Well, I simply came down here today, and I read the complaint, Petition No. 2009-3. And right here in the middle on the front, it says that Corporation Counsel Ashida did authorize the legal opinion requested by and rendered to the Hawai'i County Police Department to take no action on a criminal complaint filed against him.

CHAIR: Those are Mr. Cole's words, right?

REES: Well, I don't know whose they are.

CHAIR: They're Mr. Cole's words. And what I said is I didn't see anywhere in the back-up and correspondence, Mr. Ashida using the words take no action directly towards any department. And I could be wrong. We can allow Mr. Ashida to answer that, or Mr. Cole.

REES: You know what, sir, why we have public record is that I did not state that I knew what the facts were. I just said that Mr. Cole had filed a complaint stating that. At that time you chose to get contentious with me as if I were trying to state it as it was a matter of fact, proven fact. I never said anything of the sort.

CHAIR: Okay. Well, all I said in response was I didn't see anywhere in the correspondence where Mr. Ashida used those words. I wasn't in conflict with you over what Mr. Cole said, okay?

REES: Nor did I in my testimony claim that Mr. Ashida used those words, sir.

CHAIR: Okay, all right. I stand corrected. Okay. Thank you.

REES: Okay. That's enough.

CHAIR: Mr. Cole? Thank you, sir, could you state your name?

COLE: Yes, my name is Dan Cole.

CHAIR: And to clarify, your public statement is dealing with the clarification of the April 8th minutes?

COLE: Um hmm.

CHAIR: Okay. Well, we haven't approved them yet, so go ahead and—it's next on the agenda. Why don't you discuss exactly what—

COLE: I'll keep this brief. I assume you've all gotten a copy of the letter from Senator Daniel Inouye's office—

CHAIR: --Yes—

COLE: --where he referred information and correspondence to the Attorney General Eric Holder about the corruption in the governments of Hawai'i.

CHAIR: Hold on, did everybody get that, all Board members?

LUM: For his comment on your concerns. It reads I have forwarded a copy of your correspondence to the office of the attorney general, Eric Holder, for his comments on your, Dan Cole's, concerns. I will share with you any response I receive. Just to be clear about what that should say.

COLE: Well, I thank the Vice Chairman for reading that into the record.

LUM: Thank you.

COLE: Approval of—statements and approval of minutes, as I was limited during my statements in April the 8th, I wish to submit these supporting documents in support of the statements that the agents of the County and State of Hawai'i have threatened and attempted to intimidate me from bringing forth evidence of organized government corruption and to the acts and actions of judicial misconduct of state district court judges Metcalf and Smith. So submitted. I also wish to speak on the Section 5, New Business, of the Sunshine Law. Please be advised that the obscuring of the names of the petitioner and of the alleged County officials is in violation of the letter and intent of the Sunshine Law as codified—

CHAIR: --Wait, hold on a second. Sorry, where were you referring to? What section and—

COLE: --Statements from the public on agenda items, Section 5, Sunshine Law, New Business.

CHAIR: Hold on a second.

COLE: There's a Sunshine Law.

CHAIR: I think that's item number 6, Unfinished Business?

COLE: I was referring to the last agenda of April the 8th.

MARTIN: Five was New Business. There was no New Business.

COLE: Okay, well anyway, this is the Sunshine Law.

LUM: Six.

COLE: Okay, the ongoing thing. By obscuring the names of the petitioner and the alleged individuals is against the letter and intent of the Sunshine Law, as the governmental process is obscured and the process of the public scrutiny to participate. In addition, the fact that I was not contacted, in violation of rule 3.4 of the Board of Ethics rules and procedures notifying me of this meeting, again is a deprivation of due procedural process and may in fact expose members of this Board jointly, severally, and the County of Hawai'i, to civil torts in both state and federal courts for deprivation of due process rights. Again, I did not receive a copy of the agenda, as assistant corporate counsel Garson requested of the secretary. Only after I made a call to the Corporation Counsel Office on Thursday, June the 4th, was a copy of the agenda sent to me. Apparently everyone concerned thought that I would figure out that I was supposed to be here and the agenda items were going to be—

CHAIR: --Okay, time out, time out, okay. Let—you know, I say this a lot, but we're here to serve the public, you know. We are members of the public. We're not judges, we're not attorneys—

COLE: --I understand this.

CHAIR: Counselor Schoen, what exactly—rule 3.4, what are the requirements in terms of timeline to announce any meetings, agenda items—isn't it just when it's published?

SCHOEN: I'm sorry, I don't quite understand your question, Mr. Chair.

CHAIR: Why don't we start with this. Mr. Cole is referring to rule 3.4, correct?

COLE: Yes, that would be the—

CHAIR: --Something about prohibiting due process.

SCHOEN: Mr. Chair, if I may? It's my understanding that Mr. Cole is testifying merely on—during public statements, and so he's free to provide whatever statements he wants to at this time. But the Board, however, may limit any testimony it wants to in terms of time period in order to conduct the meeting in an orderly fashion.

CHAIR: Okay. And just to clarify for both of—you're addressing the minutes from April 8th, right?

COLE: Yes.

CHAIR: And the first item you had was this submittal here—

COLE: Yes--

CHAIR: --that we haven't seen up until today.

COLE: --Yes.

CHAIR: And the second thing is item number 6, Unfinished Business, ongoing discussion regarding the Sunshine Law. And you have some discrepancies—

COLE: --Yes. Basically, the fact that I was not notified in accordance with rule 3.4 of the Board here—

CHAIR: --Okay—

COLE: --that that would be a deprivation of due procedural process.

CHAIR: Okay—

COLE: --Yes. In addition, the agenda would be in violation of the Sunshine Law, so I request, and I move the Board, to delay any proceedings until such time as the names of the petitioner and of the alleged County officials can be properly advertised so the public may scrutinize and be available.

CHAIR: Okay. Go ahead.

LUM: I have a question. What names—where are these names eliminated?

COLE: They're identified as petitioner and identified as County officials, where in previous petitions it was identified by name and by County official. Had the petition identified—or had the agenda identified the names of Emily Naeole, Lincoln Ashida, and Kathleen Garson and myself, I could imagine there would be more people present than the public in this meeting. So the—

CHAIR: --So those two items you want changed in the minutes, so that's what you're proposing?

COLE: Well, this is the actual—this is the minutes, and I'm requesting—I'm moving the Board to delay any proceedings on the additional items of the petitions until such time that they can be properly advertised under the Sunshine Law and the rule 3.4 can be accomplished.

SCHOEN: Mr. Chair, if I may?

CHAIR: Yes.

SCHOEN: I believe the Board did provide sufficient notice of this hearing by posting the agenda in an appropriate time period. This Board also provided Mr. Cole with notice that the hearings would be held today, and so just based on those representations, I believe the Board can proceed today.

COLE: Could you please read rule 3.4 for the record?

GENTRY: Is that appropriate—excuse me, Mr. Chairman, is that appropriate to do during public testimony, or should we wait till the item is called, and then if he has motions and stuff to take up, we take it up under the petition item?

CHAIR: Okay.

GENTRY: Because this is public testimony.

CHAIR: Right.

COLE: And these are written statements for the public.

CHAIR: Okay.

LUM: We can wait _____.

CHAIR: Yeah, we can, but why don't we wait until we get to the minutes.

LUM: Okay.

CHAIR: All right, so that's it. You have _____ public testimony. Thank you.

COLE: These are submitted—do I give these to ?

(Mr. Cole handed his public testimony to the secretary.)

CHAIR: Okay, any other public testimony? Moving on to item 3, approval of minutes.

3. APPROVAL OF MINUTES

Minutes of the April 8, 2009, Regular Session.

Motion and vote: Ms. Gentry moved to accept the minutes, Ms. Lum seconded the motion, and all members voted aye.

Minutes of the April 8, 2009, Executive Session.

Motion and vote: Mr. Martin moved to accept the minutes, Ms. Nicholson seconded the motion, and all members voted aye.

4. COMMUNICATIONS

There were no new communications.

5. NEW BUSINESS

- a. **Petition No. 2009-2: Petition alleges that a County officer or employee violated Section 2-83 of the Ethics Code (fair treatment) by stating to a newspaper reporter that the petitioner was “whacky.”**

CHAIR: The petitioner is Mr. Dan Cole. Hold on a second. It’s interesting that we had one of our public testimonies deal with frivolous—and items that pertain to certain agencies and counties, and as chair, I’d just like to briefly discuss some of my review, and this is strictly based on the items submitted so far by Mr. Cole, the petitioner.

GENTRY: Mr. Chairman?

CHAIR: Yes—oh, I’m sorry. We have a disclosure.

GENTRY: Yes, before we proceed, I’d like to disclose to the Board that the County officer in question for this current petition, I worked as an appointed temporary—in an appointed temporary position for Ms. Naeole last year. It’s now more than a year ago, but I wanted to disclose that. But based on the petition, I feel that I could make a decision in this based on the merits of the petition. So I just want to put that out.

CHAIR: Can you go over again exactly what your position was? I’m sorry, your duties, just brief?

GENTRY: I served while her legislative aide was out on maternity leave. It was a three-month term.

CHAIR: And again, you feel as if you can rule fairly on this matter?

GENTRY: Yes, based on our rules and the petition, and him, and whatever testimony is presented. But I leave that up to –

CHAIR: Well, I’d like the Board to vote on this. But first, does the Board have any other questions or comments? Petitioner, do you have any comments?

COLE: Yes.

CHAIR: Brief.

LUM: Regarding this?

GENTRY: Regarding this.

COLE: Oh, regarding your disclosure, no.

GENTRY: My disclosure.

CHAIR: Ms. Naeole, any comments? Okay, can we—I'll entertain a motion. Sorry, go ahead.

SCHOEN: Mr. Chair, if I may refer the Board to its rules, 1.5, regarding the disclosure that Board Member Gentry has made. I believe the rule is that if she believes that she can be fair and impartial in this matter, the Board can review and consider that and determine whether or not she may proceed to hear the merits of the petition.

CHAIR: As we progress. Okay. So we don't need a vote, then, on this.

SCHOEN: Well, I believe that you were going to entertain any comments or questions from the Board members?

CHAIR: Right.

SCHOEN: But based upon her representation that she can be fair and impartial in this case, it's entirely up to the Board as to how to proceed.

CHAIR: Okay, let's proceed, then, unless anybody else has any comments? Okay. Again, we're dealing with Petition 2009-2. This petition is submitted for the purpose of exposing organized government corruption in the Hawai'i County government, in violation of State, Federal Racketeering Influence and Corrupt Organizations-RICO-and that placed the general welfare of the people of Hawai'i in jeopardy. Again now, where I was going, was—Mr. Cole, just to start off, give you an overview of my take. Based on the petition itself, the backup documentation that I read, I'm all for you pursuing what you feel is injustice or what you feel is something that's actionable on your part. But again, our rules and what we adhere to are strictly Ethics Code violations. So when we're hearing your side of the story, I'd like you to try and focus in on that and focus in on exactly how it pertains to the Ethics Code and/or a possible violation of such, okay? I don't think this Board here has an inkling or any kind of jurisdiction for government or organized crime laws that might or might not have been broken, and the general welfare of the people of Hawai'i, just from my standpoint, is something that we try and accomplish, we try and look after, in what we do. We need to stick to specific actions or non-actions that pertain to the Code of Ethics Section 2-83, fair treatment. The other items that you submitted I feel that—can and are a little bit out of our jurisdiction. So I'd like you to try and focus on that. If I interrupt you in what you're saying, please don't take it personal. I'm just trying to keep us focused on what we're trying to accomplish here today, and I know you've made many petitions and communications to us and other agencies. I just want to make sure we're sticking to what our purpose is and what this agency can do under the rules and practices. Okay?

COLE: *Um hmm.*

CHAIR: *And this is addressing the Board as well. So any interruption, please don't take it personal. I just want to stay focused on why we're here. And Ms. Schoen, do you have anything before we begin?*

SCHOEN: *Nothing specific with respect to the petitions other than I believe the record should reflect the presence of—*

CHAIR: *--Oh, I'm sorry—*

SCHOEN: *--Deputy Corporation Counsel Adrienne Heely from the County of Maui to assist the Board in Petition No. 2009-3 and -4.*

CHAIR: *I apologize, Ms. Heely.*

HEELY: *No problem. Good morning, Mr. Chair, members of the Board. Glad to be here. Should you have any questions, I'll be happy to try to answer them.*

CHAIR: *Okay. And Ms. Schoen, you'll be helping us with -2, right?*

SCHOEN: *Correct.*

CHAIR: *Again, I'd like to point out to the Board, just real briefly, rule 4.5 as well as in the Code, Section 2-86, that refers to the Board's action—it seems you have the rules handy, you want to read it? Actually, Ms. Schoen, do you have that out? Just to follow. Okay, some of the things I discussed already. If I can read section—rule 4.5, section b, 1 through 3, and this is what I talked about already, some of these items I feel in your petition might—don't pertain to this Board. Number one, the request is speculative or purely hypothetical and does not involve an actual situation, the request is frivolous, or the request does not substantially comply with the requirements set out above. That being said, I just want to reference that and ask the Board, just from the start—*

COLE: *What rule is that again?*

CHAIR: *4.5--ask the Board if they have—want to entertain any comments to start off, to begin this hearing on Petition 2009-2. Okay. So Mr. Cole, we're clear on where we can start off here and what we're focusing on?*

COLE: *Um hmm.*

CHAIR: *Okay. Why don't you come up and provide your testimony.*

COLE: *The testimony is submitted in the form of the newspaper article to the West Hawai'i Today by Emily Naeole dated August 29th, where she states, quote unquote, that I am whacky. Additionally, the testimony is recorded as a September 30 letter, 2008, to Councilmember Emily Naeole, as received and stamped by the County Council, subject*

your violations of civil rights laws, County Ethics Code, and criminal violations of the United States Code. The document and the language contained therein speaks for itself. Emily Naeole, in knowledgeable--assenting in silence—does in fact admit to the statements and accusations within the document. In addition, you'll notice at the end of the document, there's a stamp of the court next to the copy of Ronald Ibarra, chief judge. The chief judge has been aware of this and the fact that I have not been called before the court in contempt or to answer for the statements and accusations against Judge Nakamura using his authority under the law to protect racketeering and unlawful organizations, attests to the truth and veracity of those statements. In addition, insofar as the agenda or the meetings of 8 April indicate that my original petition of 2000, number 2008-11, could in fact have been heard had it been placed on the agenda. In the interest of the public welfare, I request that this petition be reinstated as a vehicle of legal fiction for the purpose of exacting under rule 5 testimony and statements that will expose conflicts of interest, violations of fair treatment acts, by County employees and others associated under the jurisdiction of this Board.

CHAIR: Okay.

COLE: Thank you.

CHAIR: Board, do you have any questions for Mr. Cole?

LUM: I have a question. Since we are hearing a petition claiming that Ms. Naeole did not treat you in a courteous, fair, impartial manner which is actually 2-83(a)(3), stating that Mr. Cole was whacky, okay, in her quoted statement to West Hawai'i Today. This article that we have been provided says just—it really refers—it says regarding Naeole's belief that Cole is, in quotes, whacky, Cole said I am standing up so and so forth for the constitutional rights of the people. But it actually only refers. It doesn't—no where have I seen in all of this—I admit I could easily have missed something—the time, the place, the situation, where this purportedly was said. I mean, Jim Quirk said it in this article—

COLE: --Jim Quirk quoted Emily Naeole as a reporter, yes.

LUM: It just says regarding her belief, so and so forth. But never does anything say what happened. When did it happen, what happened, where was it?

COLE: It happened. That's all that's required. It's a libelous—

LUM: --I require more, excuse me, I require more--

COLE: --it's a libelous and slanderous statement with malice. It's a—

LUM: --I require more than that—

COLE: --Well, it's a libelous and slanderous statement with malice. In addition, if you will read the letter to Emily Naeole—

LUM: --That, however, is your letter to Ms. Naeole—

COLE: --and her non-responsive--she is fully aware that assenting in silence, and as a government—

LUM: --You're past me here—

COLE: --as a government official she has an obligation—

LUM: --Um—

COLE: --not to disenfranchise the population—

CHAIR: --Okay, so the question is—

LUM: --My question is, when did it happen? And you're choosing not to answer.

COLE: No, I answered this Board already, because I submitted documents where I requested the newspaper, by and through their general vice president and general counsel for the West Hawai'i paper and the Stephens Media Group, to send an affidavit or statement as to the conditions in which Jim Quirk—and I have not received a reply. You have those statements and those documents.

CHAIR: Okay. So again, like I said in the beginning, I want to focus on what we have.

LUM: This is what we have.

CHAIR: And the petition specifically states that you're claiming—

COLE: --But—

CHAIR: --Hold on, claiming Ms. Naeole in violation of Section 2-83, fair treatment. Anything else?

COLE: No, as I said, the documents themselves—the assenting in silence doctrine is in fact a legal doctrine in Black's Law Dictionary, and she is fully aware by her own counsel in the impeachment proceedings.

CHAIR: Okay. And we have that letter?

COLE: Yes, and I also request that this be—I actually request of the Board that Petition 2008-11 be reinstated as a vehicle of legal fiction in order to take testimony and statements to uncover violations of conflicts of interest and of ethical violations of the County of Hawai'i as stated.

CHAIR: Okay. 2009-11?

COLE: 2008-11.

CHAIR: *I mean 8-11, okay.*

COLE: *This could have been heard had it, according to the minutes, had it been—*

LUM: *--We already made a finding--*

CHAIR: *--Yeah, so that's not on the agenda.*

COLE: *Yes. Well it's on the agenda in reference to this petition.*

CHAIR: *Okay.*

MARTIN: *Mr. Chairman?*

CHAIR: *Yes, sir.*

MARTIN: *Mr. Cole made a statement. I couldn't understand what he means by legal fiction.*

COLE: *Legal fiction. What that is, is it's a vehicle, or let's say we're—for legal fiction in this purpose, we'd be taking the documents and statements in this—here, the court statements, the records, the correspondence, the _____ evidence, and under your rule for investigation and procedures, you could take testimony from others, subpoena witnesses, etcetera, to understand exactly what officials did and how their conflicts of interest did in fact—were violated—at the County Ethics Code. So you're using this as a means to an ends, as merely a vehicle.*

LUM: *However, we are hearing—*

COLE: *--or procedure--*

LUM: *--Petition 2009-2, claiming that Emily Naeole did not treat you courteously and that she called you whacky in a statement--*

COLE: *--And that petition's also—*

LUM: *--and I have yet—*

COLE: *--incorporated in this petition, yes—*

CHAIR: *--Okay, why don't we—*

LUM: *--I'm just trying to get back to where we're at here.*

CHAIR: *Okay. Now—thank you, Mr. Cole.*

COLE: *Um hmm.*

GENTRY: Wait, wait, we have more—can we ask other questions?

CHAIR: Mr. Cole?

COLE: Yes, please.

CHAIR: Yeah, sure, sorry.

GENTRY: So Mr. Cole, we see a printed—through this article, let me see if I can—I read through the record, but I'm trying to figure out how to ask this question. I think Mrs. Lum was trying to ask you when this happened and how it happened, and when did you become aware that Ms. Naeole referred to you as whacky. Could you answer that?

COLE: Yes, I could. How it happened, apparently, is I petitioned the District Court of the Third Circuit an impeachment. The reason that I petitioned the—actually, it was not a petition, because there is no procedure in the County Charter for a petition, to petition, because all petition forms are required to be presented to, or received from, the County Clerk. The County of Hawai'i, the Corporation—or the County of Hawai'i has admitted it has no petitions in order to file for an impeachment. Therefore, I filed a complaint in Federal Court—or in the District Court, and the complaint was received by the court. Had the court recognized my complaint as a petition under the separation of powers of the constitutions of the state and the federal government, the court would have had to send to the County Council Election Commission to verify that it was a petition, at which point the Election Commission would have said you are lacking 199 signatures, you have 30 days to obtain them. Okay, that did not happen. The fact that it appeared before the court—the court does not have the legal authority to deny a petition. Only the legislative body of the County has that authority.

CHAIR: Okay, how did the whacky comment come in?

COLE: The whacky came from the fact that I petitioned, and everybody says you have a petition of one. It was not a petition, it was a complaint. The--Judge Nakamura, as you will notice in the documentation that was submitted here earlier, appears to be in conflict of interest and in support of organized corruption, because had my petition or impeachment gone forward, it would have exposed Judge Wayne Metcalf, a classmate of his, to the acts of judicial misconduct.

CHAIR: Okay, how was the whacky playing out there?

COLE: Well, basically it was just hey, it was crazy to submit a petition. And again now—

CHAIR: --It wasn't—

COLE: --Now again now, we go back to the letter that was submitted. Had Emily Naeole given the opportunity to make clarification of her statements prior to me submitting any documents--she refused and in fact has refused all correspondence and has disenfranchised numerous people. It is clear that Emily Naeole was elected to

represent the people of Hawai'i. However, Emily Naeole doesn't understand the people of Hawai'i may not all be Hawaiians. Okay.

GENTRY: Mr. Chair, if I may?

CHAIR: Yup.

GENTRY: I heard what you said about the complaint and about the petition format. What I was asking you is when did you become aware—

COLE: --When it was published in the paper.

CHAIR: Okay.

GENTRY: So it was through this article—

COLE: --Through that article, yes—

GENTRY: --there was no direct—she didn't say it to your face or anything like that.

COLE: No, she said it publicly to everybody.

GENTRY: Okay.

COLE: Which in fact is libelous, slander with malice.

LUM: So she was, though, referring to the petition?

COLE: I have no idea. I assume she was referring to my mental case, that I was crazy enough, or whacky enough, to actually attempt to expose organized government corruption and her part in it. That's what I assume. And that's what she also assumed, and Judge Ibarra concurs, by non-response to the letter.

LUM: I don't understand this non-responsive—

COLE: --Could--

LUM: --Why—why—I don't understand why—

COLE: --Could the attorneys please explain--

LUM: --I don't understand why a non-response—

COLE: --the assenting in silence doctrine—

LUM: --why a non-response is interpreted as being—why a non-response is something that's interpreted as being that they would agree with it.

COLE: Yes, could I have a definition of the assenting in silence doctrine, please—

CHAIR: --Hold on a second, hold on a second. I think we got the gist of what you're saying, and I'm sure we're going to have more questions for you.

COLE: But actually she's brought this up numerous times, and it's very important in this matter that a legal definition be rendered to this court.

CHAIR: Okay—

COLE: --I believe it's on page 124 of the latest Black's Law Dictionary—

CHAIR: --Counselor, can we get a brief overview of this rule, please?

SCHOEN: Mr. Chair, I believe that this Board has sufficient information before it based upon the information before it, and it can give a decision today—

CHAIR: --I agree with that, but—

COLE: --Would you like me to give an explanation of the assenting in silence—

CHAIR: --A brief one, yes.

COLE: Yes. The assenting in silence doctrine states that if accusations and assertions are made that can fairly be interpreted as true or valid, despite the silence of the accused, then such accusations are determined to be accurate and valid, even though it's silence. In other words, if you're asked did you go out last night and carouse, and you come home drunk and everything else and go, oh—you don't say anything, that's assenting in silence.

CHAIR: You saw me?

COLE: I've been around.

CHAIR: Okay, I understand—

COLE: --But it's also the fact that it's been brought up in court and she was fully aware—

CHAIR: --Yes, you made that clear—

COLE: --that if she did not respond—

CHAIR: --You made that clear—

COLE: --Yes, and the obligation of an elected official to respond to the public.

CHAIR: Okay.

GENTRY: Mr. Chairman, if I may? I have one more question.

CHAIR: Sure.

GENTRY: Mr. Cole, what remedy are you seeking?

COLE: The remedy I am seeking is under the constitution of the state of Hawai'i, the responsibility for the governance of—is by the people, the responsibility for the governance. I am attempting to expose the organized corruption of County officials that endanger the welfare and safety of the people of Hawai'i, to include the illegal and altering of the streamworks that has caused the flooding—

CHAIR: --Yes, let's focus on—

COLE: --There is not a doubt that the corruption is at jeopardy of the welfare of the people, the very core of the governance.

CHAIR: Okay. Thank you—

GENTRY: --Okay, so as a follow up, so the remedy you're seeking is governance of the people?

COLE: Yes, the exposure of corruption—

GENTRY: --Okay, hold on, hold on—

COLE: --for the protection and welfare—

GENTRY: --hold on. Okay, if that is the case, I didn't—now I forgot my follow-up question. So are you looking for—oh, what constitutes governance of the people, remedied as governance of the people? Are you looking for a document that clears your name, or—

CHAIR: --I think he said he's looking for exposure, correct me if I'm wrong—

COLE: Yes, to expose, in order for the people of Hawai'i to understand the threats that they are placed under by the actions—this is including death and injury. It's not a matter of if it's going to happen, it's a matter of when it's going to happen, and the fact that the County officials have in fact a conflict of interest, corruptly altered the federal digitized flood maps for their own use.

CHAIR: Okay, we're getting off the course—

COLE: --I understand, but I'm saying we're trying to follow on in thought here.

CHAIR: Okay.

GENTRY: So it's just governance of the people and exposure of what you—what appears to you as racketeering.

COLE: And corruption, yes.

GENTRY: And corruption.

COLE: Yes. For the welfare of the people, yes.

CHAIR: Okay.

COLE: And restoration of constitutional rights.

CHAIR: Okay. Thank you, Mr. Cole. Again, just to reiterate, the Charter says that this Board should focus on the County Code of Ethics and the interpretation thereof.

COLE: This would be a violation of ethics and conflicts of interest by corrupt officials.

CHAIR: Okay, we're dealing with fair treatment, Section 2-83. As Chair, after hearing your testimony and reviewing your petition and the back-up documentation, I feel that this Board is ready to make a decision on this. I'd be willing to entertain any motions or suggestions to move on to this. Or we can—during discussion we can reiterate, ask questions and seek some answers that we might need. If nobody feels that way, then why don't we call out Ms. Naeole and her counsel—thank you, Mr. Cole—to respond. Good morning.

UDOVIC: Morning, sir.

NAEOLE: Morning.

UDOVIC: My name is Michael Udovic. I'm here with Ms. Naeole today with respect to Petition 2009-2. I think our position is adequately stated in our letter of May 29, 2009. There's just—as stated, there's absolutely no evidence that this statement was ever made. It was just a question by a reporter to someone else which is reported, and you can't accept that as truth.

LUM: It's really—

UDOVIC: --There's no proof of the statement. I'm sorry, but—

LUM: --I can't—this is what I've been trying to—I've been trying to determine the situation where—when and where it was said, how it was said.

CHAIR: Hold on.

LUM: So far I haven't gotten anywhere.

CHAIR: Okay, hold on. Just real quick, Mr. Cole, did you get a copy of this letter?

COLE: No, I did not.

CHAIR: Okay. Can we get one to him?

(Mr. Cole was handed a copy of Mr. Udovic's May 29, 2009, letter.)

COLE: Will I have an opportunity to make statements about this?

CHAIR: Yeah, hold on a second. All right, sir, Mr. Udovic, go on, if you have anything else.

UDOVIC: I don't really—I don't think we have anything to say.

CHAIR: I agree that this Board has enough documentation, back-up documentation, to make a decision on this.

LUM: Whacky, by the way—whacky, by the way, in a couple of my big dictionaries, says eccentric and odd as the definition. It doesn't say—it doesn't say crazy, it doesn't say, you know—it says odd, eccentric. I've forgotten—there was a third one. But it was not an extremely harsh—it was not an extremely harsh word, if it was ever said.

COLE: Okay, do we have any questions for—oh, I'm sorry.

LUM: Irrational was the other one. So we cannot answer when this supposedly was said, originally.

UDOVIC: I don't think we should, even if it was said, because it's not our obligation to—

LUM: --Somebody else said it.

UDOVIC: I don't know. What it is, is I ask you a question--what do you think about Mr. Dill? Does that mean that you have an opinion if you don't—we just can't go that far.

CHAIR: Any other questions from the Board?

MARTIN: Mr. Chair?

CHAIR: Yes?

MARTIN. Mr. Dill. Does Ms. Naeole not remember every saying this?

UDOVIC: No, I think that—our position is that it's incumbent upon the petitioner to present evidence that these statements were made by Ms. Naeole. There is no evidence that this statement was made by Ms. Naeole. The evidence is only stated, as he says specifically, in the newspaper article, where Mr. Quirk says what do you think about her opinion. That's not sufficient to even raise an ethical violation.

MARTIN: Well, there's nothing here that says where Mr. Quirk got it.

UDOVIC: No.

MARTIN: Thanks.

COLE: Other questions from the Board? No? Okay, thank you.

UDOVIC: Welcome.

CHAIR: Mr. Cole, if you want to briefly respond to this letter.

COLE: Yes, I'd like to. It's in my correspondence with my original petition, 2008-11. I did send the Board the letters, correspondence, that I sent to the Media Group asking for clarification of the statements made by Emily Naeole to reporter Jim Quirk. It must be understood that in the media circles, a quotation placed around a word—that's like when you quote a politician or the president, or something—that is a verbatim statement made. Again I call to the fact that Emily Naeole has had numerous opportunities to clarify that. Had she clarified it—but her disenfranchisement—her refusal to represent or answer anybody—should the petition of 2008 go forward, you will see in there that she's also made other statements that can be called into question as perjury before the court. Again, the very essence of a reporting, of a reporting itself in the media, is when a quote is made, it's quoted. The fact it's in quotes—maybe then we should call in accordance with rule 5, is Jim Quirk before this commission, please. That has the commission's purview. Let's do this.

CHAIR: We'll take 2008-11 out of consideration—

COLE: --Yes—

CHAIR: --you can maybe resubmit it to the full Board for review or something—

COLE: --But the Board apparently, under their rule of investigative procedures, can in fact subpoena a person or ask them to appear.

CHAIR: Thank you.

COLE: Thank you very much.

CHAIR: Anything else from the Board?

LUM: We require a lot of our government officials, our elected officials, and we sometimes I think forget that each one of them is an individual, and they have—while their elected responsibility is their life, what they've chosen to do, it's what they've been elected to do—but they also have their personalities. And fortunately they do, otherwise it would be extremely boring. Do we as an ethics board try to take away their right to their opinions? I don't know that we have—that we can do that. If this was an opinion, if

it was an opinion—we haven't even determined that it was. Jim Quirk says it was an opinion.

CHAIR: Yeah, Vice Chair, I understand where you're coming from—

LUM: --That's just—

COLE: --May I make a comment on the Vice Chair's statements—

CHAIR: --Hold on a second, hold on a second. You know, opinions and quotations and whatnot—we need to focus on whether this alleged whacky incident that Mr. Cole is referring to is in violation of fair treatment. I think the question on the front of our minds should be whether or not Mr. Cole was treated unfairly because of this quotation that ended up in the West Hawai'i Today. That's what we should be focused on, what we're here to vote on today, if at all possible. I know there are other issues, and I think we've dealt with these in the past, but we cannot—we cannot, to answer your question, and we should not be ruling on anybody's opinion, Mr. Cole's opinion, or anybody else's opinion. We're here procedurally. Yes?

GENTRY: Well, if there are no other questions, I think I'll be brave enough to venture a motion.

CHAIR: Okay. To?

GENTRY: You going to ask them if they have any other questions?

CHAIR: Yeah.

GENTRY: Nothing?

CHAIR: Nothing. Okay.

GENTRY: Okay. Then I would motion to deny the petition based on lack of sufficient evidence.

CHAIR: Do I have a second?

NICHOLSON: I second.

CHAIR: Okay, discussion?

GENTRY: Discussion. Without a formal hearing and having the witnesses that Mr. Cole needs, it's pretty hard to figure it out, to substantiate it.

CHAIR: That's one thing I want to make sure I point out to Mr. Cole. This is an informal hearing.

COLE: Yes, maybe we could move it to a formal hearing.

CHAIR: You do have that right to request a formal hearing, at which time I think we have a much more broader scale in subpoenaing and whatnot. And my intention is not to hamper you in pursuing the process, that's your right as an American. I just hesitate—certain things don't pertain to this Board, and I think we've got to make sure that all your interests and needs are being met, but we've got to do it under the correct form—

COLE: --And the interests and needs of the people.

CHAIR: Correct. That's why we're here, right? Okay, so I have a second, a motion and a second, some discussion. Any other discussion? Okay, all in favor say aye.

(Ayes heard simultaneously).

CHAIR: Opposed? Okay, it's carried. Thank you, Mr. Cole. We can move on to Petition 2009-3.

- b. Petition No. 2009-3: Petition alleges that a County officer or employee violated Section 2-84 of the Ethics Code (conflicts of interest) by rendering a legal opinion to the Police Department to take no action on a criminal complaint filed against him.**

CHAIR: Petition alleges that a County officer or employee violated Section 2-84 of the Ethics Code, conflicts of interest, by rendering a legal opinion to the Police Department to take no action on a criminal complaint filed against him. Just to start off, Mr. Cole, I'm getting trouble seeing exactly where this conflict of interest was and how it pertained to the section of the Ethics Code that you are citing. Again I refer to rule 4.5, I believe, in—I think the word was hypothetical. We cannot—we cannot, again, rule on hypothetical situations and organized government corruption that you're stating in your petition. Again, I don't think that falls under our jurisdiction and whatnot. I'm just not sure exactly which provision you're citing in the conflict of interest, 2-84, and you'll have a chance to address that. Before we go on—sorry, Lincoln, we just got started. We have petition 2009-3. Again, petitioner is Mr. Dan Cole, and it relates to ethics section—the Code of Ethics Section 2-84, conflict of interest. I was just saying in my review of this, I was having trouble, number one, seeing which provision it pertained to and also whether or not the majority of these accusations fall under our jurisdiction. Mr. Cole, you want to give a brief testimony? I'm sorry, hold on a second. Board members—anybody have anything to say from the outset? Okay. Come up and provide some brief testimony on this petition.

COLE: Yes, the complaint of conflict of interest arose after the Freedom of Information Act. I received a copy dated 4 May, memorandum from the Police Department. I believe that is attached to the petition, from Paul K. Ferreira, Acting Police Chief, to Lincoln S. T. Ashida, Corporation Counsel, with attention to Brandon Gonzalez, Deputy Corporation Counsel. Subject, review and comment of criminal complaint re Dan A. Cole. The very nature of the conflict of interest is that Lincoln Ashida is in fact the Corporation Counsel, no matter who reviews or gives opinions to a County board or a County agency as the Police Department, is in fact the opinion of the Corporation

Counsel Lincoln S. T. Ashida. He is appointed as Corporation Counsel and has the authority and the responsibility for any legal opinions, whether he can transfer the authority, but he cannot transfer the responsibility of the legal opinions. The fact a legal opinion was requested about his name and appearance and actions in a criminal complaint, and a legal opinion was in fact rendered, makes it a conflict of interest in which Mr. Ashida would profit by not being charged or exposed or prosecuted. The documentation itself clearly speaks for itself, and the supporting documentation speaks for itself, and again, identifies a conflict of interest where apparently Mr. Ashida is profiting by his actions. However, this is not—no one—unless we could actually draw testimony and subpoena people in order to expose this, basically again, we're getting back to this vehicle of legal fiction here. The corruption of the court is well noted. The racketeering and influence of individuals is well noted and documented. Mr. Ashida obviously feels sorry for me, as he quoted in the paper. I do not feel sorry for Mr. Ashida. I feel sorry for the citizens of the people of the island who have been inflicted and received damage from their corruptions, of his and other peoples. So again, the fact that a legal opinion was rendered to the Police Department to take no action on a matter in which he was personally involved, which could extend into criminal violation—

CHAIR: Okay.

COLE: Thank you very much.

CHAIR: Mr. Ashida?

ASHIDA: Good morning.

CHAIR: Good morning.

ASHIDA: I'd be more than happy to answer any questions you have. I submitted a written statement to the Board. I believe under your rules, those communications remain confidential. Personally I have no problem with that document being publicly released, but I think that perhaps you should show it to Mr. Cole, because there are some items in there that perhaps he would not want publicly released. But as far as I'm concerned, I have no problems with it being released.

CHAIR: Just to clarify that's the—that's the communication dated May 5, 2009?

ASHIDA: I don't have it in front of me, but I think I only submitted one letter to you.

CHAIR: With some exhibits, correct?

ASHIDA: Yeah, I think that—yes.

NICHOLSON: I have a question.

CHAIR: Please.

NICHOLSON: I am looking at the letter dated May 4, 2007, which I think is the wording that Mr. Cole is concerned about, when he says to take no action on a complaint filed against him. And this is a letter from—to you from the deputy corporation counsel. So it says it does not appear that the department needs to respond to this notice. However, we are asking for your assistance in reviewing the documents. So you did respond to that.

ASHIDA: I had no contact with the Police Department concerning any allegations or complaints of criminal misconduct against me.

NICHOLSON: So this is from the Police Department, though, to you.

ASHIDA: It's addressed to me, but a lot of correspondence and things are addressed to me, but they get assigned out to the assigned attorneys who represent the departments.

NICHOLSON: Okay. So I'm trying to get at Mr. Cole saying that you—that you said that there should be no action, but in fact you did not get this stuff.

ASHIDA: I don't believe so. And in any event, I had no contact with the Police Department with respect to this particular—his particular allegation.

NICHOLSON: Thank you.

CHAIR: This allegation of a directive towards the Police Department urging no action, that's what you're referring to?

ASHIDA: Yes. I never told the Police Department take no action or do this or do that.

LUM: I don't see in the papers Mr. Cole submitted any place where anybody says to take no action.

CHAIR: I'm sorry, what was that?

LUM: I don't see in the papers submitted to us by Mr. Cole any place where anything says to anybody to take no action on a criminal complaint.

CHAIR: Well again, just to reiterate, I'm still confused on where the conflict of interest lies, Mr. Cole, and which provision you're specifically citing in this Code of Ethics Section 2-84, conflict of interest. Again, this is an informal hearing and what we vote on is not set in stone. It just comes down to whether or not we feel that this is in our jurisdiction, if there's enough back-up documentation, and I'm strictly going on your petition and what you submitted now, okay?

COLE: It's in the petition, yes.

CHAIR: So I'm having trouble finding a clear-cut violation or clear-cut case of conflict of interest outside of the hypothetical realm.

COLE: Okay—

CHAIR: --I understand where you're coming from—

COLE: --Could I clarify that for you on the documents?

CHAIR: Sure, okay. Anything—wait, hold on a second—anything else for Mr. Ashida? Any questions? Thank you. Okay.

ASHIDA: Thank you.

COLE: Again, I keep hearing this hypothetical.

LUM: Yes.

COLE: Yes. The fact—again we go back. An opinion was rendered to the Police Department. This is understood.

LUM: Now, where is this opinion to the Police Department, that's what I'm looking for--

COLE: --Here it comes, here it comes. The opinion to the Police Department is documented in the statement of Lincoln S. T. Ashida to the Office of Disciplinary Counsel—

LUM: --What—

COLE: --Office of—this is August 28, 2007, letter.

LUM: August 28, 2007.

CHAIR: This letter right here.

COLE: Okay.

CHAIR: To Mitsuhiro Murakawa, Esquire, Assistant Disciplinary Counsel, right?

COLE: Yes.

CHAIR: Okay.

COLE: I quote Mr. Ashida on page 3, Section 5.1. I surmise Mr. Cole mistakenly believes it was me who advised the Police Department to tell them that no action should be taken on the criminal complaint and in fact a draft letter dated 28 August, 2007, enclosed. Please note that I have also enclosed that very same draft letter dated 2000—August 28, 2007. Please notice that that letter is the identical duplicate and is the draft to the letter dated 7 June 2007 under the signature of Police Mahuna. So obviously, somehow a letter dated 28 August got reversed in time and geographical location and was placed on Police Department official letterhead and signed. You will notice that even my name—

LUM: --We don't know—there's no way we can know anything like that.

COLE: The letter is dated 28—Lincoln Ashida states, he calls attention to in fact a draft letter dated 28 August. Okay, a draft letter--is not a draft letter a pre-letter? Okay. Enclosed—okay, the letter was provided by the Corporation Counsel in response to an official request by the Office of Disciplinary Counsel, indicating that the letter itself had been generated and was being offered as proof of Mr. Ashida's having no knowledge whatsoever prior to August the 10th of that year of any knowledge of the Police's action. However that letter, with all of its misspelling, identically word for word and period, somehow got brought back in time under the signature of Lawrence Mahuna.

CHAIR: I understand what you're saying—

COLE: --More than hypothetical.

GENTRY: I have questions, Mr. Chair.

CHAIR: Hold on, hold on, yeah, just a second. I just want to point out that we're not here to vote on whether or not--what the level of knowledge was on Corp Counsel's part. You're clearly stating that you feel that Mr. Ashida gave directives to the County of Hawai'i Police Department to take no action, correct?

COLE: Okay, you have requested—

CHAIR: --No, no, answer my question. That's exactly what you're specifically saying, your claiming, right?

COLE: Would you please restate that?

CHAIR: That in your petition, you state that Corp Counsel Ashida authorized—authorized a legal opinion requested by and rendered to the Hawai'i County Police Department to take, quote unquote, no action on a criminal complaint filed against him. We're not—all I'm trying to say is we're not here to kind of advise and calculate exactly what the level of knowledge was on the Corp Counsel's part. We want to see if there was some sort of—what you're claiming—action to take no action directive towards the Police Department, correct?

COLE: Yes.

CHAIR: Okay.

COLE: I will clarify that for you.

CHAIR: Okay.

COLE: As I stated before, the fact that a legal opinion was rendered means it is a legal opinion of Lincoln S. T. Ashida, Corporation Counsel, no matter who rendered it. In

addition, the fact that Lincoln has also stated in a signed document he had no knowledge and offers a 28 August letter which is duplicate—which is the draft letter of the 7 June 2000—means that there was a connection. The conflict of interest comes and the thing is that should this action be taken against him, he would suffer monetary loss greatly in defending his action, so he is actually preserving property of himself, which is a conflict of interest—and use of his official position.

CHAIR: Okay, I understand where you're coming from. Go ahead, Ms. Gentry?

GENTRY: Yeah, I have a simple question that might help a little bit. With regard—attached to your petition is the Police Department letter dated June 7.

COLE: Um hmm.

GENTRY: Did you receive this letter in the mail?

COLE: Yes, I was sent that letter by the Police Chief.

GENTRY: Did you retain the envelope with the postmark on it?

COLE: Yes, I believe I do, yes.

GENTRY: Okay, what was that postmark date?

COLE: I believe it was just before June 7th—I'm not sure actually, I would have to get the postmark letter.

GENTRY: Okay.

COLE: However, the documents of June the 7th letter and the identity of the June the 7th letter is in numerous court documents and other correspondence, so its presence was recognized long before August the 28th.

CHAIR: In other bodies, in other agencies.

COLE: Yes.

GENTRY: I was just wondering when you received it.

COLE: I received it before August the 28th.

GENTRY: Okay.

CHAIR: Okay? Thank you, Mr. Cole. Mr. Ashida, you have any other comments?

ASHIDA: No, thank you.

CHAIR: It's my belief that the Board has enough information and documentation based on Petition 2009-3, and again we're basing it strictly on the petition and the back-up documentation provided by Mr. Dan Cole. I feel that we can move on to maybe render an opinion on this. Do we have any other further comments from counsel? Ms. Heely?

HEELY: No other comments, unless the Board has any questions for me.

CHAIR: Board members? Is anybody in agreement with me that we have sufficient information here, or are we lacking something? Again, Mr. Cole, just to reiterate—the proceedings that we're undergoing right now are informal. The correspondence that Mr. Ashida referred to, by all means you can request copies of that and request a formal investigation, and I think that can be handled under a separate hearing or something of that nature.

COLE: I see. Would that be a Hawai'i Revised Statutes 92(f) section, a Freedom of Information request?

CHAIR: If you say so. I don't know, I don't know. You obviously have a much—

COLE: Could the Board inform me and just give me the document?

CHAIR: I'd rather not right—

COLE: --and I'll make a formal request under the Freedom of Information Act—

CHAIR: --Yeah, because—yeah, I'd rather go through a formal request and you know, you can have a request for a formal hearing as well. I think the first step would be, if you want to receive that documentation, a formal request be made. But I'd like again, just to reiterate, I think we have enough to vote on Petition 2009-3 and—

GENTRY: Okay, I'll be bold. Over here.

CHAIR: Okay. Yes, Ms. Gentry?

GENTRY: I motion to deny the petition based on insufficient evidence at this time.

CHAIR: Okay.

LUM: Second.

CHAIR: We have a second. Any discussion?

GENTRY: Discussion. Yeah again, some of—I would have a lot of questions about the documents that were submitted on both sides, but it might be helpful to Mr. Cole to have a chance to look at it, and maybe a formal hearing where we can actually have witnesses and testimony and formalize legal briefs, because those are actually easier to read for me.

COLE: *Yeah, I would understand that, and I haven't seen the letter, so—*

GENTRY: *--but perhaps a formalized petition format would be better.*

HEELY: *Mr. Chair?*

CHAIR: *Yes, Ms. Heely?*

HEELY: *I'm sorry for interrupting, Mr. Chair, to remind you of the specific provisions in your rules in regards to the granting of formal hearings. I believe your rules state that upon the Board finding sufficient evidence that probable cause that a violation of the Code of Ethics occurs, the Board may formalize the hearing. It doesn't allow a third party to request a formal hearing. There's a certain process that the Board—*

CHAIR: *Yeah, okay, I can understand that—*

HEELY: *--so there's an informal hearing and if the Board finds there's sufficient evidence of probable cause that a violation of the Code of Ethics occurred, the Board may move the hearing to a formal hearing.*

CHAIR: *Understood, understood. I just—there is a volume of back-up information on these petitions, and I want to make sure that Mr. Cole is heard fairly.*

COLE: *The formal hearing, I would approve of that.*

CHAIR: *We're not going to vote on it today. I'd like you to make a formal request. Even though it's not part of our rules, we'll see how it applies to our rules and then we can agendize a discussion of whether or not to move to a formal meeting at a later date. And of course what will happen after that, if we do decide. Okay, just to clarify what we've got so far. We've got a motion on the table and a second regarding—could you read back that, Mary, the motion—I'm sorry, do you have it?*

GENTRY: *I have it, but Mary can read it.*

SECRETARY: *I move to deny the petition based on insufficient evidence at this time.*

CHAIR: *Okay, thank you. Do we have any other discussion from the Board? Okay, if I can get a vote. All in favor, say aye.*

(Ayes heard simultaneously.)

CHAIR: *Opposed? Okay, so moved. And just to recap before I move on to the next petition, 2009-4, a couple things, Mr. Cole. You've been mentioning Petition Number 2008-11 and referring to that, I think on both petitions so far. You can resubmit that for review under this Board and we can hear that, okay?*

COLE: *Um hmm.*

CHAIR: *The other thing is this latest one, 2009-3, if you wanted to request back-up documentation or supplemental documentation or correspondence from Corporation Counsel.*

COLE: *Um hmm.*

CHAIR: *Okay. All right, moving on to 2009-4.*

c. Petition No. 2009-4: Petition alleges that a County officer or employee violated Section 2-84 of the Ethics Code (conflicts of interest) by rendering legal opinions to the Board of Ethics on April 8, 2009.

CHAIR: *Petition alleges that a County officer or employee violated Section 2-84 of the Ethics Code, conflicts of interest, by rendering legal opinions to the Board of Ethics on April 8, 2009. Petitioner Dan A. Cole, and it refers to Assistant Corp Counsel Katherine A. Garson, did knowing and knowingly violate Section 2-84 of the Hawai'i County Code of Ethics by rendering legal opinions to the Board of Ethics on the Board's April 8, 2009, sessions. I'm going to refer this real quickly to counsel, Ms. Heely. Do you have initial comments or counsel?*

HEELY: *I would just like to remind the Board of certain provisions in their rules, specifically rule 4.5, which states the Board may refuse to entertain a request where (1) the request is speculative or purely hypothetical and does not involve an actual situation; (2) the request is frivolous. I also have a Webster's Dictionary, frivolous, if the Board would like me to explain that. Webster's defines frivolous as of little weight or importance, having no sound basis as in fact or law, lacking seriousness. That's what Webster's defines frivolous as.*

CHAIR: *Okay.*

HEELY: *And also just point to not only your—specific provisions of your rules, but in regard to Hawai'i County Code, Section dash 2.86, any petition which does not substantially comply with the foregoing requirements may be rejected. In addition, the Board may for good cause reject any petition.*

CHAIR: *Okay, that's rule 4.5, correct? You got that Mr. Cole?*

HEELY: *2-86.*

CHAIR: *Oh, 2-86. Okay, sorry. Okay, thank you. Is Ms. Garson here?*

GARSON: *Yes, I am.*

CHAIR: *Okay, hold on a second. Mr. Cole, why don't you come and provide your testimony, please.*

COLE: Yes, in regards to the conflict of interest matter. The petition that was submitted upon which Ms. Garson has made comments in section 6 of the April 8 minutes, where Ms. Lum suggests that Ms. Garson review with them why they could not discuss Mr. Cole's petition at the meeting. Ms. Garson explained that the Sunshine Law is fairly straightforward and that discussions must be agendized in order to discuss them in a public forum. Because today's agenda only listed the Board's letter to Mr. Cole regarding his petition, only that letter could have been discussed. Okay. This implies—and I say implies it, because unless we have a formal investigation where testimony is taken—that prior to the April 8 meeting of which you were all there, discussion was made in a quorum setting—

CHAIR: --Hold on—

COLE: --pertaining to actions with me—

CHAIR: --Sorry to interrupt. Just to clarify, I was not present at the April 8th meeting. I have reviewed the minutes—

COLE: Yes, I understand that, that's why it's in the minutes—yes—indicating that some comment was made before the meeting, whereas Vice Chair Lum, in an apparent capricious action, limited public statements to three minutes, even though I could find nothing in the rules and procedures exacting a three-minute statement. And I also went to the Corporation Counsel and requested a copy of the rules, policies, and procedures of where that three minutes came from and was informed that was purely a call by Vice Chair there.

CHAIR: Okay, you understand rules and orders are different—a chair, the sitting chair can, I believe, in my opinion, provide time limits for testimony or public comments under Rule 1.15—

COLE: --Yes—

CHAIR: --and I think it's clear at the discretion of the chair.

COLE: Yes. As I say we're merely clarifying the fact of the action. Okay, again, the fact that apparently the only reason that this petition could not have been heard, as I'm reading here, is it was not in the agenda. The reason this petition was submitted in the form it was was for the public to actually see these documents, whereas in the court transcripts and other transcripts, you have rules of evidentiary, and trickery of the court and a wink here and a nod here. This way allows the people, the people to judge the veracity of the vulgarity and moral turpitude of our elected officials and judges. And also it provides them the opportunity in which to protect themselves from the direct actions of our government, period. The fact had this gone forward, and discussion on the documents, where Emily Naeole, you know, _____ the FBI and the correspondence of Corporation Counsel as to what they know and when they knew it I believe is imperative under the Sunshine Laws and the very rule of the constitution of the state of Hawai'i where the governance of the people, that the people should be allowed to see these documents and not be held in this and held in that and correspondence requested this and

that. This is the point of the governance of the people, where they are responsible, where they can see how the corruption has placed them in danger by altering the streamworks which caused the flood and their property damage, while protecting the privileged property of others. Again the fact that Ms. Garson was presented counsel before the Federal Court, District of Hawai'i, and her opinions that this could not be heard, had this gone forward would have exposed her and her actions for review.

CHAIR: But how is that a conflict?

COLE: The conflict is by rendering a legal opinion that this not be heard, she is prevented from any exposure and exposure of conflict, property. She has a personal interest by not having this going forward.

CHAIR: Okay, I see what you're saying—

COLE: --Whether professionally or economically, or personal interest, yes.

CHAIR: I just have a hard time wrapping my slow brain around how it does—how the dots connect here.

COLE: That's why you would have to have it—hold it in a formal—

CHAIR: --Okay, and in fact we're back to the petition—

COLE: --yes, yes, a formal investigation and formal hearing would be appropriate here.

CHAIR: Well, I would—the petition for a formal hearing, let's make that clear. I would like to entertain the Board—I think we kind of need to move on here, because what the petition pertains to are a couple of things we've already discussed and need to follow up on and be resubmitted and the Board can discuss whether or not we can rule on that, the past petition, 2008-11, correct? I just find it hard to rule on this 2009-4 without going back and reviewing those items you keep referring to. Therefore, I would entertain a motion to dismiss 2009-4 with the Board's approval, and wait for Mr. Cole to resubmit this documentation that he keeps referring to, 2008-11.

LUM: Um—

CHAIR: --Yes, I'm sorry—

LUM: --No, we did hear—we did--that 2008 petition was before the Board. We did make a decision on it. It was before the Board, therefore would it not then be available to the public if they were interested in it? Because we did hear it, we did review it, we did decide that we needed to have it untangled so that we could hear the one part of it, because so much of it was not something we could deal with, and that, in my understanding, is what the petition that we heard earlier, based the—the Naeole one—was resolved—coming out of that previous petition, isolating what we could hear out of that petition. Am I wrong here?

CHAIR: No, I understand what you're saying—

COLE: --May I clarify your concerns here?

CHAIR: Hold on a second.

LUM: We did review all that, and we did ask him to pull out the part of it that we could act on, and he presented us with this Petition 2009-2, which we did here today. So it seems to me we really did read all that, did look at it, it is in the records. I don't understand why--

COLE: --Well, if you have to ask yourself whether or not you did or didn't, then the confusion would be there. Let me clarify something I keep understanding and hearing, that this Board is a board of average citizens. I'm an average citizen. You are correct that you would not have to be legal scholars, that's what you have counsel for, okay. However, the only thing that you are required to do—you have the total authority over the government of the County of Hawai'i with no responsibility for its governance, but you have the authority over all persons—the Mayor, the Police Commission, everybody—you can call them before you. This is the people's opportunity. You, by your oath, sworn oath, have sworn to uphold and defend the constitutions of the federated states of America and the sovereign state of Hawai'i, which includes the welfare and well being of the people. The people are responsible for the governance of Hawai'i. Now, getting back to your statements, well—wouldn't people have been exposed to this? I call attention to the very agenda today, the Sunshine Law that requires openness and directness, by obscuring the proceedings here under petitioner and County official or employee, whereas in previous petitions the names were identified. Had the names Dan Cole and Lincoln Ashida, Emily Naeole, and Kathleen Garson be identified on the public agenda, so that people could see the documents and be responsive and not obscured, would in fact call attention to these documents. The fact that you have to question whether or not it's been reviewed should—or it'd been properly advertised and the people of Hawai'i would have an opportunity to review these and to, as you said, have the information in them so that they in fact could protect themselves and their property. You're obscuring by your very actions.

CHAIR: Let's stay focused here on Petition 2009-4.

LUM: I would also like to comment that since apparently I was the person that asked for a review of the Sunshine Law, that is something that we are allowed and actually we agendize the Sunshine Law to keep us aware of it. We agendize it almost--I think practically every month, to try to help us respond to those requirements to be open. I did ask for her to clarify that, which she did. I see that as part of her job, what we hire her to do. I felt that it increased our understanding of why we had to have something agendized before we could deal with it and why we could not reopen a petition that was not, so that the public could be informed. That's exactly what we're doing here. I fail to understand this petition.

COLE: *However, the actual what you say you're doing, the fact that the discussion was held in the context it was, indicates that a discussion in violation of the Sunshine Law occurred prior to that meeting—*

LUM: *--That is your speculation—*

COLE: *--Well, that's the problem we have, because unless we go forward we're in a catch-22 here. If we can have subpoenaed documents or records, that's one thing. But we're in a catch-22. You can't file a conflict because you can't do this. I mean—*

LUM: *--Are you saying that a member of this Board cannot ask for legal advice before a proceeding? I don't think that's true—*

COLE: *--You bet you can—*

LUM: *--I think that we are allowed—*

COLE: *--but you're required in quorum, if you are in quorum, you are required under the Sunshine Law to have that in a public meeting. However—*

LUM: *--There is no evidence of any sort that that took place.*

COLE: *The documentation itself alludes to it.*

CHAIR: *The minutes. Okay, time out, time out for a second—*

LUM: *--It's not in the minutes. There's nothing in it, and there's nothing in the Executive Minutes.*

CHAIR: *Hold on, _____.*

LUM: *Okay, I'm done.*

CHAIR: *Okay, I'm sorry, Mr. Cole, my brain doesn't work as fast as yours. Back to Petition 2009—thank you, Vice Chair, you made yourself clear. Thank you, Mr. Cole. Do we have any action that the Board would like to take? Go ahead, I'm sorry.*

NICHOLSON: *Rather than defer this—did I hear you say you wanted to defer this?*

CHAIR: *No, no—*

NICHOLSON: *--okay—*

CHAIR: *--I feel like we have sufficient information and back-up documentation in the minutes.*

NICHOLSON: *Okay, I would like to move that we find that there was no violation under Code of Ethics Section 2-84, conflict of interest, by Assistant Corporation Counsel*

Katherine A. Garson in her rendering of legal opinions to the Board of Ethics at our April 8, 2009, meeting.

CHAIR: Okay.

LUM: Second.

CHAIR: Any discussion, Board members? All in favor say aye.

(Ayes heard simultaneously.)

CHAIR: Opposed? All right, thank you. Thank you, Mr. Cole, for your time, and I wish you well in your pursuit. And I'm sure we'll see each other again.

COLE: I'm looking forward to it.

CHAIR: You have a nice day.

COLE: Yes.

CHAIR: Hold on, I've got to get back to my agenda. Okay, moving on, Unfinished Business.

6. UNFINISHED BUSINESS

Ongoing discussion on the Sunshine Law. Ms. Schoen said she had nothing new to report.

Motion and vote: Ms. Gentry moved to enter into Executive Session for review of confidential financial disclosures. Mr. Martin seconded the motion, and all members voted aye.

11:33 a.m.: The Board left Regular Session.

* * * * *

11:45 a.m.: The Board returned to Regular Session.

7. EXECUTIVE SESSION (VOTING)

- a. Review of Confidential Financial Disclosure Forms filed pursuant to Section 2-91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.**

The Chair stated that the Board had reviewed the 12 financial disclosures listed on the agenda and that disclosures 6 (Jamae Kawauchi) and 9 (Dana Okano) needed further

information. Disclosure 6 needed clarification regarding the filer's occupation (Item 1), and 9 needed clarification of the nature of the consultancy (Item 1).

The Chair disclosed that he has relationships with David Fuerte and Sidney Fuke, filers 2 and 3, but that he did not feel his decision on approving their disclosures would be biased.

Motion and vote: Ms. Gentry moved to approve all the financial disclosures except for 6 and 9. Mr. Martin seconded the motion and all members voted aye.

8. ANNOUNCEMENTS

The Chair announced the next meeting as being scheduled for July 8, 2009, at 10:00 a.m. at the Department of Liquor Control in Hilo at 101 Aupuni Street, Suite 230.

Ms. Schoen said that Ms. Heely would be preparing the documents regarding the Board's decisions today on Petitions 2 and 3 for the Board's review at the next meeting. Ms. Heely said she would be available to the Board via telephone, which was allowed by the Board's rules.

9. ADJOURNMENT

Motion and vote: Mr. Martin moved to adjourn, Ms. Lum seconded the motion, and all members voted aye.

11:48 a.m.: The meeting adjourned.

Respectfully submitted:

Mary E. Crosson, Secretary