

HAWAI‘I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION¹

Wednesday, September 23, 2009

10:00 a.m. – 12:27 p.m.

101 Aupuni Street, Suite 230

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
Mary E. Crosson, Secretary for the Board

Also present: Joyce Folena, Gregory Smith, Emily Naeole, Michael Udovic, Jon Olson, Leana Gloor, Tim Rees, Shelley Stephens, Raymond Beason, Anne Marsh-Johnson, Cherish Alameda, James Weatherford, Jason Armstrong, Nancy Cook-Lauer, Dave Corrigan, Wendell Ing, Kenneth Van Bergen, Levi Hookano, and several other members of the public.

1. CALL TO ORDER

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

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

The Chair announced that the Board needed to consult briefly with counsel regarding how to handle the public testimony on the agendized items.

Motion and vote: Ms. Gentry moved to go into Executive Session, Mr. Martin seconded the motion, and all members voted aye.

10:02 a.m.: The Board left Regular Session.

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10:08 a.m.: The Board returned to Regular Session.

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

CHAIR: Okay, this meeting is back in order. Okay, thank you, everybody. We are now on agenda item number 2, Statements from the Public on Agenda Items. I will be calling up the people who have signed up, and this portion is limited to three minutes, so please make your point so we can fit everybody in. One more thing I'd like to ask as Chair. We've got a lot of people here today—if we could make sure that we're respectful and courteous to the Board and to the folks giving testimony today. Call up first Joyce Folena. And if you could state your name. Thank you.

FOLENA: How close do you want this microphone to be?

SECRETARY: Right there is fine.

FOLENA: About like that? My name is Joyce Folena. I'm a resident of Puna District. I've lived in Hawai'i nearly 26 years, and I'm speaking in favor of the Board adopting Ordinance 08-57 into your rules of procedure, giving you the power to impose and collect fines that you would decree of not more than \$1,000 per each violation committed by a officer of the County of Hawai'i. This ordinance has been languishing for sixteen and a half months. I've spoken to Renee Schoen about it. I've spoken to Mary Crosson about it. They've been very helpful and very courteous. I'm not an attorney, so I don't really understand the ins and outs of the legal standards necessary to adopt this ordinance. I do understand from the newspaper that Mayor Billy Kenoi is in favor of penalties being imposed by the Board of Ethics, and most of the people that I've spoken to are saying well, why do we have a Board of Ethics if all you guys do is vote and give your opinions but you don't give penalties? So that makes you, in a lot of people's minds, dysfunctional. I would hope that with the adoption of 08-57 into your rules of procedure—and I understand that there has to be an agency of appeals created so that—and that's all in fairness and that's within our law within our United States of America. If you're found guilty of something, you have the right to appeal it, so I'm wholeheartedly in approval of this, and I think that enough time has gone by that I think the County can get it together to create this agency of appeals. There's something else going on in HRS. Mrs. Schoen would have to explain the details of what—the County is lobbying HRS to lighten up some kind of restrictions, or some kind of legal details, making it easier for you to adopt this ordinance 08-57 into your rules of procedure. I understand that there are also—there are two bills that are going to run through again in the next legislative session, and one bill which was defeated last year, which will probably be given a new number. I don't know if it will or not. But Mrs. Schoen is the lady that I think, and I do request, say into the record, exactly what needs to be done, because Mrs. Schoen understands it, being an attorney. That's it.

CHAIR: All right, thank you.

FOLENA: Thank you.

CHAIR: I'll call up next Gregory Smith.

SMITH: My name's Gregory Smith. I reside in the district of Puna, and I'm very much in favor of adopting fines and—for councilmembers or any other public official that goes

against the Board of Ethics rules. And I do agree with Mayor Kenoï that it should come forth. It's a long time past. Apparently, you know, I've heard some Council people and others say that the Board of Ethics is not really effective at all because they cannot levy fines and penalties against people that have broken the rules of ethics. So anyway, that's it, and mahalo.

CHAIR: Thank you. And Jon Olson?

OLSON: Yes, good morning. My name is Jon Olson, and I'm here to speak to 2009-6 and 2009-7. I was present during some of the incidents that were cited in this petition. As the chairman here has just pointed out, our process relies on civility to make it function. I have taken up directly with the Council chair the issue of Emily's discourteous demeanor to people who come and testify. He has refused to deal with the issue, and therefore it's on your desk. There is a disc of all of this, so the issue is really not the question of whether she did it or not. What we're down to is what are going to be the rules of engagement, and apparently it's fallen to you to make that decision. Is this the way we're going to conduct the government's business? I'm a child of the sixties, and I've dealt with government out of control, and I can do that and I will do that—if that becomes the rules of engagement. If she can do it, I can do it, and many, many more of us will do it. I don't want to go there. Been there, done that. But if that's what it takes to get things back under control, we will. Thank you for your time.

CHAIR: Thank you. And next we have Leana Gloor.

GLOOR: My name is Leana Gloor. This is in correspondence—this is regarding correspondence 2009-66, letter from Mayor William Kenoï regarding proposed amendments to the Ethics Code. I am concerned about Proposal 1, relating to Section 2-83, fair treatment. The stated purpose of the proposal is to prohibit County employees and companies in which County employees hold a controlling interest from contracting with the County. This seems reasonable and appropriate. However, the language of the amendment as it is presented in point 5c stipulates that, and this is quotes, no officer or employee, or any business in which an officer or employee or the officer or employee's spouse or dependent children has a controlling interest, shall contract for goods or services with any County agency. The way it is worded suggests that the intent is to prevent an employee from using a spouse or dependent children as a cover so as to enter into contracts with the County while essentially hiding their role as the contractor. However, the language as proposed would seem to prevent a spouse of a County employee, who may otherwise qualify on their own merit, from contracting with any County department simply due to their marital status. I do not know how many individuals this amendment might affect, but I would suggest that it could potentially unfairly diminish the pool of qualified contractors and vendors. This amendment would mean that a business owner that sells goods or offers services and is married to an employee of the County would be unable to provide such goods and services, regardless of the price or qualifications. It is easy to imagine many instances where an employee's role in the County has nothing to do with the selection of contractors or the goods and services to be provided by such contracts. This affects me personally, because I am a community planner currently performing a small contract with the County of Hawai'i

Planning Department. My spouse is employed by the County Department of Environmental Management. My husband has nothing to do with my County contracts with Planning, nor does he perform any of the duties of my contracts. However, under the wording of Proposal 1, (5)(c), it seems that the fact that my spouse is an employee of the County would now exclude me from qualifying from any future County contracts with any department. I do not believe that was the intended purpose of the amendment. Furthermore, Proposal 2, Section 2-85, seems to allow for a County agency to contract with an employee under certain stipulated criteria. I am unclear how the amendment in Proposal 2 relates to the amendment in Proposal 1. I feel that Proposal 1, (5)(c), is worded in such a way that these amendments does not allow for any further consideration. I ask that when the Board consider these amendments, it reconsiders the wording of Proposal 1, (5)(c), so that it will not arbitrarily exclude all County spouses from contracting with the County if the contract is deemed to be awarded fairly and without a conflict of interest. There are various methods this could be achieved, and I trust that with minor rewording the amendment would achieve the desired intent to ensure fair treatment in awarding of contracts. I recognize the value of transparency in government, and I welcome ethical reforms that will ensure the public monies are spent wisely and contracts are awarded fairly to qualified contractors. Thank you for your consideration.

CHAIR: Thank you, Ms. Gloor. And just to point out, my intention for this Board is to look at this communication from the Mayor closer at our next meeting, so you're welcome to come back next meeting or submit your public testimony to the Board.

GLOOR: Okay, thank you.

CHAIR: Next up, Mr. Tim Rees.

REES: Good morning, Ethics Commission.

CHAIR: Good morning.

REES: Sir, I made a mistake on that thing, too. I wanted to list—one of the items I wanted to speak on, I should have listed it as 5.d.(2), the moot petitions.

CHAIR: Okay.

REES: The first one I wanted to testify on this morning, though, is Communication 2009-66, Mayor Kenoi's letter, and I speak against this. Most of the provisions in his letter—one problem was trying to locate that letter. I had a hard time. And I'm glad to hear you're going to be looking into it more at your next meeting. Hopefully—I don't know if you folks can do the hyperlinks on your website, if you're capable, like the County Council does it. That's extremely helpful so people can be informed about what you're discussing here today. However, I did acquire it, and there's some misstatements in here. And generally he—the part that I'm against is this giving you folks adjudicatory powers. There's a lot of philosophical problems with that. I question whether any of you have been properly trained, except perhaps maybe Ms. Schoen, in evidentiary law, and even if

any of you would know which particular evidentiary rules or guidelines would apply in a ethics board setting. So there are very strong considerations, it really needs to be looked in carefully. Primarily what I'm going to say is this. I testified extensively when Brenda Ford initiated this ballot initiative at the Council level, and for the Council to now try to pretend as if they weren't aware of the consequences in the language in HRS statute 46-1.5, section 24, subsection (a), is preposterous. That is ridiculous on the face of it. I can show you reams of pages of my testimony to them, explaining to them precisely the problem they were heading towards, where a person who wishes to fight an administrative assessment can drag it on for at least a year. And I suggest that they stick with the earlier provision in the Charter as it was, which said that all violations shall be prosecuted—it didn't say they were misdemeanors, but it said as a misdemeanor. And I would like to point out that the County itself has many opportunities to seek injunctions. For instance, if you have a County employee that is not obeying the Code of Ethics, there's nothing that stops the County from going and seeking an injunction against that person to stop that particular behavior. You open a can of worms, and when I say you, I'm meaning the County Council of Hawai'i—opened a can of worms when they went to go to this administrative fines situation. The truth of the matter is, 26—HRS 46-1.5, section 24, applies to all administrative fines, such as if a planning director wants to hit somebody with zoning violations, again, one of their strongest moves is to go right to the Circuit Court and seek an injunction while all of the proper procedures 46-1.5(24), as they exist, are in operation, are in play. The truth of the matter is that the Planning Director and all the County departments—I don't think they've ever gone after anybody. There may be one to three cases in the past three years where they've actually gone to seek administrative fines. So this thing is becoming an issue here. In reality, how often do you think this Board will actually exercise its fining functions rather than giving people warnings, advising them, and—other proper venues and avenues are open to the County of Hawai'i to stop improper behavior. And of course your Board is very important in notice—notification to a person and allowing a person to request, a County employee to request from you. So I feel there's a little bit of humbug going on here, the County acting and the Mayor acting as if we need to change this law now, as if they weren't aware of the consequences of that section 24 that I referred to. So I'll be looking at this closely. There are very strong matters to be considered here. Thank you on that one. On Petition—

CHAIR: --Mr. Rees, just to point out, you're four minutes, and we're limiting this to three minutes. We have a stack of people wanting to testify on this. So you already have four minutes.

REES: What does that mean?

SCHOEN: Mr. Rees, though, you were going to testify on another item on the agenda.

REES: I was, and I'm sorry I went long. I didn't realize I was over the limit.

SCHOEN: Were you going to testify on other matters?

REES: Yes, I was.

SCHOEN: Okay, then you can allow him another—

CHAIR: --Okay, all right. Another three minutes? All right, I'm sorry. Go ahead.

REES: I wish to also testify on three more items, and I'll make it as fast as I can.

CHAIR: Okay, thanks.

REES: I believe that your New Business, number 5 on your agenda—these petitions are insufficiently agendized. And why I'm saying this is that what has happened in this state is, we have a one-party system, and it's led to quite a bit of corruption in this state on all levels. What happened was, years back we had university law professors that were engaging in sexual conduct with students. They have a strong union. We also have SHOPO—police officers have a very strong union. They lobbied the State Legislature to put in a provision in the Uniform Information Practices Act which our state, low and behold, puts parentheses after and says, modified. The uniform was not so uniform—I guess it was uniform and good enough for all the other states. Hawai'i needed to modify it for its own intents and purposes. What they did do, if you look at the open information laws and the UIPA chapters, they started out very well. They had good intentions. They had great provisions in there. What they did was they took the actual first amendment balancing test of where privacy rights were being unduly affected or jeopardized, and they took the right to know of the public, which—the right to know has been considered a first amendment constitutional right. The unions stepped in and said, we need to exempt government employees and police officers from having their names and complaints about them mentioned. And so this is why you don't see this in your thing right now. People always refer to the SHOPO case. The SHOPO case was actually kind of ridiculous. It missed so much. What the Ethics Board should consider is UH Law Review, Volume 18, where a university student went into the—I don't have it in front of me right here—the page citation I could give you. It is here somewhere in my papers. But with the time limits I'm just going to have to tell you. He points out how the U.S. Supreme Court has ruled on these matters, not for specifically ethics boards, but for judicial review commissions where the language is synonymous with the language you folks use. It says it is silly, when you're trying to present an open and fair ethics process in a review process of government employees, not to name them. Now I want to relate that very quickly to the insufficiency of this agenda. If I read New Business 5.a., I could just as well think that this complaint is against yourself, Mr. Dill. Or Ms. Gentry. So has it sufficiently generated the knowledge that persons of interest need to decide whether they will come down here and try to interact with our government? We need to know what's happening. So my loss here—the violation to my constitutional right is—perhaps I would want to speak in support if the violation is against you. Perhaps I would want to speak in support of the complainant. But because the violator and the complainant are not named here, for silly reasons that have been adopted under this SHOPO ruling, I don't know who this is about or what's going on. I don't know if I could trust my paper, everything they print. If I ask politicians, they say well, you can't trust everything the paper says. So I should be able to get it off a government document. And if I went long, I would include those too already. The last issue I wanted to speak on is moot petitions. This is

5.d., subsection (2) there, Counsel's Report Regarding Matters and/or Inquiries Received by the Board, including incomplete and/or moot petitions filed with the Board, if any. Well that's really a loaded gun right there, this concept of moot petitions. And if this Board gets into sticky territory, I can see how there's just so much political pressure to declare something moot and be done with it, and have it over with. Though it depends how you're using the word here—if you're trying to draw a legal conclusion and say that issue is legally moot, that's a big, powerful thing to do there. And I think that the public really needs to be careful about that, that we don't have an Ethics Board that ends up dismissing matters using the buzzword it's moot, the matter is moot. And thanks, that's all.

CHAIR: Thank you very much. Up next we have Shelby Stephens. Ethical sales of lands.

LUM: _____?

CHAIR: Ethical sales of lands. Ms. Stephens? If you could make sure that your testimony relates to the agenda items.

STEPHENS: Okay. All right, is it on? Okay, I believe I can relate this to Petition No. 2009-8, because it involves sales of any lands within Hawai'i. And I just wanted to make sure, when it comes to property in Hawai'i—and I'm going to actually relate this to Hāmākua sales, as the first speaker had talked about—that I just want it on record that the County of Hawai'i must not sell stolen property that they know is stolen, nor should they purchase property for open space and other things on their agenda that is also stolen and cannot prove clear title. The title search should have raised major ethical issues and red flags concerning stolen property but was ignored until citizens pointed out discrepancies. The sale auction of Mahele lands, especially those proven to be stolen while the queen was in prison, is unethical on behalf of the Corporate Counsel, the County Council, and the Mayor, because it perpetuates the belligerent occupance of the Hawaiian people's land base, subsistence, and traditional cultural properties. Royal patents, kuleanas, and other Mahele lands are not actually subject to illegal taxation, and—

CHAIR: Excuse me, sorry to interrupt. We don't have that issue on our agenda. I know you're trying to relate it to Petition No. 2009-8, but you're speaking specifically of the Hamakua land sales—

STEPHENS: --Well, I'm actually speaking specifically for ethical transactions within the County Council, and that it's unethical for any member of the County to sell stolen property. That is my main point.

CHAIR: I hear you, but it doesn't relate to anything on the agenda. What you said can go on record—

STEPHENS: --Okay, thank you.

CHAIR: And if that does come on our agenda, you're welcome back to testify.

STEPHENS: Okay.

CHAIR: Okay?

STEPHENS: And then—

CHAIR: --Is there anything else regarding the agenda?

STEPHENS: Yes, I had signed on to do—for Petition No. 2009-6 and 2009-7.

CHAIR: Okay.

STEPHENS: So far as—so for the first one, County officer violated the Ethics Code regarding fair treatment. I just want to go on the record saying that the police in general have a bad habit of doing improper handcuffing on the Big Island. I believe it's unethical, so that while in the police's care there are people that suffer great injury because of unethical treatment, and that I'm asking the Ethics Board to consider some sort of ordinance, statute, some sort of recommendation so far as proper handcuffing—

CHAIR: Again, you've got to relate it to the petition on hand—

STEPHENS: --Okay. And I'd like to join the overbearing reference to religion, racist remarks, and insulting gestures. First of all, I want to say—I'm not sure, but I believe that today this is all about something that Emily Naeole may have done. And I just want to say that I've known Emily Naeole a long time, and to look at me, you probably think I'm a white person, I'm a haole. And that I've been insulted left and right because of how I look, and that actually, after being insulted and being called an F-ing haole one day, I actually cried on Emily Naeole's shoulder. And she did her best to try to remedy the situation, and we talked about things like the kumulipo, where there's people of all different races inside the Hawaiian creation chant. But the thing is—and I've heard rumors, I don't really know, I haven't talked with her personally about what the gesture was, but that I took a class at UH, and it was all about insulting gestures in foreign countries, because we had no idea that—like this means peace, and this means something very different, very insulting, in a certain country. And we didn't know that, so we had to learn all these different ethical things about gestures. And so that's where I'm saying maybe people need more training as to what is considered a—now I have a sore thumb, okay, and sometimes—I know the thumbs down thing, but sometimes I sit there and I go like this and I hold my sore thumb, okay. That's only because my thumb is sore, not because I'm trying to insult anybody. And it's not because—well, I don't even know that that would be insulting. So, so far as public officials, I believe they need more training and actual consultation with other—because we're a multi-racial community here. And I believe that Emily Naeole does not have a prejudiced bone in her body. That's what I believe. Thank you.

CHAIR: Thank you very much.

STEPHENS: Oh, I'm sorry. I needed to, just for the record, I just want to say that the geothermal plant has no emergency response plan and that they are dumping catalyzed sulfite into the water table. And that is unethical business in Hawai'i. Thank you.

CHAIR: Okay, up next we have Raymond Beason.

BEASON: Good morning.

CHAIR: Morning.

BEASON: My name is Raymond Beason, and Petition No. 2009-6. Emily and I are going to get married October 24th—

CHAIR: --Congratulations.

BEASON: Thank you, sir. And I've been with Emily for quite a period of time since I been here, and I went all over the place with her. I've seen people come to her with tears, all types of races, and all she does is show love. And what she says, that's what she does. And she helps people. I've seen this with my own eyes. And Emily, she is not prejudiced. She loves everybody, 'cause I've seen this with my eyes. And that's what I got to say. And what I say is the truth.

CHAIR: Thank you very much.

BEASON: Thank you.

CHAIR: Up next we have Anne, Anne Marsh-Johnson.

MARSH-JOHNSON: Good morning.

CHAIR: Good morning. Let me just point out again, like to Shelby, we need to have this relevant to the agenda items.

MARSH-JOHNSON: I think that these are really good. I think it should be passed. I think the proposals are very, very good.

CHAIR: What are you referring to? I'm sorry.

MARSH-JOHNSON: All the proposals, all the proposals that are in this—

CHAIR: --the Code changes—

MARSH-JOHNSON: --Yeah, the Code changes. I think it's really good.

CHAIR: Okay.

MARSH-JOHNSON: I wanted to talk about the ethics of the County of Hawai'i in land sales, though. And it's really important. I've been doing some investigative work on the actual boundary lines of the Hāmākua Forest Reserve, and I'm finding out that these boundary lines are far larger than what you have now. And is it ethical for the County of Hawai'i to withhold documents from the State of Hawai'i and lands from the State of Hawai'i that belong to the State of Hawai'i? Is it ethical? We right now are in a situation where I know that we have endangered species of plants and animals on this island. The Department of Land and Natural Resources has a map. They know about that. But we are allowing the County of Hawai'i to continue with these land sales and—

CHAIR: --I'm sorry to interrupt. We have to have it specific to something regarding the agenda. You're welcome to file a petition--

MARSH-JOHNSON: --I'm sorry—

CHAIR: --No, no, you're welcome to file a petition—

MARSH-JOHNSON: --But I do think that this is very good.

CHAIR: Okay.

MARSH-JOHNSON: I think that we should pass it, but ethics wise, I think that there needs to be more transparency and more ethics done. I think it's very good.

CHAIR: Okay.

MARSH-JOHNSON: I think it should be passed, I think the whole thing should be passed.

CHAIR: Thank you very much.

(UNKNOWN FEMALE VOICE): All land sales go through the County.

MARSH-JOHNSON: Yeah, the land sales do go through the County, and it's not ethical for the County to sell something that doesn't belong to them.

CHAIR: Okay, thank you.

MARSH-JOHNSON: Thank you.

CHAIR: Okay, Cherish Alameda.

ALAMEDA: Good morning.

CHAIR: Morning.

ALAMEDA: I am here on behalf of, I believe it's Petition 2007 and 8, dash-8.

CHAIR: 2009-6 and 7.

ALAMEDA: *Oh, 9 and – okay. Regarding the ethnic of Emily Naeole. I have known Emily for about ten years, and I live in her district and I’ve had the option and the wonderful opportunity to be not only a part of her life, but a part of many lives that she surrounds and who surround her. And when this first came up, I was shocked, and I could not believe it. This lady goes out on a limb for her district and everyone who lives within it, and those who don’t live in her district. It doesn’t matter what your creed, color, race, is. Emily, I don’t believe, has any form of what we call in Hawaiian pilikia against anyone. She will give the shirt off of her back if she sees someone walking in the rain and needs a shirt. This lady, she holds a great standard of who she is. And I know a lot of the time people feel that her beliefs interfere with what her job is, but I believe that—and I know that she knows that she believes this also—that she stands on who she is, and that’s—who she is has gotten her to where she is today. And through every life experience she has experienced, every person she has met along the way has made her into the woman she is today. And not because she has a certain belief or because she has—that she’s different from others. Should she be constantly condemned for that? You know, a lot of people, they use her—especially in her job realm—they use, oh, Emily uses God all the time, all the time. Well, you know what? All of us use God all the time. Every time we reach in our wallets to grab a piece of money, to grab money to pay for something in this country, we are using God, ‘cause printed on every currency that we have, it says in God we trust. And that’s what Emily lives by. And I love her dearly, and I know that she loves her job dearly, because the way she’s able to interact and make a difference in many people’s lives. And I just would like you folks to take that into consideration today. Thank you.*

CHAIR: *Thank you. Up next we have Joyce.*

FOLENA: *Mr. Dill, I’m going to speak on my own petitions, my and Greg’s petition. Is that acceptable?*

CHAIR: *Yeah, you’ll have an opportunity later, of course.*

FOLENA: *Okay, I’ll be brief.*

CHAIR: *Okay.*

FOLENA: *This is—I’ll use the six minutes up, maybe, maybe not. Petitions 2009-6 and 2009-7. We are not criticizing or faulting Mrs. Naeole for her religious belief. We are very adamant that during the County Council meetings, which are secular by nature, legislative by nature, called to conduct business—the legislative business of the County of Hawai‘i—that it is a violation of the Code of Ethics for any council member to single out their own religion and use that religious principle as a lever to try to sway the politics, the votes, of the County Council, to try to affect the legislation of the County Council of the County of Hawai‘i using skin color. There was a quote by Mrs. Naeole. She said, is it because I’m kind of dark, or what’s the problem. And this is a racial slur. The*

religious test in our country is illegal for anyone holding any position in our government, and that reference is the government can't give a religious test to someone as a criteria for that person to hold office or to be appointed to any position in our government. I think it's a semi-permeable membrane. I think that it's a violation of Section 2-83(a)(3), which states all persons must be treated in a courteous, fair, and impartial manner. There are many people in our County that do not accept Jesus Christ as their lord and savior as part of their religious or spiritual belief. We have Muslims, Hindus, Buddhists, Christians. We also have atheists and agnostics and many other sects and beliefs of which I'm not familiar. So we have to respect with impartiality all persons. We have to be courteous to all persons. We cannot allow our County representatives to use their own religious construct during the legislative debates and discourse of the County of Hawai'i. This is not to fault Mrs. Naeole in her private business of her religion. We are saying Mrs. Naeole does not have the right to bring her religion to the table during the legislative business of the County of Hawai'i. Thank you.

CHAIR: Thank you. Next we have Gregory Smith.

SMITH: Yes, I'm going to comment on our petitions 06, 07. Again, my point is, is it—apparently Mrs. Naeole does not understand how she has wounded some people's sensibilities by her constant references to her god, or the fact that she has said that Akua told her to do this, Akua told her to do that, right. This—I'm sorry, I don't hold those beliefs. Now I am a firm believer in separation of church and state for the very simple reason that I am sure that if I express my views of Pentecostal or evangelical Christians, I would actually hurt Mrs. Naeole's feelings and her sensibilities, all right. And that's the problem. This behavior, if you notice—if you go to a Council meeting, you'll notice that nobody in that room except Mrs. Naeole refers to her god, refers to Akua, refers to Jesus Christ. They keep silent, not because—they keep silent because it's respect for all people's religions. We are in the business—if we're in the County Council testifying, or whatever business we are discussing in that body, we're not here—I don't want to hear it. I'm sorry. I just don't want to hear it. I don't burden her or anybody else in that room with my religious or spiritual beliefs. I do not appreciate that. And then of course, to me, what was most grievous was her racial slur, which we have recorded in our petition. And this is not some isolated incident with Mrs. Naeole. Again, if you notice, other council people do not reference their ethnicity or their race in their general discussions, unless of course you say, oh, we have a Hawaiian issue or we have a Filipino issue, or something specific to what is on the agenda. The problem here is that, again, her reference to her skin color after Kelly Greenwell had given her a sharp—you know, a sharp—it was a sharp discussion on her qualifications to be vice chair, okay. And the problem is that she comes in, obviously angry and frustrated. Nobody likes to take criticism. But you know, that's part of being a County Council person, you know. And if you can't take criticism, in my opinion, get out of the kitchen. What she did in that one comment—and I was involved in civil rights in the sixties. I've been put in jail for it, and to have somebody come up in this day and age, 2009, to make some stupid comment like that is—to me that's not acceptable. I'm sorry. Anyway, that's it. Thank you.

CHAIR: One more. James Weatherford, speaking on the two petitions.

WEATHERFORD: Thank you, Mr. Chair, and specifically I want to address an issue that Ms. Folena had asked me if I was present when a particular incident occurred at the County Council. That was the incident in which Ms. Naeole was praying over the witness at the time that Ms. Folena was testifying before Council. And it is true, that my observation was that Ms. Naeole was holding her hand out and was audibly having something to say to someone during the time that Ms. Folena was testifying.

CHAIR: Okay, thank you.

WEATHERFORD: Thank you.

CHAIR: Okay, moving on to agenda item number 3, Approval of Minutes.

3. APPROVAL OF MINUTES

Minutes of the August 12, 2009, Regular Session.

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

4. COMMUNICATIONS

a. Communication No. 2009-64: Hawai'i Police Department *Annual Report Fiscal Year 2007-2008.*

The Chair requested delaying the acceptance and filing of this communication until the Board had more time to go through it. The other members agreed.

b. Communication No. 2009-66: Letter from Mayor William Kenoi dated 9/14/09 regarding proposed amendments to the Ethics Code.

The Chair said that since no one was present from the Mayor's Office and more time was needed for the Board to review the proposals, he would like to continue the matter to the next meeting. In the meantime, he asked that each member come up with a list of questions and send them to Renee Schoen. He said someone from the Mayor's Office would need to be present at the next meeting to answer their questions.

Motion and vote: Mr. Martin moved to defer the matter to the next agenda, Ms. Gentry seconded the motion, and all members voted aye.

5. NEW BUSINESS

a. Petition No. 2009-6: Petitioners allege that a County officer or employee violated Sections 2-83(a)(3) and 2-83(b)(5) of the Code of Ethics (regarding

fair treatment) and “needs to be instructed to stop being discourteous and unfair to the public, and needs to understand our First Amendment Rights, in stopping . . . racist remarks and overbearing references to religion.”

CHAIR: Before we start these petitions ahead of us, I just want to remind everybody that this is an informal meeting, and the way I'd like to work it is to bring up the petitioners to give their side of the story first. Then Ms. Naeole and whoever's representing her can then give their side of the story. And you guys can take ten, fifteen minutes, whatever you want to take, but just try to keep it to the point. You guys tell your side of the story for the first petition, and then I think—Mr. Udovic, are you representing Ms. Naeole?

UDOVIC: I am.

CHAIR: And then after that, I'd like the Board to ask questions. We will discuss if we need more time, more information, whatever, and possibly, if everything's fine with us, we'll make a motion to issue a decision on this today. So petitioner first, and then Mr. Udovic and Ms. Naeole next. So petitioners for Petition 2009-6, Joyce Folena and Gregory Smith.

FOLENA: Do you want us to proceed?

CHAIR: Yes, please.

FOLENA: Okay. Petition 2009-6 contains—I'm sorry—

CHAIR: --Wait, I'm sorry, I think we have some disclosures first for the Board, before we move forward on this.

FOLENA: You want me to wait now?

CHAIR: Yeah, sorry.

GENTRY: Mr. Chairman, I would disclose that I worked in a temporary position under Ms. Naeole more than a year ago, but I feel that I can sit on this case based on the merits of this case.

CHAIR: Okay. Anybody have a problem with that? Yes, Arthur?

MARTIN: I'm an ordained minister in the United Church of Christ. I don't know if this would have a bearing, as there's a religious part to this.

CHAIR: Okay.

SMITH: Absolutely no problem with that.

FOLENA: It doesn't bother us, Mr. Martin.

CHAIR: Any of the Board members feel that they can't—have any issues with these disclosures? Ms. Naeole's side, any issues with these disclosures?

UDOVIC: I have none.

CHAIR: Okay. And then before I proceed, just a reminder to everybody that this Board deals directly with the County of Hawai'i Board of Ethics and the codes therein. Constitutional issues are out of our scope, but you referred to the Board of Ethics, or the Code of Ethics, in your petitions, so let's look at that. Please proceed. Sorry.

FOLENA: That's okay. I understand that the—I want to say this formally into the record, that I understand that the Board of Ethics of the County of Hawai'i deals with issues pertaining only to the Code of Ethics of the County of Hawai'i, Chapter 2, Article 15, Section 2-83, in this case subsection (a)(3) and (b)(5). My first two addendums—and I'm not an attorney, and I'm not a professional, and my typing's pretty darn bad, so I apologize for the poor typing—had to do with constitutional law and case histories that I'd researched doing Google. I do understand that now, that this is just background and that's why I did enter and file the Summary Addendum, which is more to the point of how you people do rule, and how you vote. The Summary Addendum contains verbatim listings of a total of 14 violations to the Code of Ethics on the part of Mrs. Emily Naeole. Thirteen of these violations—and they're in chronological order—thirteen of these violations on the part of Emily Naeole occurred on 16 June 2009 during the County Council meeting held in Kona, videoconferenced Waimea and Hilo. Mrs. Naeole was the only council member present in Hilo at that time. Mr. Smith and I were present in the Hilo room along with quite a few other testifiers and members of the public who did not testify. I think just about everybody that sat there did testify. During that time, Mrs. Naeole expressed herself in ways that we find completely in violation of the Code of Ethics which, by the way, does follow HRS, Hawai'i Revised Statutes, which in turn follow federal law. And this subsection here, Section 2-83(a)(3), says all persons shall be treated in a courteous, fair, and impartial manner. And I'm going to do my best to be brief so that you will understand why we think this is serious enough to bring it to the Ethics Board. We don't want to go into a court of law with this. We want this nipped in the bud. We want your vote and your opinions in the direction and in agreement with our petitions so that Mrs. Naeole will be confined, we hope, by verbiage from the chair, J Yoshimoto, after your opinions are given to the chair, which I believe they are, are they not?

CHAIR: Um hmm.

FOLENA: Correct, okay—to confine her comments to a secular, within a secular nature, and to please stop mixing church and state. There are two very good reasons for that. When church interferes with government, it opens the door for government to interfere with church. I don't—I said this before in my testimony—I don't fault Mrs. Naeole for her Christian belief. I don't fault anyone for anyone's belief, because I'm a universalist in nature. I feel that people walk their own path and as long as they do that with respect to everyone else's path—in our country, the United States of America, everyone is empowered to do so, so this all persons shall be treated in a courteous, fair, and

impartial manner—I think the key word here is impartial. The impartiality demanded of every County Council member in the direction of religion means that no council member can use his or her religion as a bludgeon, politically speaking, as a political tool, or as a political lever in order to influence the legislative, secular vote of the County Council—and also cannot be used as—this religious thing—cannot be used by a council member in order to intimidate or try to affect the thoughts and the testimonies of the public, which in turn affect the vote of the Council. When Mrs.—that’s in the 16 June 2009 meeting. I’m going to refer to the fourteenth violation of Petition 2009-6, and that occurred on the 5 August 2009 County Council meeting. This is held in Hilo. At that meeting, I was giving my public testimony in very definite opposition to Mrs. Naeole being vice chair, and I will sit here and say to all of you that to this day I feel that Mrs. Naeole isn’t qualified to be the vice chair of the County Council. And I feel by her aforementioned violations that she’s continuing to prove my point, but that’s a matter for the Council. Now during my very definite testimony in opposition to Mrs. Naeole being the vice chair, a position that Mrs. Naeole wants very dearly, Mrs. Naeole extended her—let’s see, I think it was her—I don’t know which hand it was at this point. I think it might have been her left hand, or right hand, don’t know. And she started, barely audibly—I could hear some words coming from her—praying over me—I’m using a gesture, but this isn’t teleconferenced nor is it recorded visually, but she extended her hand in my direction. I’m sitting at the table. She’s sitting about where Diane Gentry is sitting in angle to me. And it was disruptive to my thought process, and I was infuriated that that occurrence was being conducted during this secular meeting. I mean, the meeting is not a church meeting. It’s a secular meeting. The doctrine of church and state in our country has been upheld 100% of the time by the Supreme Court, and so as such I think that doctrine is carried over—I’m very sure it’s carried over—into the Code of Ethics. All persons shall be treated in a courteous, fair, and impartial—impartial, underline, bold print, impartial, manner. Please, if Mrs. Naeole wants to pray during the County Council meetings, that’s her right, as long as she does it silently. She can read her Bible during County Council meetings. But we strongly oppose Mrs. Naeole using God told her that it was okay and she should step up and be the County vice chair. Frankly, I don’t believe that. But Mrs. Naeole believes that, and it’s her right to believe it, and it’s my right not to believe it. You can’t bring your own personal religious belief in as reasons why you’re sitting in that chair as a representative, and as reasons why you think you should be elevated. Neither can you bring in your ethnicity as a reason. Now I have a dual feeling about Mrs. Naeole using ethnicity, skin color, Hawaiians have to come up because Hawaiians have been put down. I will be the first to admit Hawaiians have been suppressed, and Hawaiians do need to step up. I’m very supportive of this, but you can’t—you meaning Mrs. Naeole or any council member—can’t use any one ethnic group or ethnic reason as a—an opinion or as being qualified to hold any office in our United States government or our state government, i.e., our County government. We’re prohibited by law from using racial bias, racial reasons, religious reasons, for hiring and voting, electing anybody in our government. I think I’ve covered it. Thank you. And there’s also 2009-7, so I didn’t cover that one yet, sorry, sir.

CHAIR: _____.

FOLENA: I’m only speaking on 6.

CHAIR: Yeah, right now.

FOLENA: Sorry, sir.

CHAIR: Mr. Smith, you want to add a few words?

SMITH: Not really much. If you folks have any questions, certainly I'd be—

CHAIR: --We'll hold our questions till after we hear their side. I'm sure we'll have some.

SMITH: All right, very well. Thank you, sir.

CHAIR: Thank you. So why don't we call up right now Councilwoman Naeole, Mr. Udovic.

UDOVIC: Good morning, Mr. Chair and members of the Board of Ethics. I've provided correspondence with the Board which I think outlines our position fairly succinctly. I don't think that this Board has the, quite frankly, the authority or the power to determine what people can say, think, feel, hear, or speak about during council meetings, quite frankly. And the real issue I think that we're involved with in this particular case I think was brought up by—I think it was Mr. Smith, Gregory Smith, the last person who was present, when he said that what—in his public testimony—that what they're really talking about was that Ms. Naeole, by her statements, were wounding their sensibilities, and they don't appreciate that kind of comment. Well, I don't think that's a violation of the Ethics Code of the state or for the County of Hawai'i, and I think that's what we're here for. Remember that council members are elected because they have opinions. They're elected because of who they are. The members of her district elected her because of who she is, and she's there to represent them. And if you start restricting how she represents them, then quite frankly I think that we've really gone and taken a step backwards. I don't think we have anything else to add.

CHAIR: Okay. Board members, do you have any questions for—why don't you stay there for a second—any questions for Ms. Naeole, Mr. Udovic? Yes, Arthur?

MARTIN: The petitions seem to be based on 13 statements supposedly Mrs. Naeole said. Are those accurate or not?

UDOVIC: We didn't determine whether they were accurate or not.

CHAIR: Yes?

GENTRY: I was wondering, when you took office, Emily, was there an orientation for proper decorum of office? Did they provide new council members an orientation on what you can and cannot do during the course of a—in conducting council business?

NAEOLE: Not really.

UDOVIC: Not really.

NAEOLE: And so the thing is, you know, I been in office almost three years. I've done the same thing from day one. So almost three years later, I'm being criticized for things I've done for almost three years. That's all I have to say. I haven't changed. I'm the same when I walked in till today.

CHAIR: Well, in our deliberations, my feeling is, like Mr. Udovic pointed out, that council members, politicians, are elected for who they are. I think the expressions that Ms. Naeole had brought forth in the course of public service is basically expressions of who she is. If Ms. Naeole or a counterpart of hers was a Muslim, something of that nature, or environmentalist, dressed a certain way, with a turban or with a—however an environmentalist dresses—I think they would be expressing who they are to everybody that looks at them. I myself find it hard for us to limit the expression of who we are and why we act the way we do in the course of civil service. One of the problems—one of the issues in Section 2-83(a), subsection (3), as Joyce brought up, is the impartiality. And that I'm having trouble trying to comprehend and wrap my mind around. If nobody else has any questions for Ms. Naeole—do you? We have some questions for--

UDOVIC: --Thank you—

CHAIR: --I have some questions for Joyce. Ms. Folena, at the 16 June 2009 County Council meeting—

FOLENA: --Um hmm, I'm right here—

CHAIR: --you had mentioned that you were in the Hilo videoconference room, right—

FOLENA: --correct-

CHAIR: --and there were about five other people there with Ms. Naeole—

FOLENA: --No, there were more than five.

CHAIR: More than five.

FOLENA: There was a room full.

CHAIR: Okay. Let me ask you this, if you know the answer to it. The people that wanted to give testimony, did they all give testimony? Did any of them not give testimony because of the way the behavior was from Ms.—

FOLENA: --I can't answer that question because I didn't ask them all, sir. And I have a point that I'd like to make up to you, or give to you. There was a question of authenticity of our quotes and our summary addendum asked by Mr. Martin, or Reverend Martin.

Mr. Martin, sorry. These quotes are verbatim in chronological order from discs three and four of the DV disc recordings of that meeting, sir. So you can validate them at your will, at your time.

CHAIR: All right.

FOLENA: Thank you.

CHAIR: My question was, I heard something during--

FOLENA: --Sorry—

CHAIR: --your presentation, saying that I think we all gave testimony that day in that room, so I just want to see if there was any kind of impediment because of the way Councilwoman Naeole was acting—if anybody did not give testimony.

FOLENA: I couldn't answer that, because I didn't speak to anyone. So for me to say yes or no would not be a valid answer.

CHAIR: Okay. Board members, do you have any other discussions, _____, questions?

GENTRY: I guess maybe just a comment, because if—whether or not county council members are given an orientation, and have these types of rules, like if they're not trained or if they're not—it's at least not brought to their attention, that all persons shall be treated in a courteous, fair, and impartial manner, then it's subjective, you know. What is courteous, fair, and impartial? And that's why I asked my question, to see if they had covered—

CHAIR: --Well, I think it's obvious to the petitioner—that the petitioners were offended by what was said and what was done—

FOLENA: --You're right—

CHAIR: --and felt that it was a violation. What gets me is the person sitting next to you might not feel that way, or might feel ten times worse. Just because she's expressing who she is, is really—we live in a pluralistic society. Our society is very diverse in belief, and I think you mentioned that in your public statements.

FOLENA: I did.

CHAIR: So I think one of the requirements of us living in this pluralistic society is to be tolerant, or to at least recognize the fact that there are many people that are different than us, and that's—

LUM: --But the other side of that, of course, is that all of us have to try, attempt, and grow to recognize particularly when it's important to be sensitive and try to be—nobody

can totally be impartial—but to be sensitive, and I think people in public office, people who deal with our—the public interaction with our government, are perhaps held to a stronger standard of impartiality and held to attempt to be more sensitive to the public, perhaps to put our own feelings down a little bit so that the public can be made comfortable, and to be in an environment where they are comfortable to express their opinions. So that I think that we have to all—I think that’s why this rather troublesome section (3) remains in our Code. The other items don’t necessarily have that, but this item, we’ve chosen that, that all persons shall be treated—this is now talking to all of our County people, that we’re supposed to treat all people courteously, fairly, and impartially. It’s tough, but we have to work to do that, and sometimes we do it better than other times. And I think that’s why people end up in front of the Board of Ethics, because it reaches a point with some people where they feel a line has been crossed, and so they go to the trouble to make a petition. And I think we have to listen to that.

FOLENA: Mr. Dill?

CHAIR: Yes, ma’am.

FOLENA: I think I included (b)(5) in the Section 2-83(b)(5), so I’d like to please have you consider (b)(5) too, using County property or personnel for other than a public activity or purpose.

CHAIR: Right, I recognize that, and I reviewed all your documents.

FOLENA: Okay.

CHAIR: I’m assuming your reference to (b)(5) is that Councilwoman Naeole was using County property for religious activity?

FOLENA: Right. That’s private.

CHAIR: And one of the problems that I have with that as chair is that it goes back to the constitutional issues and arguments and questions, and I think it was more—in this case it was more of an expression of who she is and why she votes the way she does and why she does the things she does. I don’t think she was technically holding a religious ceremony or ritual, and that’s the problem I have with (b)(5).

FOLENA: Okay.

CHAIR: Let’s see how it applies to (a)(3).

FOLENA: Okay.

CHAIR: Does the Board have any other questions, or are we ready to file for a formal opinion?

LUM: One point. Praying over someone is probably a religious ritual.

CHAIR: Okay. I guess I should say—

LUM: --especially with the motion—

CHAIR: --a formal—

LUM: --yeah, not a formal service, but I do think it is a ritual.

CHAIR: Again, I think it's an expression of who she is. I think she made it clear she was just expressing who she is. But I think the question comes down to, is offensive behavior to one person in violation? Is it discourteous, is it impartial, is it not impartial? And that's what we need to decide here.

GENTRY: I don't have any questions.

CHAIR: Do you have any comments, questions?

NICHOLSON: I have no questions, no.

GENTRY: I don't have any questions for Joyce or Greg, but maybe a question for Emily, another question for Emily.

CHAIR: Go ahead.

FOLENA: Okay.

SMITH: Thank you.

GENTRY: My question is this. At the time that the petitioner was submitting testimony before the Council, were you indeed praying over her?

NAEOLE: You know, I think I was praying for myself, so I could keep my act together, yeah, because I remember what I was doing, but nobody knew what the word was coming out of my mind and my heart. Only me knows. And I got to pray for myself sometimes. When people call you stupid, and people put you down a lot, what you supposed to do? I'm a human being. And you know the word stupid—it's a hard word for me, because when I was growing up as a child, that word was used upon me a lot. And so when I hear people calling me that, sometimes I try to believe it, but I know I not. I know I pretty smart. And so, that's all I have to say.

GENTRY: So at the time this was occurring, you were not actually—your intention was not praying over the petitioner?

UDOVIC: No.

NAEOLE: No. I had to pray for myself.

GENTRY: You were exercising—yeah, you were praying for yourself.

NAEOLE: I have to, but my hand was out.

GENTRY: Okay. That's all I have.

CHAIR: Okay. Anybody want to entertain a motion, or anything of that nature for discussion? Okay. Why don't we take a five-minute break. You can use the restroom, freshen up, and then the Board will reconvene and deliberate on this issue, and hopefully we can come to some sort of formal opinion on this. So five minutes—

LUM: --Informal opinion.

CHAIR: Informal opinion.

NICHOLSON: Informal.

(The Board recessed from 11:18 a.m. to 11:26 a.m.)

CHAIR: Okay, why don't we call this meeting back in session. Okay, just to recap this informal hearing, we've heard from both sides regarding Petition 2009-6. Does the Board have any discussion between itself, any questions for petitioners or responders?

NICHOLSON: I would just like to—since I haven't said anything, I would like to at least state how I feel about this. And I feel that the—if I were the one sitting in that chair or listening to this, I think I would find the behavior somewhat inappropriate and maybe somewhat offensive, but do I think it raises to a real ethical violation? And I would probably say no. I think that there is definitely some inappropriateness here, but again, I'm applying my own—my own standards, and we all tend to do that. But is there a real ethical violation here? And I guess I'm not seeing that—the strength of a real ethical issue.

CHAIR: Okay. I agree.

GENTRY: I would tend to agree with Board member Nicholson, and that's the reason why I asked Councilmember Naeole, to come up and ask—well, what were you thinking? Were you really praying for the petitioner? And the answer was no. There's so much about public perception, especially in the area of ethics, that it can be misconstrued. In the public purview, so many things, even if you scratch your nose that could be misconstrued as I'm scratching my nose at somebody particular. And that does not seem to be the intention here, at least not from the reading of it. But I can understand where so much of what we do—even sitting here, whether we smile or not, frown or not, can be discourteous to someone. And that was never our intention to do. But as a public officer or elected official, we could try to mind our p's and q's a little bit better, too. That's it.

CHAIR: I'd like to call for a motion for an informal advisory opinion from the Board regarding Petition No. 2009-6, finding that Councilwoman Emily Naeole was not in violation of Hawai'i County Code Section 2-83(a)(3) or (b)(5).

MARTIN: I so move.

NICHOLSON: I second.

CHAIR: Any further discussion? All in favor say aye.

MARTIN, GENTRY, NICHOLSON, CHAIR (simultaneously): Aye.

CHAIR: Opposed?

LUM: No.

- b. Petition No. 2009-7: Petitioners allege that a County officer or employee violated Section 2-83(a)(3) of the Code of Ethics (regarding fair treatment) by making "insulting gestures during the time of testifiers exercising their constitutional First Amendment rights to free speech."**

CHAIR: All right. Moving on to Petition No. 2009-7, we're going to handle this in the same way. It is in reference to the same section of the Ethics Code, Section 2-83, except it is isolated to Section (a)(3), correct?

SMITH: Yes.

CHAIR: Okay, Joyce, Gregory, please come up.

FOLENA: Mr. Dill, I have a question about your ruling just now?

CHAIR: Yes.

FOLENA: Since 2009-6 had a list of a total of fourteen violations

CHAIR: I see, I see. Yeah, I see what you're saying.

FOLENA: Yeah, what about the rest of them?

CHAIR: We are—

FOLENA: --the rest of the violations?

CHAIR: --what we're doing is referencing the petition, which includes all those violations. You included this in your addendum, right?

FOLENA: Yeah, right. Did you just rule on all fourteen violations?

CHAIR: Yes, because we ruled on the petition, it ruled on all fourteen violations, yeah. Okay?

FOLENA: Okay.

CHAIR: So now we are at 2009-7.

FOLENA: Dash-7, okay. That has to do with—I'm going all the way back to Mr. Azevedo, Mr. Buzzy Azevedo, Buddy—sorry, Lionel Buddy Azevedo's letter to you concerning the thumbs down gestures of Mrs. Naeole during the 16 June 2009 meeting, which was held in Kona, teleconferenced in Hilo. Mrs. Naeole was the only council member present in Hilo. And also teleconferenced in Waimea. Mr. Buddy Azevedo's letter is in front of you as part of the petition, as a witness to that particular event. Mr. Jon Oleson testified earlier. He was a witness to that event. During the first part of the teleconferencing, as we were sitting in Hilo—so from our view the teleconferencing was Kona and Waimea—Mrs. Naeole used the thumbs down gesture. And thumbs down means your thumbs go down. Your hands are in a fist position. And you are gesticulating up and down with your thumbs pointed down. I don't think any group of people—I'm referring back to Shelley Stephens' testimony, that some gestures mean some things to some people and some gestures mean other things to other people—but the thumbs down gesture was used way back in Roman times, and it doesn't mean that any more, thank goodness. That meant off with their heads, or thrown to the lions during the arenas there, the gladiators and etcetera. But in today's time, thumbs down is a definite negative gesture, and in anybody's language, I think, in anybody's culture or country. And so for Mrs. Naeole to do this, and as she did this she actually glared at everybody sitting in the Hilo room—the Hilo room had a lot of people in it, and she only did this when the camera was off of her and when the camera was on other people in Waimea and Kona, so she couldn't be seen on DVD doing this, of course, because she was off-camera. But it was I think a very discourteous thing to do, and I am underlining in this instance (a)(3), the word courtesy. And I think also underlining the word fair. I think it was unfair to the testifiers to receive that kind of what we perceived as an intimidation of the rest of our testify—and again, the testifiers were, round figures there were fifty of them, testifying in all three locations against Mrs. Naeole being the vice chair of the County Council. So this response on the part of Mrs. Naeole I feel was completely discourteous and completely unfair to everybody.

CHAIR: Thank you.

FOLENA: You're welcome.

CHAIR: Mr. Smith?

SMITH: Yeah, just for the record, and I think the DVDs can actually prove this—that Mrs. Naeole's statement that someone in the audience called her stupid is totally untrue and ingracious, just for the record. And that can be proven. The point of the matter is,

again, I hark back to the behavior of the other council people. Now I've been going to council for 20 years on various issues in my community. In fact, I—Joyce and I have actually been active in the community, at least at the council level, a lot longer than Mrs. Naeole. And fifteen years ago the council was a virtual battleground of discourteousness. We've had female council members that were verbally abused by male council members. I don't know if the Board of Ethics was in existence at the time. But the point is that we've come a long, long way. I mean, what aggravates me is the fact that we—myself, Joyce, and other members of this community—have pushed to get this council for years to treat the public with courtesy and respect, and you know—I mean, I have not seen an individual that is as badly behaved in council as Mrs. Naeole, except for maybe Jim Rath. And I mean—I'm sorry, this is not—I understand your logic, but I don't understand Mrs. Naeole's behavior in the face of how the other people behave themselves in the council, all right. I just don't understand that. Oh, it's an expression of herself. Well, you know, if I—if she gave me a thumbs down gesture, should I give her a middle finger up gesture? I mean, this is stupid. This is dragging the council into nothing more than a little circus, or a little school yard, behavior. No. I'm sorry, this is not acceptable to me. And this is not a single incident. This is something that she has done from, as she pointed out, from day one. Again, why should a council member or anybody going in office have to be taught how to conduct herself or himself in a civil manner? Again, we have to sit there and verbally abuse each other in council? That's nonsense. And because most of the people did not feel comfortable with Mrs. Naeole taking a position of higher responsibility, and she makes a racial slur—excuse me—I'm sorry, I'm sorry, but I mean, what I'm talking about is this is not a singular incident. So thank you, anyway.

CHAIR: Thank you very much. Just to clarify real quick. The thumbs down gesture took place on June 16 or June 18?

SMITH: 16th.

FOLENA: 16th. There was nothing happening on the 18th—

SMITH: --on the 18th, I'm sorry.

FOLENA: _____ on the 18th.

SMITH: I'm sorry, 16th.

LUM: You were at that meeting, true?

SMITH: All day, the 16th.

FOLENA: All day long, from morning till night, though it seems incredible.

LUM: People do that, don't they?

SMITH: Yes, they do.

LUM: *I'm looking at Mr. Azevedo's letter, and I'm not clear if he was the only one where that signal was noted, or was it noticed that there were others—*

SMITH: *--As far as we know, no--*

FOLENA: *No. No. Mr. Jon Oleson testified that he had seen—but he wasn't specific to this. He didn't say I saw her do the thumbs down in his testimony. He said he had witnessed the violations of Mrs. Naeole, so if you want to contact him again and ask him—*

LUM: *--oh, the gestures, okay—*

FOLENA: *--yeah, that's what he meant—*

LUM: *--Now who was it?*

SMITH: *Jon Oleson.*

FOLENA: *Jon Oleson. He testified earlier. Mr. Azevedo—the reason that you folks—I want to go on record, just so that the public reviewing this can understand what we're talking about. Mr. Azevedo had written to you on June 18th and you had read his letter at your meeting. But Mr. Azevedo had not quoted the section of the Code of Ethics. He didn't file a petition, and so I contacted Mr. Azevedo. I encouraged him to refile with a petition, and he was just too busy to do it. He drives a truck. So I asked his permission, although I didn't really need to ask his permission, because now it's public record, to use Mr. Azevedo's letter as a witness.*

CHAIR: *I understand what the question is, and as chair I don't have a problem with this in terms of specifics and who it was gestured to. Mr. Azevedo specifically says that the thumbs down gesture was to the first couple of speakers that day, and it was apparent to many more people in that room. So I don't have a problem with the fact that it's not from him, that the petition is not from him.*

FOLENA: *Thank you.*

SMITH: *Thank you.*

CHAIR: *Mr. Udovic, Mrs. Naeole?*

UDOVIC: *You know, as I indicated in my correspondence to the Board, quite frankly, as unfortunate as it is, council members are elected specifically because they hold opinions, and specifically because they represent their clients. And when they hold an opinion, they could shake their head in a negative manner. They could make a thumbs down gesture, or something of that nature. And I don't think this Board should be governing the behavior, quite frankly, of the council members. I mean, it's just incredible that you would expect every council member to sit at a council session with an impassive face and not have any kind of passion in their commitments for who they represent. And whether*

she did it or not, quite frankly, I think that she's allowed to express her opinion and to say no, I don't agree with you. And she can say it—no, I don't agree with you in this way, or she can say no, I disagree with you. But either one of them I don't think have raised to the level of ethical violations. They may once again be inappropriate behaviors, maybe not something we'd like to see our council members do, but I don't think it's an ethical violation.

NAEOLE: Yeah. I just want to say that my people in my district love me for who I am, not who I going act to be. I not on one movie show when I'm at my meetings. I'm a real person, very passionate. And so I think that's why Puna loves me, because I going do what I got to do, and it's to mālama all the people. Mahalo.

CHAIR: Mrs. Naeole, so you don't deny the fact that you gave the thumbs down gesture during a meeting on the 16th of June?

NAEOLE: You know what, I don't remember doing it. But Mr. Rodney Oshiro, he was the county clerk assistant. He was there with me that day. I remember specifically, the rest of my colleagues was in Kona. I was in Hilo by myself, and Rodney was there with me. I don't remember doing it.

CHAIR: I don't understand what Rodney has to do with it. So you don't deny it, or—

NAEOLE: --Well the thing is, if anybody was the proof to working with the County that day, was Rodney Oshiro. And so—I don't remember doing it. But maybe if I did, like my lawyer told me and just told all of you, that's not your kuleana. I do whatever I got to do. It's not to make disrespect to anybody, you know. And so maybe if I did do thumbs down, it's I no agree with your mana'o.

CHAIR: Exactly, and—

NAEOLE: --but you can still say it. Anybody can say anything. I agree with some things. I no agree with everything. And like, you know, our last—Greg said that that word stupid wasn't—oh, it was said over and over, and over and over. And so I don't appreciate that, because as a native person, and being suppressed in my childhood, that word irritates me, because people think I not smart enough, that's why somebody else should be in my seat. No, I don't think so. I'm pretty smart. Thank you.

CHAIR: Okay, Mrs. Naeole, like I just refrained from interrupting you in the middle of what you were saying, the problem I have with this is that when somebody's giving testimony, and a gesture like this, which is clearly interpreted as disagreement with what they're saying—it's the same thing as interrupting them in the middle of what they're saying and telling them that you disagree. I think it kind of rises to the level of discourteousness, and not only that. I think what I really have the big problem with is that it shows a lack of respect for the system that you're a part of, the legislative process that you got elected to serve. What frightens me is that gestures such as this while someone's giving testimony might discourage somebody who's sitting in the audience, who's nervous as all get-out but believes passionately about something—hold on—it

might discourage them from wanting to come up and testify how they feel about a certain subject. If they feel they're going to be treated like that by going up there, what it will do is limit the participation of the process. That's what I have a problem with. I'm not saying it's wrong for you to disagree with somebody giving testimony, but what I fear is you're discouraging people from being part of the process and hearing equal sides and voices.

NAEOLE: All right. So I need to tell you back, a mana 'o back to you. Nothing—she said there's nothing on video. And I say I no remember doing it. And I just told you that Mr. Oshiro was in that room with me, when I was there by myself, as the County worker. So with all of that calculation, they got somebody to say that that happened. But I just feel in my heart that my mana 'o is just as good as their mana 'o. So they have—

CHAIR: --I'm not questioning that, I'm not questioning that. I'm just questioning the process, and threatening the process by those gestures.

NAEOLE: All right, thank you.

CHAIR: Anybody else have any questions, please –

GENTRY: I was wondering. Have people from your district, or even not in your district, approached you about what they perceived as inappropriate behavior on your part, or is this the first time?

NAEOLE: No. You know what, it seems like—to me, there's certain people that come to our council a lot, and maybe they might not have anything else to do. My people in my district love me. When you follow me around, just like Raymond Beason said, the people love me. I go anywhere. They're all flocking over me, kissing, hugging, loving. That's the kind of daily walk I have in my community—not only in my community, the rest of this island, wherever I go. So there's certain people that no like me, and that's their right. That's their right. And so that's all I have to say.

LUM: I wonder, Ms. Naeole—you know, it is obvious that people have very warm feelings for you and that you're a very generous, kind of loving person. So I, too, am having problems, because to me you're the kind of person who would want to hear from everybody, whether they agreed with you or not, and that I, too, am afraid that maybe this little bit too passionate, lack of control, maybe does discourage people. We on this Board have had situations where people try to intimidate us by threats or whatever. It does make you very uncomfortable, and it maybe surprises me that—I would think that you would want to be encouraging to everybody, no matter whether they agreed with you or not, to have their say. And I'm afraid that gestures, or this interruption which—I think a gesture interrupts—would be like you speaking out, would be discouraging to people and make them feel—like you say, make them feel maybe a little stupid for what they're trying to say, or make them say, oh, I don't want to go up there, what if she does that to me?

NAEOLE: Okay, so I need to say something. If you check the track records for almost three years, there's other of my colleagues that has been massively rude to people. I'm not going to name nobody's name, but people's been rude to people around this whole island. And I never see them come before the Board of Ethics. Nobody else but Emily Naeole come before this Board of Ethics. I need to remind you guys about that. I been in this office almost three years, and I only see one person getting slandered and slam-dunk here in this ethics meeting. Nobody else, but personally myself. I've watched my colleagues, certain ones of them, slam-dunk people all the time. That's the natural habit, right? And it's all good. Everybody's all good—but only Emily Naeole. I just need to say this, because it's reality. And so only me come before the Board of Ethics. Nobody else.

CHAIR: Ms. Naeole?

NAEOLE: Yes?

CHAIR: I speak for the whole Board where—

NAEOLE: --You had other people in here?

CHAIR: No, when I say that we would much prefer not seeing you. You have a lot of work to do.

NAEOLE: Thank you. Even me, I get choking work to do.

CHAIR: Unfortunately, we only can deal with the petitions that are provided to us. Frankly, if you had told the person giving testimony that you disagreed with them, and told them directly after they're done giving testimony—I disagree with what you said—I'd have no problem with it. But in the middle of their testimony, to give thumbs down not only sends a message to them, but it also sends a message to everybody in that room who can see on the videoconferencing. And I think it discourages them—

NAEOLE: --Yeah, but only if that was real, yeah? You wasn't there, so you never see it.

CHAIR: No, but I can only take what was said on the petition, right?

NAEOLE: Yeah, and I got to say what I got to say on my end. She says what she says. I got to say what I say. Mahalo. Thank you. Lawa. Any more questions?

CHAIR: You guys got any questions, or you want to deliberate?

GENTRY: I have a question for the petitioner.

CHAIR: Okay.

NAEOLE: Thank you.

FOLENA: Ms. Gentry?

GENTRY: Yes. So my question is this. Realizing that you've observed Councilperson Naeole's behavior over all this time—

FOLENA: --Yes—

GENTRY: --wait, one moment. Did you approach her and say hey, what you did was offensive to me, and perhaps it didn't have to come this far?

FOLENA: No, I did not.

GENTRY: Okay. That's the only question I had.

FOLENA: May I tell you why I did not?

GENTRY: Yeah, sure.

FOLENA: I approached Mrs. Naeole at a public meeting, when Mrs. Naeole had called the public meeting because she did not support the West Side Civic Center. The public meeting was held in Pahoa. After the meeting was over—no, sorry, it was during—I think it at the intermission of the meeting, or after it was—let me think back. Hold on, it was quite awhile ago. During the—after the meeting was over, we approached Mrs. Naeole and we wanted to express to her our reasons why we had supported the civic center, and Mrs. Naeole refused to talk to us. She just turned away from us, and we waited till she turned back. And we approached her again. She got up and she walked away. So we felt—okay, it's difficult for us to talk to her because she knows that we oppose her. Now there was a second instance where we went into Mrs. Naeole's office to talk to her about the traffic problem at Mālama Market, where Mālama Market exits into a small side street, and then that side street exits into Pāhoa Road, Old Government Road. There are a lot of traffic problems there. So we didn't know that was actually State jurisdiction. We thought it was County. So we went into her office, and she treated us very cordially. It was very nice. And we told her of our concerns, and Mrs. Naeole at that time decided to talk to us about the Bible and God, which is okay.

UDOVIC: _____

FOLENA: But the reason—sorry, counselor, I'm right on track. And the reason that—

UDOVIC: I would object. I think we're going well beyond—

CHAIR: --Well, hold on, if you could just wrap it up—

FOLENA: --The reason that we did not, we did not, we did not approach her is that we felt that it wouldn't do any good. That's why we came here instead. Thank you, counselor.

CHAIR: Board members, do you have any other questions, comments? Good? If I could call for a motion for an informal advisory opinion that Councilwoman Emily Naeole, as referenced in Petition No. 2009, and the actions therein, was in violation of Article 15, Section 2-83(a)(3), County Code of Ethics.

LUM: Courteous, fair, and impartial.

NICHOLSON: All right, I'll speak again. I—again, I feel that if this behavior did take place, it was inappropriate, should not have happened, and I'm sure that there are other council members who have also done things that are inappropriate to the public and to each other—but this is the petition we have before us. And even though I feel like it is inappropriate—I personally would find it offensive—again, to me, I don't think that we can find it as an ethical violation. I think we could provide a note of caution, as we have in the past. But to me this does not rise to the level of an ethical violation.

CHAIR: Okay. One of the things that—in Section 83, all persons shall be treated courteous, fair, and impartial. The petitioner emphasized courteous and fair, and frankly I'm—my thinking is that I don't think the behavior was impartial at all. I think she was making it extremely clear that she disagreed with the person giving testimony. And I think by doing that it really threatened the full participation of everybody involved and may have discouraged others who want to give testimony—

LUM: --That's what worries me—

CHAIR: --because of the lack of impartiality there. And so that's where I see the violation.

LUM: There's an intimidation aspect to it, facet to it, an appearance of intimidation.

CHAIR: And like I said earlier, I would have had no problem if she stated that she disagreed with the testimony, given after the testimony was given. But to give kind of a blanket disapproval of what was being said during the testimony is a clear lack of impartiality.

NICHOLSON: I think part of the problem I have is that we have a difference of what this was. We didn't see it. So we don't know the context of exactly how this happened, and we have people that can tell us what they saw and what they witnessed, but we didn't see it. So I have a little bit of a problem for us censuring someone for something that we ourselves have not seen the evidence of. And because it was not captured on a tape, there's no way we can view it, so I think we can—the most we can do is caution, give some cautions and some warnings. But I don't know that we could particularly cite that gesture. And some of these things are involuntarily. I think sometimes you do—you frown, you squirm in your seat, and so she might not have even been aware that she was making that gesture, if she did. Again, I think if she did, it was inappropriate. But I don't feel like we can justify censuring something that we cannot verify and that we can't see in the context that it happened.

LUM: *We did have—*

CHAIR: *--the letter from Buddy Azevedo.*

LUM: *We had the letter, and we had the testimony, the public testimony—*

CHAIR: *--as well as Joyce Folena's witness, right, and Gregory Smith.*

LUM: *Yeah, we did have that, which is all we go on anyway. I still think that the fact that it happened during testimony and other people could see it—I don't think people are lying here. There's that aspect of an appearance of trying to control the testimony that really bothers me—that intimidation, those kinds of things, that appear to try to limit testimony. And I do think that that wiggles over into ethics—when you try to control what's being said or not being said.*

NICHOLSON: *And I do agree with that. I do agree that it's inappropriate. I just don't know that we can really get a finger on it well enough.*

CHAIR: *Could we get a motion—*

LUM: *--Do we have a motion?*

CHAIR: *No.*

LUM: *I will move—*

GENTRY: *--There's no motion, except that this could—this appears to be, from different people, that this pattern of behavior is consistent.*

LUM: *I will make the motion that we find Ms. Naeole in violation of 2-83(a)(3) for not treating the testifiers in a courteous, fair, and impartial manner by making gestures, negative gestures, during the testimony in view of others, _____.*

CHAIR: *Is there a second?*

GENTRY: *Second.*

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

LUM, GENTRY, MARTIN, CHAIR (simultaneously): *Aye.*

CHAIR: *Opposed?*

NICHOLSON: *Aye.*

MARTIN: John, you know something I've been thinking about, is a comment was made earlier, a question was asked earlier, whether or not new council people are given some kind of—

CHAIR: --training—

MARTIN: --training when they first get in, and it sounds to me like the council has never done anything like that. Maybe it's something that the County Council ought to think about, how to conduct itself in front of the public.

CHAIR: Yep. I think the chairman sets the tone for the meetings, and we're all adults— all adults at the meeting, and hopefully act as such. But that's a good idea, and it's a recommendation that we might want to make later.

LUM: I think that that, too, even just procedurally, if you're going to disagree, hold your disagreement until it finishes. That just might even say that you have the right to disagree, but how you do it and when you do it is what becomes important.

CHAIR: Hold on, counselor wants to say something. Yes, ma'am?

SCHOEN: Mr. Chair, just in response to Mr. Martin's question. The Corporation Counsel's Office does provide training in OIP, in ethics, to all new newly elected and appointed government officials. So that does happen. I also wanted—I think Mary had a question about your vote, and so just so the record is clear, could you guys state your vote on the record, just so—I don't think she heard Mr. Martin's vote.

CHAIR: You're in favor of the motion?

MARTIN: Oh, yes.

GENTRY: It's four to one, yeah.

- c. **Petition No. 2009-8: Petitioner is seeking an opinion from the Board on whether his employment as a property manager with the County of Hawai'i is in conflict with his ownership of a small real estate company which will have no transactions with the County.**

CHAIR: Okay. And we move to Petition No. 2009-8, petition from Kenneth Van Bergen.

VAN BERGEN: Ken Van Bergen, Property Manager, County of Hawai'i.

SCHOEN: Mr. Chair, if I may interrupt again, I'm sorry. The petitioner, Mr. Van Bergen, didn't indicate on his petition whether or not he wanted an open or closed meeting, so maybe, if I might take the opportunity to advise him that he may ask that the Board consider this matter in a closed hearing outside of the presence of the public if you believe that personal matters, financial matters will be discussed. If you choose—if you want to have a closed hearing, the Board will nevertheless have to vote upon the matter

and decide that the hearing should be held in closed fashion, closed to the public. So it's up to you if you want to have an open or closed meeting. Everybody's leaving the room, but Mary does take minutes. The minutes are published. So what's your pleasure?

VAN BERGEN: Open's fine.

CHAIR: Okay. If you can just briefly summarize your petition.

VAN BERGEN: I started with the County of Hawai'i five weeks ago, and about my second week or so on the job I asked Nancy Crawford, the director that I report to—I have a broker's license, an active Hawai'i's broker's license, and own a small LLC in Kona. We manage one building that my wife takes care of—and is that okay? She said probably, but I should petition the Board of Ethics just to get _____ and to make sure it's okay. So in summary, I do own Trask Commercial Realty, LLC. It's a two-member LLC that my wife and I are the two members. At this point I manage one building in Kona. It's not a very active business at this point because I'm full-time with the County, but I'd like to keep the income that we do have from it, managing that building, and have other opportunities to maybe add some more buildings if that comes across. It's something that I won't do personally, but my wife would do.

CHAIR: What department are you in, I'm sorry?

VAN BERGEN: Department of Finance, Property Management Division.

CHAIR: So just to clarify, you have no direct contracts with the County of Hawai'i?

VAN BERGEN: No, and I think in my letter I stated nor will I, as long as I'm property manager, ever have any County contracts.

CHAIR: Yes?

NICHOLSON: What does the County of Hawai'i property manager do? I don't have a clue.

VAN BERGEN: Ask me in a few months. Our primary role is to—we deal in all acquisitions and sales of County real estate. We deal in any leasing activities the County might engage in. We are involved with the PONC, or the Open Space Commission and represent the County with that. We also are in charge of the personal property accounting system and any public auctions we might have, whether it be vehicles, real estate, or any other type of County possessions that they want to dispose of.

NICHOLSON: And another question. When you were hired, were you hired in part because you have a real estate background? Was that part of the qualifications that you had?

VAN BERGEN: Absolutely. Yeah. We've owned Trask Commercial—we moved to Hawai'i six years ago and started it back in 2003. Last couple of years I actually worked

for Merrill Group Development and Resort Properties, and I think my whole real estate endeavors helped me get the job with the County, with my commercial background and my development background.

NICHOLSON: And I have yet another question.

CHAIR: Sure.

NICHOLSON: So what kind of conflict do you think could arise? In what kind of activity that the County might engage in would you feel you might have a conflict with your - ?

VAN BERGEN: If Trask Commercial Realty were to, for instance, get a listing on a building to lease. Obviously, I pick who we—I negotiate the leases on behalf of the County, so to have me representing the County and my wife representing Trask Commercial would not be appropriate. So that would be one, if we got a listing, or owned a building—we do at time to time buy real estate. Any kind of sales to or from the County represented by Trask Commercial Realty would probably be a conflict. And I have no intention of working with the County at all. I'm just simply—it's a business that we own, we have income from, and I'd like to keep it. So I have no interest in working with the County with Trask Commercial Realty. That would be a conflict if that were to happen. Is that clear?

NICHOLSON: Yes.

VAN BERGEN: Okay.

LUM: So if you were—let's say day after tomorrow you buy a building. And three years from now you're in the job and the County says oh, I'd really like to use that space. You really couldn't do it.

VAN BERGEN: No. No. I have no interest in doing that, for obvious reasons.

CHAIR: Okay. Any other questions?

SCHOEN: Can I ask one real quick?

CHAIR: Sure.

SCHOEN: So you're asking basically that you be able to keep your license active—

VAN BERGEN: --Yes—

SCHOEN: --while employed with the County—

BERGEN: --Yes. I am the broker's license. My wife has a real estate license. So my broker's license is what allows us to transact brokerage business. So I'm just asking to

keep my license active with the understanding that in no way will my company have any dealings with the County of Hawai'i as regards to real property.

SCHOEN: _____ told you whether or not your retention of your license would be a violation of the Code of Ethics?

VAN BERGEN: That's correct. And just to know, we have no agents. It's a very small LLC, and we're not looking to grow the business, so to speak.

MARTIN: I don't see a problem, unless your broker's license did something with the County, but like you said you won't do it anyway.

VAN BERGEN: No.

MARTIN: I think that's a decision you'd have to make.

CHAIR: Well, it would be in violation of the County Code, so –

VAN BERGEN: Yeah.

CHAIR: All right, does anybody have a problem with Mr. Van Bergen keeping his broker's license?

GENTRY: No.

CHAIR: Can I have a motion—

LUM: --As it stands now I don't see there's a violation.

GENTRY: I don't see any. I move that there is no violation at this time on this particular petition, that the petitioner can maintain his broker's license, especially since he was hired based on his real estate expertise.

NICHOLSON: I'll second.

CHAIR: Okay, all in favor?

ALL MEMBERS (simultaneously): Aye.

CHAIR: Opposed? All right. Thank you, sir.

VAN BERGEN: All right, thank you.

CHAIR: Okay, moving on to d., Counsel's Report Regarding Matters and/or Inquiries Received by the Board.

d. **Counsel's Report Regarding Matters and/or Inquiries Received by the Board, including:**

- (1) *Gift Disclosure Statements* received from Brian DeLima (Merit Appeals Board), Searle Grace (Salary Commission), Patricia Provalenko (Salary Commission), and Henry Silva (Merit Appeals Board).
- (2) Incomplete and/or moot petitions filed with the Board, if any.

Ms. Schoen explained that this is a new agenda item and would be a way for her to report on miscellaneous inquiries and documents received which did not need to be acted upon by the Board. It would provide a way for her to inform the Board on various happenings on her end.

She understood Mr. Rees' comments and concerns about moot petitions during today's public testimony. However, in some situations a petition will be filed regarding a person who no longer works for the County. The Board would therefore have no jurisdiction, and the petition would be moot. Petitions which are incomplete or unclear are also sometimes received.

For the four *Gift Disclosure Statements* on today's agenda, each was reporting that no gifts were received, so they were not required to be filed and the Board did not need to review them.

Motion and vote: Ms. Gentry moved to accept Ms. Schoen's report on the four disclosures and for them to be filed. Ms. Nicholson seconded the motion, and all members voted aye.

For the occasional incomplete or unclear petitions which are received, Ms. Schoen asked the members whether they preferred her to request more information or clarification from the petitioners before presenting them to the Board, or whether they preferred to have the petitions agendized as they were received for the Board's review and determination. The Board members said they preferred that Ms. Schoen determine the sufficiency of petitions and communicate with petitioners for clarification before agendizing them.

6. **UNFINISHED BUSINESS**

- a. **Further discussion/update on clarifying lobbyist registration requirements, including Communication No. 2009-63 (9/2/09 letter from County Clerk Kenneth Goodenow regarding recommended changes to the Lobbyist Registration Form and accompanying instructions).**

Ms. Schoen said that at the last meeting, the Board voted to adopt Levi Hookano's suggested changes to the forms, and this communication had the new form and instructions attached.

Mr. Hookano said that the new form removed the reference to attorneys being exempt from filing.

Motion and vote: Ms. Gentry moved to accept and file the communication, Mr. Martin seconded the motion, and all members voted aye.

Motion and vote: Ms. Lum moved to go to Executive Session, Ms. Gentry seconded the motion, and all members voted aye.

12:15 p.m.: The Board left Regular Session.

* * * * *

12:26 p.m.: The Board returned to Regular Session.

7. EXECUTIVE SESSION (voting)

a. Approval of August 12, 2009, Executive Session minutes.

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

b. 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.

Motion and vote: Mr. Martin moved to accept Sherman Warner's confidential financial disclosure, Ms. Gentry seconded the motion, and all members voted aye.

8. ANNOUNCEMENTS

The Chair announced the next meeting as being scheduled for October 14, 2009, at 10:00 a.m. at the same location.

9. ADJOURNMENT

Motion and vote: Ms. Gentry moved to adjourn, Ms. Nicholson seconded the motion, and all members voted aye.

12:27 p.m.: The meeting adjourned.

Respectfully submitted:

Mary E. Crosson, Secretary