

**HAWAI‘I COUNTY BOARD OF ETHICS
MINUTES – REGULAR SESSION**

Thursday April 7, 2022
10:04 a.m. to 12:34 p.m.
Hawai‘i County Building
25 Aupuni Street
County Council Chambers
Hilo, Hawai‘i 96720

Members and Staff Present:

Larry Heintz, Chair
Amy Self, Vice Chair
Denise Nakanishi, Member
Kelly Valenzuela, Member
Erick Allende, Member
Dakota Frenz, Deputy Corporation Counsel
Liza Osorio, Secretary

1. CALL TO ORDER (10:04 a.m.)

Mr. Heintz called the meeting to order at 10:04 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:4 a.m.)

Mr. Griskonis: Good morning I’m Joseph D. Griskonis for the record. Really kind of out of Honoka’a, but been in Hawai‘i on and off since 1987 and as a surgical technologist and frontline health care worker during a pandemic, also a homeless veteran, the entire time, working full-time. Ethics issues have gotten in the way and that’s what I’m here for. Normally when I speak in testimony I begin with one of my guiding principles. I have two books that help me a lot. Number 1, Parenting with love and logic, it works on adults too. Number 2, Love Dare for Parents and it’s at this point, every time I step up to the mic, that I didn’t do the other day, and today I don’t have the passage in front of me, but basically what it says is to reach out to your children all across the aina, each and every day and tell them that you love them and that you care for them and that we’re looking out for their future. Item number 5c under unfinished business, about to expand our memberships, I’ve been looking at this for one year. Came here a couple of times, couldn’t come here and testify no problem. The thing that really brought me to the mic, I left Kona Community Hospital on August 15th, I actually resigned a month earlier, over serious ethical issues. These are things that are non-compliant. These are things where surgeons doing procedures with no consent, no inform, no implied consent. I’m kind of an expert in this zone because at University of

California Irvine, one of the early places in my career is a teaching university hospital. I had a reference point. I also had a medical reference point from my experience as a coast guard medic. Never in my life had seen such an egregious breach and since then I've suffered tremendous consequences including a County Council member now I know we don't get to mention 'em by name, when I reached out to her on the telephone, I wish I would've recorded it. No one believes when I tell em what she said to me and blamed myself for being homeless. What's wrong with you, why can't you get a job, on and on. This is about a 2 minute tongue lashing at me, who's mom died when I was four. She took into no accountability, my socio-economic status, my entire life battle, against chronic homelessness. How I've helped others with homelessness. How I've been lucky enough. The ethics committee would do good to have somebody who can come speak intelligently, from experience, who can represent that population. Hope resources is lying to you guys and us. They do not provide services, they sign you up, they drive by me every day at St. Joseph's Catholic Church at 5:36 in the morning. The VA HUD (?) also has a rapid response team that failed. I am forming my own homeless organization. The North Coast Veterans Resource Center and that will be how I help but I would love to be included. That's it, expanding the membership. Mahalo.

Mr. Heintz: Thank you Mr. Griskonis. I just have one question for you.

Mr. Griskonis: Yes sir.

Mr. Heintz: During the course of your remarks you made a remark about Kona Hospital and ethics violations at the hospital. Did you call those to the attention of the Kona Hospital Medical Ethics Committee?

Mr. Griskonis: Not only them, HHSC, not only them Hawai'i State Medical Board, not only them, the National Certifying Board for General Surgeons and detailed and records and photos, and texts, all saved, all proof.

Mr. Heintz: Thank you and just one question, can you tell me roughly the time period that you're talking about.

Mr. Griskonis: January 2021 through July 15th, 2021. Consistent, I mean like the surgeon grabbing me during surgery, that's assault. Injecting a patient with what's called a tap block when you don't have the authorization to do it on that patient, in other words it's not your patient, it was a new surgeon. And through bullying and intimidation did an unsterile thing, went outside the sterile field. So

yes I reported it in detail.

Mr. Heintz: Thank you. Does anyone else have questions?...I assure you I'll follow up on that. Thank you.

Ms., Frenz: Just to interrupt here, good morning, Deputy Corporation Counsel Cody Frenz present, for the record, along with Liza Osorio, Board of Ethics Secretary. Just to make sure our record is clear, thank you Chair.

Mr. Heintz: Sorry...are there any other testifiers? By zoom or otherwise? Seeing none...we'll move to the next item on the agenda.

3. APPROVAL OF THE REGULAR SESSION MINUTES OF MARCH 16, 2022 (10:10 a.m.)

Motion and Vote: Ms. Nakanishi moved to approve the minutes, subject to corrections. Ms. Self seconded the motion. All members voted aye. (10:15 a.m.)

4. NEW BUSINESS (10:15 a.m.)

a. **Petition 2022-04: Request for an Informal Advisory Opinion of a Petition from a County employee seeking approval and assurance that there is no conflict of interest for her to do contract work (5 hours a week) as an executive assistant with the Stupski Foundation. This work would be done after her normal full-time County employment ceased (after hours).**

*** Petition 2022-04 was withdrawn prior to start of meeting ***

b. **Petition 2022-05: Request for an Informal Advisory Opinion of a Petition from an Office of Housing Community Development employee seeking guidance on whether a conflict of interest exists in preparing drawings and filing building permit applications with the Department of Public Works on behalf of property owners or himself. (10:15 am)**

Mr. Erickson: Aloha. My name is Neil Erickson. I'm an architect in Hawai'i. Currently working with the Office of Housing and Community Development. And I'm seeking a written opinion regarding practicing architecture outside of my office. And my belief is that it would be no conflict with my current position but I would like a written opinion from this Board just to clarify if that's acceptable.

Mr. Allende: The only question I have for you sir, is how would you be getting your clientele and as long as I think you're not getting em from walk-ins from people who may be looking for services or advice

from the County. I don't know if that's something that comes up with you because my experience of knowing other contractors and people in say Lowe's or Home Depot type of thing. There like well they're handy men, but they get their jobs because people come into to those situations you know, who is there to hire and they're like 'well I can do it' and I just don't want there to be that type of conflict with someone who's looking to have their house drawn and then they come to you and it's something they go "well this gentleman worked for the County" and you know that could be something that may arise.

Mr. Erickson: No I agree and that's why I'm here. I don't want that conflict to be something that anybody would ever consider being me taking advantage of my position and the people that I've been working within the past, former interns are the ones who are asking me if I would consider working with them again. And so those kind of people are former and current, not current clients, but former clients of mine, and employees.

Ms. Self: My question is, when you're doing the plans for people, are you gonna be in anyway interacting with DPW or you just put your stamp on their plans and they take it from there, the drawings that you do.

Mr. Erickson: My goal is not to interact with DPW because nowadays all the applications are electronic and so if there's any questions or clarifications that are required, we deal with that and upload it directly to the site. So, I probably won't have any reason to contact any of the staff unless I disagree with their opinion. But those kind of things are really up to me to decide how to address. But you know, dealing with DPW staff is not unlike anybody else would have to do, right. I don't wanna be treated any differently and I want them to know that.

Ms. Self: Okay would it be that you would enter like for instance, you would tell your client the problem and then they would interact to DPW? Because I don't know how you would do it, if you are not doing it during work hours.

Mr. Erickson: Correct. Well again everything being done electronically would have to addressed on paper and in written response. And uploaded to the site right?

Ms. Self: Right.

Mr. Erickson: So those kinda things, the interaction is done via the online

electronic processing system that they've developed. So there's no reason for me to interact with them personally.

Ms. Self: Okay.

Mr. Heintz: Other questions?

Ms. Nakanishi: So you don't work for the building division any more, you work for Office of Housing and can you explain, I kind of looked through this, but can you explain what it is you do?

Mr. Erickson; It's a very broad scope. Pretty much what they call the ComDev or Community Development section and we look at Long Range planning for affordable housing and lots available that are either an opportunity for the County to provide or mandated by rezoning from developers in order to achieve their credits required, right. So I'm looking at probably shouldn't say specific projects, but I'm looking at projects that can be developed by the County in order to provide those kind of opportunities for the community.

Ms. Nakanishi: So it could entail single family residences or if it's mandated or if there's an opportunity but you don't think there's any kind of conflict cause you'd be doing individual projects?

Mr. Erickson: Yeah I'm not looking at doing anything on that level, certainly not. And these are developers and contractors that are already preapproved by the County Department of Public Works and selected via a committee and those people are chosen based on a scale, scoring process. So those developers and non-profit groups would come forward in developing the lots or the homes and I would have nothing to do with those.

Mr. Heintz: Were you planning director before?

Mr. Erickson: No, that's Michael Yee.

Mr. Heintz: Okay, but did you work in the planning department at some point?

Mr. Erickson: No, I was always with Public Works, Building Division.

Mr. Heintz: Okay, Building division...and when did you leave that position to move to the Office of Housing and Community Development, how long ago?

Mr. Erickson: It was the 15th of last month so 3 weeks ago.

Mr. Heintz: Three weeks ago? Okay...I'm not familiar with how all these agencies are hooked together and so I was just concerned, are you familiar with section 2.91(2)(b) of the ethics code which talks about, it's a pertinent section, that talks about 12 months from when one is employed in the County that one would work with or be involved with that same department in another capacity.

Mr. Erickson: No I'm not and I have no problem with 12 months at all. I just was asked to get a written opinion and I thought that would make good sense one way or another.

Mr. Heintz: Yeah. Okay. Any other questions?

Ms. Self: I have a question...Okay what if, while you're at work in Housing, DPW responds to something you've done on the side. I'm asking these questions cause I've had this come up at Board of Appeals meetings before where a DPW person was accused of doing something, moonlighting or whatever, and so I'm asking these questions to protect you as well. So what if you're at work in Housing and you get a response from DPW and they need you to respond right away...How are you gonna do that?

Mr. Erickson: Well first of all I can imagine there being something that urgent and secondly, in order to get a response via the EPIC system we would have to be notified via our email or I have to go online to that site. Which I keep a separate email from my personal business as well as from the County website so there's no reason for me to be looking at that or addressing any concerns or comments during the regular work day. And if it's something that is urgent I would schedule some time off and get it cleared from the director.

Ms. Self: Sounds good, thank you.

Mr. Heintz: Any other questions by members?

Mr. Allende: I was just curious, what page was that on, the section about the 12 months? I remember reading, I just don't recall it.

Mr. Heintz: Section 2-91.2b, page, well it's in the Hawai'i County Code, Ethics Article 15, it's page 2-40. It reads...right, he's left one position that would've been relevant.

Ms. Self: That's like me. After I left the County, as Deputy Corporation Counsel, I had to wait a year before I could represent anybody other than the County in front of a board or commission or even

before Council or whatever.

- Ms. Frenz: So Chair just to clarify the section, within our Hawai‘i County Code to review it, and I agree with board member Self, the difference would be say our petitioner wanted to work on something that he directly worked on within the department of public works, that would be inappropriate, but anything thereafter would be fair game in that sense. He would not be prohibited. Unless he were to retire and what to do work in that same field, he would have to wait a year under that statute, but otherwise he is free...just to clarify.
- Mr. Heintz: Yeah, I just wanted to, I didn’t know if this would’ve been relevant. Okay, thank you. Any other questions or comments for Mr. Erickson?...I don’t know if that’s a raised hand? No...I think she’s trying –
- Ms. Valenzuela: Yeah, it’s Kelly. I actually have a question. So your current role right now, if you could describe what your current roll is right now that you do as far as the community development, cause you go out in the public correct? And talk with the different people?
- Mr. Erickson: No that’s not part of my roll. I do not meet with the public in general, I’m working with, right now I’m working with contractors such as surveyors, land developers, those kind of people as far as agreements with the County for development of raw land right now.
- Ms. Valenzuela: Okay, and then your side job would be specifically, can you describe that to me?
- Mr. Erickson: The requests that I’ve had are projects for single family homes for family and friends that need help meeting and complying with the County Codes for fire, safety, ventilation, that kind of stuff.
- Ms. Valenzuela: Okay, alright thank you.
- Mr. Heintz: Any other questions?
- Mr. Allende: Just to simplify the request and I’m thinking it helps with, you know, me understanding myself it’s easier...all you’re trying to do is draw up single family homes any other things that may require a stamp in order to get it passed in a permit and through the County and then once approved you’ll deal with that on your separate time...

Mr. Erickson: Correct.

Mr. Allende: ...and then from there move on and then help out that client or family member like you mentioned to complete the project and because the County projects you work on are vastly larger than those, than you would do on the side, that's how you're saying that there isn't a conflict of interest.

Mr. Erickson: The kind of work I'm doing with housing has nothing to do with the kind of things I would do on the side if that's what you're asking, correct. I'm still technically responsible for some County projects within DPW and they're looking for someone else to take on that role.

Mr. Heintz: Thank you. Mr. Erickson.

Mr. Erickson: Thank you Mr. Heintz.

Mr. Heintz: Is there a member who'd like to make a motion?

Mr. Allende: Being my first motion would it be just making a motion to have a written response to Mr. Erickson about there not being a conflict of interest for him doing the work proposed on the side?

Mr. Heintz: Okay, is there a second? So that would be an informal advisory opinion of the board.

Ms. Nakanishi: I second.

Mr. Heintz: Any discussion?

Motion and Vote: Mr. Allende made a motion for an informal advisory opinion finding that there's no conflict of interest. Ms. Nakanishi seconded the motion. All members voted aye. (10:29 a.m.)

Ms. Frenz: So sir, just to clarify, the board, I will draft an informal advisory opinion that documents the discussion that we had here today along with the motion and the findings and that informal advisory opinion would be before the board next month for their review and approval.

c. **Petition 2022-06: Request for an Informal Advisory Opinion of a Petition from an Office of Housing Community Development employee seeking guidance on whether a conflict of interest exists as Housing Specialist III who is looking to obtain their Real Estate license to list/sell homes, some of which may be Section 8 properties. (10:30 a.m.)**

Ms. Nakanishi: Mr. Chair? She did request a closed hearing. I don't know when we have to...it's got closed hearing checked there and she didn't sign it so...I don't know what that does.

Ms. Frenz: So if I could, this is Deputy Corporation Counsel Cody Frenz again, Ms. Justo, so before we do that, well actually I need to address the closed hearing first. Ms. Justo, I'm informed in a belief that you requested a closed hearing, I just wanna make sure you understand that a closed hearing would mean that anybody that's currently sitting in here that is not a part of the board would be asked to leave? Is that what you want ma'am?

Ms. Justo: Yes Please.

Ms. Frenz: Okay, give us one moment....so for those of you that are viewing this hearing via zoom, we're gonna put you, the people that are on zoom that are not a party to this petition, we'll be moving you into a waiting room and will bring you back in as soon as this petition has concluded...

Mr. Heintz: Thank you Counsel, are we ready to proceed with this petition?

Ms. Frenz: Not quite, sir...

Mr. Heintz: Not quite? Okay, thank you.

Ms. Frenz: Okay we now have all members of the public either exited from the building or put into a waiting room so they cannot hear the petition. Before you go on Chair I just wanna put on the record. I wanna make a personal disclosure that Tisha Justo is married to my husband's cousin. And so she is family, we do spend quite a lot of time together outside, not at work, but outside work with our children and at baseball so if anyone here, whether I'm not sure whether or not there'll be a need for legal question, I did get back up Counsel that I can ask to join should there be a legal question. I wanted to make that disclosure and whether or not the board wanted me to recuse.

Mr. Heintz: Does any member of the board have any question to Cody about whether she needs to recuse? Seeing none...I don't see any need for you to recuse.

Ms. Frenz: Okay, alright go ahead chair.

Mr. Heintz: Okay, thank you. And thank you for that disclosure. Ms. Justo are you ready to make a statement?

Ms. Justo: Yes.

Mr. Heintz: Thank you.

Ms. Justo: Okay, so I'm just coming to here see if there's any conflict on your behalf, cause I'm a Housing Specialist here and currently looking to get my real estate license but I don't want to get it if there'd be conflict. But what I do here, I would have the option not to list and sell homes for property managers that do have their home listed as a unit that's rented to Section 8 tenants so that part I don't see that there is a conflict, but I'm not too sure cause if I work under an agency that's a property manager that has units listed here, if there'll be any conflict, but I won't be doing any property management.

Ms. Nakanishi: So what if it was an owner who just found out you had a license and asked you to list their Section 8 property for example?

Ms. Justo: So I wanna look at it as if I have the option to decline any units that currently have tenants in the home, cause this will be just like a secondary income so it's not like I'm out there hustling everything I need to sell.

Ms. Allende: Good morning Ms. Justo, I just had a question...the part that you're wanting clarification on, is it the homes that you work with now, you're wondering if those would become available to sell and then you don't want to have any dealing with those because they may affect the Section 8 renters that you also deal with?

Ms. Justo: Um, no I'm actually looking to get licensed, I just got guidance cause I was offered to work somewhere but they're a property manager here so I didn't want to have the conflict of property managers listing homes here and then say if I go and list their home there might be a conflict with having a section 8 tenant. But myself, I would be able to say no, I would not want to list it due to the conflict.

Ms. Nakanishi: So are you aware that most property managers do property management for the purpose of getting listings and buyers? That's really why they do it, it's not from what they make, being a property manager.

Ms. Justo: Yeah, but I wouldn't be managing the properties I would just be listing homes and selling them. I'm not interested in doing any property management.

Ms. Nakanishi: I guess I'm not making my point. As property managers, people in that business specifically as property managers do it because they get listings from the properties they manage, they get buyers from buyers that are in those properties. Although yours is specifically Section 8, I could see where, you know, an owner would say. "Can you do my listing?" Then what would you do?

Ms. Justo: If it's on our housing currently with the Section 8 tenant I would tell them that I would not be able to and I understand your question, or your concern about property managers, that's the way they make their money but not all their homes that they list are under Section 8. It would just be the specific Section 8 homes.

Ms. Self: I have a question, this is Amy. I'm not a realtor, I have nothing, I have no idea what a realtor does, but I do know some realtors and they're very busy people. I don't know how you're gonna be able to do what a realtor does – there's no problem with you getting a real estate license by the way, you can get that regardless. But there is a problem when you're working for the County, when are you gonna be selling, listing and selling properties cause I think you have to go and show properties, and you're gonna be limited to just after hours and weekends. And what if the County needs you to work overtime or whatever? Enlighten me please.

Ms. Justo: Well this is a second income and it would as it comes. Whoever I work with would have to deal with my schedule but I do, I would take time off if I need to or I do have a few realtor friends that would, we had talked, so you know, where they would do the showing for me and we would agree on paying them a fee for the showing.

Ms. Nakanishi: I am a realtor, and Kelly is a realtor and you pay somebody to do a showing for you and do you understand you're liable?

Ms. Justo: For the showing the of the home?

Ms. Nakanishi: You're liable for everything that's said and done at that showing. Unless you're just referring it to somebody, totally.

Ms. Justo: Okay. And that's yeah, something I would have to work out and agree upon, yeah with your broker and make sure they...as far as getting your license, the more the merrier.

Ms. Valenzuela: I have a question. So Kelly Valenzuela here. So couple of things as Denise just said. I'm a realtor. So, your role in Office of Housing,

currently right now, can you describe to me what you do and who you deal with as the clients in your role?

Ms. Justo: I'm actually, I determine their eligibility so I get all their information, determine what their portion would be, I collect all their information, applications, and if they have conflicts between the landlords and themselves, I go ahead see if there's any conflicts between landlords and tenants and if there's any rules that they've broken. That's pretty much it.

Ms. Valenzuela: Okay, and then do you deal with the property managers directly and/or the owners?

Ms. Justo: Yes, for the purposes of their payments.

Ms. Valenzuela: Okay, and then should you get your license and I might be overstepping, Cody correct me if I'm wrong with this question. Should you get your license, the brokerage you're thinking of going to, how many Section 8 units do they deal with?

Ms. Justo: That I would not be able to tell you right off hand. Anywhere from 10 to 12 on our biggest clientele? I mean landlords, sorry.

Ms. Valenzuela: And my only reason for asking is, you know in real estate, Hawai'i is, this is a small state right, small island and word gets around very, very quick and I'll just use myself as an example. I was a realtor and as Mike knows, who's sitting next to you, on a large project and when I became in a paid position as a consultant, I resigned from the Board of Appeals because it was a conflict, to me, of interest because the people that came before us in the Board of Appeals, had to do with Planning and issues with the County, and now I felt that thought I probably, I don't know, wouldn't have had a case, I felt it didn't look right. It was partial. So, in my opinion, I think it's great if you have your real estate license but I also think, that closely with Section 8 and working with clients and/or owners maybe a conflict or may not look right. If you were in another department, it would be a little bit different. But you're actually gonna be dealing with people you will possibly be selling for. And if that was the case, the right thing to do would be to recuse yourself from any clients or any owners that you currently are running paperwork through as a public servant for the County of Hawai'i. Cause now you're separate yeah? You're in real estate, you're in an independent, and with the County you're a government employee so yeah, I would just, that for me, that's just a flag of caution.

Ms. Justo: Okay, yeah and I have the ability to see, so I would be able to tell which units would be under Section 8. So I would be able to not have anything to do with that unit specifically.

Mr. Heintz: Ms. Justo, I have a question for you, the (?) to the agency that you are going to work with, are they willing to exclude you from any involvement in the any housing or properties that are hooked up to or in any way connected to Section 8?

Ms. Justo: I haven't gotten that far yet, cause I feel as an independent you would be able to choose to say no to those properties, listing or selling those properties.

Ms. Nakanishi: That's true. She's correct. You're an independent contractor you wouldn't be required to list or sell. I could see you going into, or somebody finding out you have a real estate license because everybody wants to talk you about real estate right? And then all of a sudden you're saying okay I'll list it, and you find out there's a section 8 tenant in there, I can see that happening pretty easily. And you're in the middle of listing it and then you find out, oops...

Ms. Justo: Yeah and I would have to do my due diligence to make sure that doesn't happen and that's something that I would do and, I don't want any conflict there and I'm sure I would be able to figure that out before moving forward with that.

Mr. Heintz: Are there any further questions by members? I know that the board will wanna discuss this amongst ourselves after we're done with you. Amy do you have a question further that you wanna ask her?

Ms. Self: I'll wait until our discussion. I don't have specific questions for her but I do have something to say during discussion.

Mr. Allende: Hi Ms. Justo, what I have a question about is the fact that in your petition on number 4, I understand it says, I do have access to tenant landlord property managers info and units, so I would be able to double check if home is currently being rented to Section, to a Section 8 tenant. That is kind of in itself from my understanding, a conflict from using your county info for personal gain type of a thing there. So we would wanna make sure that, that would be something that's not being done in order for you to not have issues arise, and secondly, just a thought process of getting it out there. It's almost like you would need to have a lawyer or somebody to draft a letter stating for houses you did sell, stating they were made aware of your primary employment, something that wouldn't, so that way they know, okay my primary

employment is with the County of Hawai'i Housing, and deals with here...but you know if, I guess it would be that you're not, that they weren't ever considering listing it with a property manager that's under your jurisdiction in that section type of a thing. Something along that, and that's just the raw information of my thought that we wanna make sure you're covered from all angles so then that way there isn't a conflict or an issue that arises in the future.

- Ms. Justo: Okay, understood.
- Ms. Nakanishi: So like clarification on that next sentence: 'could also use my platform to meet multiple home buyers', can you clarify what you mean?
- Ms. Frenz: Just one second, Ms. Justo. If you could repeat your question with your mic on, sorry about that.
- Ms. Nakanishi: Thought I had it on...the next sentence says 'could also use my platform to meet multiple home buyers' can you explain what you mean?
- Ms. Justo: Oh, like if I was a listing agency and I met people who had multiple homes that weren't on Section 8 I could possibly you know, talk to them about our program here and help more families get housed. Cause we're short, I mean, shortage of homes and landlords that want to rent to Section 8.
- Mr. Heintz: Any further questions, Kelly did you have any further questions?
- Ms. Valenzuela: Not at this time.
- Mr. Heintz: Okay, anyone else have further questions? Alright thank you very much Ms. Justo for your (?) your petition. Thank you. Okay, now I think in order to have a discussion about a motion. I don't know if the board is ready to do that? But I think we make a motion first.
- Ms. Frenz: That's correct Chair.
- Mr. Heintz: Okay. Is there anyone who wants to make a motion at this point? We're thinking?...Maybe I'll talk a little bit while other's think. If that's not too disruptive.
- Ms. Frenz: As a point of order chair, we need the motion before we can begin our discussion.

Ms. Self: We can always amend it.
Ms. Frenz: That's true but we need *a* motion.

Mr. Heintz: Okay so I can make a motion and we'll amend it. Okay. By making this motion, this is not to say that I would vote in favor of it. The motion is to provide an informal advisory opinion to the petitioner that the board approves her petition that there's not a conflict of interest but the board is concerned that there needs to be a clear provision that would exclude her involvement in Section 8 housing in her private roll as a real estate agent. If there's a second then we can discuss this.

Ms. Nakanishi: I second.

Motion and Vote: Mr. Heintz made a motion for an informal advisory opinion finding that there's no conflict of interest. Ms. Nakanishi seconded the motion. (10:51 a.m.)

Mr. Heintz: Okay so we have a motion and we have a second and now we wanna discuss. Amy I think you, you're ready for us?

Ms. Self: Yes. Okay, as I said before, I don't have any problem with you getting a real estate license. That's not the problem. The problem I see is that you're in the housing office and I just don't see, just even the appearance of impropriety just jumps out at me. Because you've got access to these people's files, you know all these managers and I guarantee you at some point somebody will accuse you of having a conflict because you have all the information on all these Section 8 housing buildings or apartments or houses and I don't know, I just think that it's gonna be hard to separate yourself from that and taking clients because you could be getting clients just based on the information you get using the County files. I just see a huge, the previous petition we had was completely different, he was in a different department. But you're in the same department that you're gonna be dealing with as a realtor. And I'm sorry I just don't see the separation I just don't.

Mr. Heintz: Thank you, are there members who would like to continue our discussion?

Ms. Nakanishi: I'm pretty torn about the whole issue. Although in reality accept for what I've already mentioned, property management and sales are two separate beasts and just as a caution, there are a lot of people who try to do real estate part time and it doesn't work, but that's just an aside. I guess, you know I guess I'm so torn that I must see a problem with it.

Ms. Self: Erick made a very good observation. When you say you have the information on the County files of Section 8 and that you could look at that if somebody asked you to list the property so see whether they are Section 8 people or Section 8 units, well that alone is gonna require you to use County property for your own business. Do you see that? It's like, you're gonna be, regardless when are you gonna access those files? Just the act of going in and accessing those files to find out whether or not the unit is a section 8 unit so that you can list the property, that's a conflict. No matter how you look at it. And it's not only using the time, the County time, it's also using County property.

Mr. Heintz: That's part of the reason that, to the motion, I said that the agency that hires her would need to be, exclude her from any involvement in any sales or properties that involve Section 8. And I don't even know if that's strong enough. So I agree with you on the concern.

Mr. Allende: I think you're right Chair, that maybe it would almost be that any property manager or managing company that's listing a Section 8 with the County, she would have to recuse herself with, because then there's no chance of there being a, as a (?) and propriety of information that would need to be checked, because you know, and if that was the case, such a waiver maybe stating that not only that those people don't intend to rent with Section 8 but have never rented with Section 8. Then that way there would be no need for her to check or those records to be checked because the people she would be listing with would therefore already be excluding it without her checking those records. Which means she wouldn't have to use the County tools at her disposal to do her other job.

Mr. Heintz: And even that leaves the concern, oh I'm sorry, one moment Kelly we'll get to you. Amy made the point that even if it turns out there isn't actually a conflict of interest or impropriety there certainly will be the appearance of it and that is another concern that's again why I was suggesting we, that whoever employs you would have to exclude you from being involved in those kinds of sales. Kelly do you have further...?

Ms. Valenzuela: Yeah, so again getting back to what we're saying of the appearance of, so let's use this as an example: there's two property managers in the same area in Hilo, they both have Section 8s and one of them hires you as an owner to sell their property. You knowingly know that their property has more Section 8's than the other guy selling their property. Somebody could come in and accuse you of either not taking a buyer or taking a buyer because of your knowledge of that property. And I'll give you an example, when

we list property, if I'm related to the owner in anyway, that goes on the MLS. It has to be in the remarks of the MLS. We have to disclose that right up front, number 1. Number 2, most realtors would look at a person in that position and correct me Denise if you think I'm wrong, as a gold mine because you have access to a pot of people as owners are making money through clients through section. You understand what I'm saying? You might be just thinking I'm selling you know, homes for my aunty, my uncle, my friends right cause you get into real estate and you send your email out to let everybody know hey I'm a realtor. But I just feel the department that you're in and being a realtor, it just doesn't go hand in hand in my opinion...

- Ms. Nakanishi: Well especially now you could, I mean I'm not saying you would but we are so short of inventory in the housing sector that you could canvas those sellers and say you know it's really time to sell this thing not put another tenant in there. That would be the biggest thing but you'd have to make sure it didn't happen and how do you know that, how do you prove it didn't happen?
- Mr. Heintz: Are members willing to wrap this, up this discussion or any further discussion? No further comments?
- Ms. Self: This is Amy, I would move to amend the motion...I would say the motion would be to, provide, did she ask for an informal?
- Mr. Heintz: Informal Advisory Opinion.
- Ms. Self: Informal opinion that the Board finds no conflict with getting a realtors license per se, however, the board finds that there's a high probability of there being a conflict of interest in the petitioner being a realtor and also working in the housing, the office of housing and especially in her position in dealing with Section 8 inventory for the County of Hawai'i. Something like that, I don't know.
- Mr. Heintz: Is there a second?
- Mr. Allende: I second.
- Mr. Heintz: Any discussion of the amendment? The new motion as it's amended? So...what we'll do is first vote on the amendment. And I think this amendment actually deletes the original motion. So this is the only motion before us. This...
- Ms. Frenz: The amended motion would be the only motion the board would be

Mr. Heintz: voting on.
...would be dealing with.

Ms. Frenz: That's correct Chair.

Mr. Heintz: Okay. Thank you very much. Okay does everybody understand the motion? All those in favor please say Aye.

Motion and Vote: Ms. Self moved to amend the informal advisory opinion stating that the Board finds no conflict with getting a realtors license per se, however, the board finds that there's a high probability of there being a conflict of interest. Mr. Allende seconded the motion. All members voted aye (11:02 a.m.)

Ms. Frenz: So Chair, to the petitioner Ms. Justo, I will draft an informal advisory opinion that affirms the discussion and findings of the Board here today that informal advisory opinion will be reviewed and approved by the board at next month's meeting assuming there are no delays in that meeting and you will get a filed copy of such.

Ms. Justo: Alright, thank you.

Mr. Heintz: Thank you Board members.

Ms. Frenz: Chair if you could give us a moment to go back into open session since we are closed.

Mr. Heintz: Oh yes please lets go back into open session.

* * **The board took a short recess** * *

5. UNFINISHED BUSINESS (11:14 a.m.)

a. Petition No. 2022-02: Review Order Dismissing a petition from a County employee requesting to volunteer on County of Hawai'i board or commission. (11:14 a.m.)

Mr. Heintz: We're moving now to unfinished business, we have an Order dismissing Petition No. 2022-02, this is the Mr. John Andoh petition, we have the draft that that's been provided for us. Are there any members of the board who have any comments about this draft? Any questions, any editorial changes?...Seeing no changes, I move that we accept the draft for dismissing Petition No. 2022-02...do we have a second?

Ms. Valenzuela: I second it.

Mr. Heintz: All those in favor please say aye?

Motion and Vote: Mr. Heintz moved to approve the draft Informal Advisory Opinion. Ms. Valenzuela seconded the motion. All members voted aye (11:15 a.m.)

- b. **Petition 2022-03: Review of Informal Advisory Opinion regarding a petition from a County employee seeking guidance and clearance on Mayor's office accepting donations for disbursement into the local community for two separate events. (11:16 a.m.)**

Mr. Heintz: This petition is an informal advisory opinion, you have the draft before you. Are there any changes or, editorial changes or comments about the draft? Hearing none. I make a motion that we accept the draft as presented to us.

Ms. Self: I second.

Motion and Vote: Mr. Heintz moved to approve the draft Informal Advisory Opinion. Ms. Self seconded the motion. All members voted aye (11:17 a.m.)

- c. **Continued discussion regarding a letter from Council member Sue Lee Loy to the Board of Ethics regarding a request to expand their membership. (11:17 a.m.)**

Mr. Heintz: That moves us to Item 5c, which we discussed last time and that was a letter from Council Member Sue Lee Loy that was asking the Board's opinion of whether we would be inclined to approve or promote the idea of enlarging the Board of Ethics from 5 members to some larger number. In our discussion last time, most members had a chance to look at this and I just wanna make one or two comments and then open it up for further discussion.

Ms. Frenz: Chair we'll just briefly note the presence of Council member Lee Loy, in case the board needs anything from her.

Mr. Heintz: Oh my goodness, I'll have to change everything I was gonna say. Councilmember Lee Loy is present. I just want to point out that I am rather ambivalent about this and for a couple reasons, one is I remind you of member Self's remark last time that, sort of in general, there's always been or seems to be a problem of getting enough volunteers and finding volunteers to staff up boards and commissions. And my own experience on this board is that 2 of the last 3 years we have not had five full members because of a couple of things, one is because every year you lose a member, so those are rotating and it's just not up to filling the positions we've had. We are right now fortunate to have five and I'm not sure if this would exacerbate the problem if we had seven, if we'd have two or

three vacancies. So I just wanna (?) that that does ring important to me. The other thing is that well, and other than that I am kind of ambivalent about this idea. I am not persuaded by the importance of the population, I think that makes sense if you're talking about numbers of council members, numbers of members of the house of representatives and so on, but not in a quasi-adjudicative board. But I probably am going to abstain, I'm not gonna vote for this or against it, but depending on what the motion is. I guess that's enough for me.

Ms. Self: Do you want me to make a motion.

Mr. Heintz: I was gonna say, the other thing is that my understanding is what we will be doing is having the Corporation Counsel write a letter for us to council member Lee Loy just indicating whether we support this idea or not and if we support it, it might have some details like a number or not. So I don't see this as an informal advisory opinion but rather just a letter, you're seeking our view and we're not gonna scold you afterwards. We're coming out right now and saying how we feel. Okay? That's the idea so I don't know that we need a motion that we're gonna write this letter I guess.

Ms. Self: Well it depends on whether we want more members or not. I would go for two more members to make it seven as opposed to nine...

Ms. Nakanishi: I would think it would help with the quorum issue and nothing else cause I know there was a meeting couple times ago when I couldn't be here and there wasn't a quorum and I think these poor people drove from Kona to find out they just go home.

Ms. Self: It was because of me, cause I had COVID.

Ms. Nakanishi: Well I wasn't there either you know, so seems like...

Mr. Heintz: Kelly you had some comments before about this. Did you wanna join in?

Ms. Valenzuela: No, I just think, I kind of think that it would be good if we had seven because of that one, the quorum. Two, I do also kind of agree with you in the sense of, not necessarily agree but understand that getting members on a volunteer capacity, a lot of folks just think it's just you know a meeting once a month. But no it's not, we get documents, we get stuff at the last minute. If you have a full time job you have to work around it. So unfortunately

we don't have a lot of people running to volunteer nowadays right? But I do think it would be a much better opportunity to have seven members I think that would be a good number. So that would be what I thought.

Mr. Heintz: I actually have a question for counsel, maybe you can help me. If we increase the membership to seven, how do we, how is the quorum calculated. Would that mean that four members would have to be present?

Ms. Frenz: That's correct Chair.

Mr. Heintz: Okay. So, I mean, this could actually increase the problem of having a problem rather than decreasing. I mean, partly because even though there's seven positions there might be only 6 people or 5 people appointed and filling positions and so we automatically are short one or two. Right? Is that how it's calculated?

Ms. Frenz: That's correct chair. I would say that what I have seen over the course of the last not quite year and a half now, and in fact you had Ms. Bartolome before you at the last hearing, she is responsible for working with, finding, preparing and assisting the Mayor in the selection of those people and she has at least at my experience with all of the other boards and committees that I have in addition to Board of Ethics has been very active in securing and providing names to the Mayor. So I have not seen significant delay as far as Ms. Bartolome who does that work. So it has been quite quick, it has to get through Council. Right? but it has been pretty quick as far as her being able to fill those seats. So, for what that's worth, those are my thoughts.

Mr. Heintz: Yeah that's my experience that we finally have five. Most of the time that I've been on this board we've only had four, so thank you. Other comments and I think council member Lee Loy would like to say something. But Erick did you wanna say something first?

Mr. Allende: I just had a question with why do you feel it is necessary to have more?

Ms. Lee Loy: Thank you for that question. Actually it was with my discussions with Amy when that one particular meeting got cancelled because there wasn't enough people and Ms. Self knows this. There was another charter amendment that I had proposed for the salary commission and kinda did it on my own and that particular body

didn't like that I didn't come ask permission first. And so I just saw this as a way to elevate the conversation for this body to have this discussion around, and providing context and texture to this, if this is a decision that the board wants to make, a charter amendment has to be introduced at a particular time frame and we're within that time frame so that this can be placed on the ballot for the electorate to decide. And so I just wanted to elevate, those were the driving pieces for me.

Mr. Allende: So that was the question when you were asked, during my confirmation about the timing, so, greatly understood. Thank you.

Ms. Lee Loy: And I do want to echo, Ms. Frenz point that Ms. Bartolome has been very active at recruiting and getting those names in front of the Council. I really think it is that individual's job within the administration to fill those positions or find willing people, which is the council's job to then confirm them but the questions are asked, how available are you. What is your commitment to this and really driving in that, it's not just a board or commission. It's the action of that board and commission to function and you being present is what is the most important piece for these boards and commissions to work.

Ms. Frenz: I have I thought I'd share with our Board of Ethics as a point of just consideration in general, as we've heard, as the board has heard on many occasions with the big island as large as it is it is still a very small community, a lot of people know each other and the smaller our board, sometimes, the greater there is for potential conflicts to arise in a way that we could lose our quorum if we have such a small number and everyone knows the person in front and doesn't feel comfortable sitting for example or presiding over it. We may still have that happen if we were to increase to seven or nine, right? But if we have seven members, 2 additional, possibly a better chance of there being a quorum to hear a petition that involves somebody that maybe a majority of our members are conflicted from presiding over. So just one additional thought I thought I'd share with the Board.

Mr. Heintz: Comments by board members?

Mr. Allende: I just had one, I guess it would be something to bring up between us, something that you brought up, Chair, about if we went seven, then that means we would have to have four present right? And so, is it possible to have almost like two alternates? Somebody so that way it doesn't lower quorum. So that way if people not showing up type of a thing, it would have to be...

Ms. Self: It's not in the Charter.

Ms. Frenz: That's correct, we would not be able to do that.

Mr. Allende: Okay, just a question .Thank you.

Ms. Lee Loy: And if that's an option you guys wanna explore, it still requires a charter amendment and why we're here now to figure out where we wanna go with that.

Mr. Allende: Right, totally understand. Thank you.

Ms. Nakanishi: I have a question regarding the charter amendment, do we still have anything on the floor regarding the changes? And can we kinda put them all together one time rather than...it was a code change...

Mr. Heintz: Yeah there are no other items coming from the Ethics board that would involve a Charter change. The codes of ethics changes will go to the Council for approval or not. So this would be the only one and it really wouldn't be coming from us. It would be a letter supporting or not this proposal and then council member Lee Loy will decide whether or not she's gonna go to the council to deal with it. Thank you.

Ms. Lee Loy: Absolutely and introduced kind of at the request of this body is really the goal. I mean I don't want to spend the time and energy on putting something on the ballot, which all of that costs money and time, and public hearings that go with it and I would wanna be smart and effective and efficient with whatever business decision this body makes.

Mr. Heintz: Okay any other comments, any other...I think that we can do is decide how we're gonna vote and what we're gonna do.

Ms. Self: I'll make a motion. I move to have the our Deputy Corporation Counsel respond to Council member Sue Lee Loy's letter requesting to expand our membership, to expand our membership to seven members.

Mr. Allende: I second.

Mr. Heintz: 2 seconds. Any discussion? Further discussion? No further discussion, all those in favor of this motion please say Aye.

Motion and Vote: Ms. Self moved to expand Board of Ethic’s membership from 5 to 7. Mr. Allende seconded the motion. 4 members voted aye, Mr. Heintz abstained. (11:31 a.m.)

Ms. Frenz: So Chair I will draft a letter, to Ms. Lee Loy indicating on behalf of the Board of Ethics that we are requesting a Charter Amendment request to increase our membership from 5 to 7.

Ms. Lee Loy: Thank you. Ms. Frenz, I have a draft, do you want me to forward that draft of the Charter amendment before placing it on our council agenda?

Ms. Frenz: Yes, sure.

Ms. Lee Loy: I’ll write it, I just wanna check that you’re good with it.

6. CONTINUED DISCUSSION REGARDING AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF ETHICS AND THE HAWAI’I COUNTY CHARTER AND COUNTY CODE (11:33 a.m.)

a. Continued review of Legal Opinion by Deputy Corporation Counsel Dakota Frenz regarding whether Chair Heintz’s proposed additions to the Code of Ethics are consistent (or inconsistent) with the Hawai’i County Charter.

Mr. Heintz: In our last meeting, we had moved the discussion to the point of whether or not to vote on the two proposals and member Allende asked that he have a little more time because that was his first meeting and he hadn’t had a chance to really explore this and I also volunteered to send him some more information if he needed it and that’s where we left it. So we can pick up with 6a if there’s any further comments anyone. Cody was not here but the minutes have like 15 pages of discussion. And I hope all the members had a chance to look at that. I don’t see a need to reiterate that discussion but there we go.

Ms. Frenz: I was not present but I did listen to the entire recording just so that I was up to speed as far as any issues any misunderstandings, any things that needed to be clarified, expounded on or corrected based on the opinion that I drafted for this board. At the end of the day my duty, my obligation is to ensure that I provide this board in its entirety with legal guidance as to what you can and cannot do. That was the point of my opinion. I wanted to correct a couple of things. First and foremost, a couple of the points and/or comments that struck me that I wanted to touch and just kind of clarify and or flush out for every one’s consideration. Chair you mentioned that one of the biggest impacts that the failure to discharge section would potentially have is, and I have written in here, you indicated “shame”, right. To point out that someone is failing to do their

job right, and it was an opinion that was drafted indicating he or she has failed to do their job, the media could wind of it, the public would be able to get wind of it and understand that the board has made a finding that a person, has failed to do their job. My biggest concern, just as to that point is that, that's not the purpose of our Board of Ethics. The purpose of our Board of Ethics is to hear, evaluated and decided initially, right if we, I wanna bring everyone back to our rules of practice and procedure. We have multiple different types of hearings. Multiple different steps that this board needs to remember, we are responsible for, you rather, are responsible for. We start as we've done today with an informal hearing. A petitioner or an accuser comes in and says this is my concern, if they're accusing someone for example right, so and so is not doing their jobs. Then there is a discussion .They provide proof, testimony, evidence and it's up to this board to decide whether or not further investigation is required. That's not something that I believe this board has done in quite some time so I wanna reiterate that that is a duty and obligation of this board. It is not just rendering informal advisory opinions which is all we've ever done, at least in my work with this board so far, and I believe Chair has also mentioned, while he's been here, a contested case hearing. I wanna remind the board that that's going to happen and the reason why I believe that's going to happen is, under our current rules of practice and procedure, it is the accused that has the right to request a contested case hearing and that's because it's their name, their reputation. If they wanna have it flushed out, they wanna have their day in court, so to speak right, it is their right. This board cannot deny them the right to a contested case hearing. So in our rules of practice and procedure, we would go from an informal to an investigatory. If we need to go even further we get into a formal hearing. That's where counsel can be, I would actually act as counsel and there would be a formal roll right. There would be transcripts. If they were unhappy with the outcome, they can appeal to the circuit court because that would be an agency appeal under the Hawai'i Revised Statutes. We're talking extremely formal proceedings because of the discipline that can potentially come from a finding and a recommendation that someone is perceived or believed to have to not done their job. Right? So I wanna remind this board that it is not as, well I did read, I did take some notes hearing I believe mostly chair's discussion with Ms. Self and I know, Ms. Nakanishi and our newest board member, discussion about 'it's just and informal advisory opinion.' It's just saying 'hey, shame on you, you didn't do your job' but it's not that simple. Unfortunately it's not that simple. That opens up a bigger can of worms. It would be hard and we don't know, we cannot predict. It would be hard to imagine that

someone accused of not doing their job would not want a full blown hearing to be able to prove their innocence, so to speak. And that just, that's a whole nother separate set of formal quasi-judicial proceedings that then become formal proceedings in the circuit court, right, so that would an agency appeal. I would remind this court, this board if you recall we had a hearing with a petitioner, in fact that involved council member Lee Loy where this board dismissed that petition. That petitioner appealed to the circuit court, and it became a formal proceeding. I had to file a motion to dismiss because I said he did not have an agency hearing, contested case hearing because it was at the informal stage.

Ms. Nakanishi: I'm sorry, you're saying agency...agency being like the agency that they worked for or us...

Ms. Frenz: This board. Yes. So there are formal processes. So if the thought is, it'll just be an informal advisory opinion. We'll just say kinda 'shame, shame, we know your name, we know that you weren't doing your job, we're calling you out and we're sending this letter to your boss' it is not quite that simple. Our rules require formal proceedings in order for that kind of action to actually be taken against an employee. So that was my first thing I wanted to make really, really clear. If, I know there was a lot of discussion about how long certain hearings took, I mean frankly it shouldn't have taken that long but that gets right into me saying we don't have the authority to even evaluate that. But secondly, we're probably very likely gonna need more than one meeting a month would be my guess, right. If it's opened up to people being able to say my co-worker isn't doing his or her job, we have the potential for there to be a lot of hearings. Now that should not decide just because there might be more work we're not gonna do that, that's not the purpose, I'm just reminding this board that if we go in that direction, that there is the potential and they can be retaliatory complaints, people just not happy with a co-worker, or somebody who got a promotion that they didn't. Who knows. But there will be more, right. So I wanted to point that out as well. Another point that struck me was a lot of the focus seemed to be on elected officials at last month's discussion and when we talk about making sure that the public knows, you know, part of the public's job is to make sure that they are informed and our media assists us with that and we saw at the beginning of this we had Ms. Cook-Lauer who is joining us from West Hawai'i I believe, to listen, to observe to find out whether or not there are any petitions worthy of documentation in our media, right. So there are outlets for our public to become informed. But something to keep in mind is it's the public for our elected officials that decide whether or not to keep them in office.

So that was the point of my legal opinion to this board. We already have in place mechanisms to deal with someone who is alleged or perceived to not be doing his or her job. Whether they are elected officials or they are civil service officials or they are, such as myself, at-will employees. Not everyone takes an oath of office. I believe I mentioned that. Elected officials, at-will employees like myself we take an oath of office. You don't stand there necessarily like an elected official but you sign off. There are mechanisms where if I'm alleged to not be doing my job as a non-civil service employee. My department head would sanction me, discipline me, whatever it may be to handle if I am perceived to not be doing my job. But I would be entitled like everyone else to go through that kind of process. Let's look into whether or not he or she is not doing their job. But that's internally done by the departments. And then we get into our civil service which further complicates things even more because there are collective bargaining agreements. This sort of proposal, assuming it were even to pass would have to go them for collective bargaining agreement employees. So I also wanted to point out that additional complication and really just remind this board that we're here to deal with ethical violations. I definitely understand and appreciate the Chair's sentiment that not doing your job is a moral, morally we all have an obligation to do our job, I'm not saying that I disagree with that at all. I do agree that we should all be doing our job. My point is solely that. This is not the arena, this is not the agency to determine that. If there is, such as we dealt with earlier, a question about whether or not an employee is improperly using their County employment to access information, that sort of an allegation, that belongs here, in the board of ethics. Ethically are you doing something that in violation with the Code of Ethics. Those issues belong in front of this board. So I just want to bring it back to reminding this board as far as what your Kuleana is. What you're supposed to be deciding and it is not, in my opinion, based on the charter as it's written, as far as the authority that it gives to this board to determine whether or not if someone is doing their job. Because frankly, if we leave it as currently written, we will have complaints, part of our amendment is to have it a complaint, not a petition right, before this board indicating that somebody didn't respond to an email, well I did but I did it two weeks later. Does that mean that I did or I did not do my job? I returned a call, but how quickly did I return the call, or do I have a reason why I didn't return a call, that's the kind of issues that this board would be faced with if we're gonna get into determining whether or not someone did his or her job and that is not the role, under the charter, for this board. So those are just all of the points I wanted to address after listening to the recording and kind of the discussion and commentary from everyone so I

could just touch on what I found to be the important parts.

Ms. Self:

I would like to add one thing. Here's another thing to consider. I'm speaking as an attorney. When I was a Deputy Corporation Counsel, I was the attorney for the Planning Department. I got a bad decision from the Board of Appeals, Planning Director wanted me to appeal – no I'm sorry it was a circuit court decision, Judge Ibarra, Councilmember did not want me to appeal that decision to the Intermediate Court of Appeals. My client was saying no, we're going to appeal. Well that put me in a real predicament, and I spend an entire weekend responding. She filed an ODC complaint against me, Office of Disciplinary Counsel, that's very serious, with the Supreme Court. She was trying to get me disbarred, all I was doing was my job. I was doing my job, so anyway I spend an entire weekend responding to that complaint and when they got it two weeks later, they stopped the investigation and they dismissed it. But this is the kind of thing that you're asking for by cutting that kind of, asking the Council to pass for the code of ethics. You're putting attorneys, elected officials, I mean any hint of me not doing my job is a total embarrassment to me. I have always to job to the best ability. I've been before this board before when someone from the public filed an ethics complaint against me for something that the reporter, the newspaper reporter wrote. It wasn't even a quote that I made. It was completely absurd, but I had to come before this board, two times cause the person didn't even show up the first time. Second time they didn't show up I finally got them to dismiss it. These are the kinds of things where if you're gonna say, you're gonna listen to somebody say that somebody's not doing their job. Well, you can say that about anybody but if you're saying it about an attorney and your name ends up all in the newspaper. That's really bad because then, how are you gonna repair that? And it's all for not. You don't decide, we do not decide if somebody is doing is doing their job or not, there are other bodies that decide that. There's a whole state law about that. A whole chapter in the HRS about civil servants not doing their jobs.

Mr. Heintz:

Okay, thank you for those comments. What I had in mind when drafting this, and what stimulated this. Were really two situations, two cases, two situations. One was having to do with Mayor Kim and the closure of the road and that that sort of authority was turned over by the Governor to the Mayor in July. And the Mayor worked on trying to open the road for roughly 6 months and complaints came that he wasn't doing that. We started an investigation into that issue about whether he was avoiding or not acting, okay? In the end, that is not what we did and were accused of doing that. But we said that's something we'd look into. He may

have been doing all kinds of things trying to do his job, so it's a matter of how well he discharged or, was he just avoiding his duty? Now the so that never, probably would never have been passed by the board that he didn't do his job. The second case is it was the case of a Council member who for whatever reason came to the view that the County of Hawai'i didn't have jurisdiction and was not a legitimate government force and she is a council member, refused to vote, refused to participate, problems with quorum and so on. So it was like non-action, non-performance, okay. And so it wasn't like the manner in which she was doing it, she wasn't, she just stopped. She just wouldn't do what she swore an oath to do. So that's the other case where it seemed like this would've been relevant. And one of the points I was trying to make is so what do you do with that case? What if the County council or the citizen raised the issue that a council person are or acts, wasn't keeping her oath, fulfilling her duty. And what the board of ethics in that case would've looked at is we're not evaluating the manner in which she's doing her job, the quality of her work, but rather that she's not, she's avoiding or is not acting, it's in-acting, non-action, altogether and so there would've been probably an informal advisory opinion to the County Council that you indeed have a council member, if we had this provision, that was failing to discharge their duty and then it's thrown back to the County Council and the County Council may say the remedy for \this is to let the electorate deal with it, or that they would (?) or whatever but the County Council would do it. Now that's what I had in mind. And that's what I'm trying to address is there's a puka, there is a problem. What we have is manner of discharge, are they discharging their manner in a way that's unfair or it has a conflict of interest. Or is misusing County resources. Those are the common kinds of cases that we get. This is a very unusual situation and, but it came up twice in the time that I've been on this board and so that's what I was trying to address. I do not see that if we had such a provision that it would conflict any of the other mechanisms that are established that Cody and Amy are talking about. And I appreciate the work that you did and I understand that, that's the way you address it. We're not evaluating how well the person is doing their job and the kinds of complaints that people, fellow colleagues might make. This is a complete non-performance, avoidance, rejection, whatever. So that's what I was trying to address. Since I'm on this I will now switch to the other point. The appearance of impropriety or appearance of unfairness.

Ms. Frenz:

Let me just interrupt Chair, cause we're only 6a right now, which is as to my legal opinion so maybe –

Mr. Heintz: Yeah I'm talking about your opinion still, I was just gonna say, in a footnote you indicated that you thought the appearance of fairness provision is already handled by our Code of Ethics. And I just was saying, no that's another puka. What we do deal with is conflict of interest or unfairness. And in the case of Mitch Roth, he was accused of both conflict of interest and appearance of conflict of interest and then they backed off, the complaints against him backed off from that he actually had a conflict of interest but he had an appearance of conflict of interest. And the ethics board was silent and let standing the charge that he had an appearance of conflict of interest and the reason that the majority of the board, it wasn't unanimous, I dissented, is that he didn't have an appearance of conflict of interest either but we just didn't have a provision in our code that addressed appearance of conflict of interest so I'm trying to fill that puka.

Ms. Frenz: When you say appearance of conflict Chair, do you mean appearance of impropriety?

Mr. Heintz: Yes, that's the legal term in law, lawyers usually talk about that, in Prosecutor Roth's request for an informal advisory opinion, he used the term, appearance of impropriety or appearance of unfairness, appearance of conflict. There's a difference between the actual, making the case and the appearance of, and as we saw today, in the case before us of the person who wants a real estate license. You may in actually may not act in a way, but she's surely gonna be charged with an appearance of unfairness or appearance of conflict. And so that's what we're trying to add in this second one. Now if we vote in favor of these, they go to the council and the council re-writes or works on them, fixes them and or says we don't need it, right. So the County council in the end is gonna pass this ordinance because this becomes legislative really, so that's the point I just wanna make. In my experience here we've have two pukas and I'm trying to fill em. That's all.

Ms. Nakanishi: So I have a question. So with Mayor Kim, we had a complaint. With the other one there was never a complaint right?

Mr. Heintz: There was a request by Mitch Roth to –

Ms. Nakanishi: Not Mitch Roth, the other one with the County Council.

Mr. Heintz: Oh, no. In fact to my knowledge that just, the County Council was kind of baffled with what to do with her and the newspaper....

Ms. Self: But that's the Council's decision, that's not this board's decision.

Mr. Heintz: Well if this board would've expressed an opinion or if the question would've been raised to this board then we would have a section that would say 'yes, failure to discharge, or non-discharge or inaction, or avoidance is under performance, non-performance is, that's what we wanna, that's what we would be adding. Right now we don't have that, that's right. I totally agree.

Mr. Allende: My only, I guess question is and mixed with a statement would be: One, has the Council already given us a means to try to enact either somebody with the drawing from office or disciplining them with another means and I think it's with the fines, monetary issue that if say that Council member was receiving a per diem or their pay, and they weren't performing, we as a Board could therefore say hey, it's not ethical to receiving such monetary money like your paycheck or your per diems and so we're gonna withhold it until there's proper action on your part. So I think we have some type of method to either create an action by that person on their own by saying well if I'm not getting paid, do I really wanna be there or is my motive there just to be....

Mr. Heintz: Okay, my understanding of it, correct me here, I think in that case I guess the County Council could've dealt with that. But this Board of Ethics could not have because we have no failure to discharge provision. So we would not have a been, we wouldn't have had anything to say. Because there's no provision. If we pass this then there would a provision and then I suppose we'd be put in that position. And that's where we might simply write a letter and let them deal with the penalties or not or let the public, let the electorate deal with it. But yeah, as of now, these aren't in, these do not exist.

Ms. Self: These do not exist in the Honolulu Charter, or in the Maui Charter as well. I mean I didn't look at Kauai, but Honolulu and Maui do not have such a provision in their charter or in their code...

Mr. Heintz: I think that's right.

Ms. Self: ...and that's because it's not an ethics issue.

Mr. Heintz: No that's not right.

Ms. Nakanishi: I mean agree, I mean I think if there had been a complaint filed then we could've acted on it. So what you're suggesting that we would bring that complaint, absent somebody else and I'm not sure...

Mr. Heintz: The origin from the complaint can come from us, conducting an investigation which Cody referred to or it can come from the public, it could come from the Council, it could come from anywhere but as of now it wouldn't be addressed because there is no part of the code.

Ms. Frenz: Might I ask, and I will admit upfront Chair, I'm gonna play devil's advocate okay, because you have directly state in the past on a couple of occasions, that you do not feel comfortable or qualified to sit on a quasi-judicial investigatory hearing that this board would be required to do, and that's what all of these would require so would you be, how does that, when you think of utility right, you always wanna think about, especially when we go before Council, we wanna make the following amendments. We need to tell them why, what's the purpose? What's the utility. How is it going to function. How does it help? We need to explain that to council, so if we would do all of this, and let's say you even get past Council and Council were to approve it, right? Are you thereafter going to disqualify Chair? Again, I'm playing devil's advocate because you've already indicated that you wouldn't feel comfortable. So when we think of the realities of having thereafter however many contested case hearings, we would definitely need that seven member board if our Chair is going to disqualify out of all of that.

Mr. Heintz: Well let me respond this way, my remarks about that about not being, feeling like I would want to be in the chair position, I'd go back to, if you look at our rules of procedure, of the formal hearings and some of the provisions, right down to the attorneys have to have the standing for the Supreme Court of the State of Hawai'i, that with those qualifications required of lawyers involved in such hearings that I at that time, I had that conversation with J...my point is, that was based on those earlier thoughts and discussions, and that's what that arises out of. And those rules we haven't come to yet, and in my three years that we've been here, we haven't had such a formal case. That's what that arises out of, and so in the actual event, so if you'd like, say this is hypothetical, in the actual event that this came about I would reconsider but probably will hold the same view as I understand it now. And the previous person, J, the Corporation Counsel that I was talking with about this, agreed with me. He said he said he understood why one would not...because I wouldn't to bollox things up, I mean, that's all.

Ms. Frenz: I agree Chair that if someone doesn't feel comfortable proceeding

and participating in that formal of a hearing which is what these will become then it wouldn't be fair or appropriate to the board, to the accused right, to the petitioner to preside over it and that's part of my concern, because every single one – hang on Chair, let me finish my thought. Every single one of these would result in a contested cases hearing because of the nature of the allegations. So we will have a lot more, again, the level of work should not deter anyone from deciding either for or against something I just wanna make sure you understand that these are going to be contested case hearings, we will have attorneys, we will have formal proceedings, there will be records...

Mr. Heintz: I guess my only answer is this is conjecture on everybody's part and what I thought or envisioned that these would be very rare, rare indeed.

Ms. Self: Not if you do this...

Mr. Heintz: Well maybe not.

Ms. Frenz: I don't think (?) amended Chair, only because of nature of the type, when we open it up to look at ones employment duties or lack there of being fulfilled, there is a greater probability that there will be a lot more petitions and we, all of us, anyone is gonna wanna defend their good name, right?

Mr. Heintz: Okay. I think let's move on, I think that we may have disagreements, Amy and Cody have certainly a lot of experience in this area and they had to deal with this. I am gonna make a suggestion that what we'll do is divide these two proposals, one is the failure to discharge proposal to submit this to the County Council, for their consideration and the second, the appearance of fairness doctrine. And I think we should vote on these separately.

Ms. Frenz: I think we might wanna take it a step further because we've done some previous amendments that the board has approved regarding our informal advisory opinions, or formal opinions that I'm working on from previous, several months back. I don't think that they should be kept together, either. Typically if I'm gonna go before County Council, because...

Mr. Heintz: You separate em all out...

Ms. Frenz: That's my thought, especially when we have a potential disagreement because I do just wanna note on the record for the board's purpose, as Counsel for the board, as I indicated, my job is

to provide you guys legal guidance, opinions, for example, as I've done, once you step outside of that space, you're not entitled or nor are you protected by having the benefit of legal counsel. So my advice to the board, and Ms. Self can chime in if she wants to but my advice to this board is what you are doing is not appropriate, and I don't mean that in a moral ethical sense, I mean the Charter does not give you the authority to do so. So I'm advising that you cannot, you do not have the authority so make these determinations. That is my legal advice. So if you choose to go beyond my legal advice, there are no legal protections for you thereafter should there be any sort of a lawsuit or some other issue, you would not be protected by having legal counsel defend you in that sense. I just wanna make that very clear, not as a scare tactic, just wanna make sure, I would not be doing my job if I did not share that with you. I would be called before Council as the attorney for the Board of Ethics and I would be telling them that I recommended against the, should it pass today and that's fine, that's just my job. I would have to go before them, I would draft it, if it passes today, and so I do think that before we lose our board member to an appointment, we should have a vote today as to the Chair's motion regarding failure to discharge as currently written. And see how far we can get, before we lose, we won't lose quorum, but to give her a chance to weigh in and have her vote count. We should have a motion to either approve Chair Heintz failure to discharge as currently written, have that discussion and if it passes, my job would be to submit that amendment to the Council., So I do think we should move forward with our motion.

Mr. Heintz: Cody just one question, if we pass this motion, failure to discharge, and all we're passing is that this be added to the Code of Ethics and that it's a recommendation to the County Council that they add this, we're not adding it. We do not have the authority to add it. We are recommending that they add this. Just as we're recommending that they increase the membership from five to seven. That is a recommendation to the Council. And now, tell me, are you also saying that we don't have the authority to make that recommendation to the County Council so if we do it anyway, that that's what we wouldn't have legal protection on?.

Ms. Frenz: No.

Mr. Heintz: You're not saying that.

Ms. Frenz: I'm saying if you go against Counsel's advice, which you're free to do and you've done in the past, if you go against Counsel's you are not subject to any Counsel protections thereafter should there be

complications. That's all I'm saying.

Mr. Heintz: But thereafter is it goes to the County Council, and let's say the County Council does something stupid and approve Heintz's proposal...

Ms. Self: If you think it's stupid, why are you proposing it?

Mr. Heintz: I'm joking...I don't think it's stupid.

Ms. Self: Let me tell you something if this passes, I will, not as part of this board but I will show up and the County Council meeting and testify as an individual and as attorney cause I don't want to be a part of this embarrassing thing. This is embarrassing to do something you have no authority to do.

Mr. Heintz: We have the authority to make a recommendation to the County Council to add this to our existing code. So...

Ms. Frenz: Do you wanna make a motion Chair, regarding your failure to Discharge?

Mr. Heintz: Yes.

Ms. Nakanishi: I'd actually like to table it again, I'm sorry because this opinion that you wrote was not in my packet.

Ms. Frenz: It's from last month.

Ms. Self: It's my understanding, according to the Chair that then Corporation Counsel, Joe Kamelamela also wrote an advisory opinion saying that this board did not have the authority to do this.

Ms. Nakanishi: His was about Harry Kim right?

Ms. Frenz: So my legal opinion was about four pages, it was I believe everyone had it at the last hearing where I indicated, and I had kind of a short answer up front that no you do not have the authority to render opinions regarding employment in short. And then I provided you guys as to each different employment type. I broke it down. So you had the elected officials, at-will employees, collective bargaining. I tried to show you guys who is in control of these issues for each of those different bodies of employment.

Ms. Nakanishi: Okay. I can see where there is some circumstances where it could be appropriate in extreme circumstances but it would have to be

very narrow. Anyway that would be my request, I would like to table it so I could re-read that cause I don't remember seeing it. And I'm old and I know that. I still don't remember seeing it.

Mr. Heintz: So there's a request to table the proposal on failure to, well the whole thing because both of the issues are in Cody's March 11th letter.

Ms. Frenz: So why don't we, I believe we're gonna lose a board member. Do you wanna make a motion to continue this matter?

Ms. Nakanishi: Yes I would like to make a motion to continue this matter one month.

Mr. Allende: Seconded.

Mr. Heintz: Any discussion? All those in favor of continuing til next month, say Aye.

- b. **Consideration of Chair Heintz's proposed additions to the Code of Ethics Sections for "Failure to Discharge" and "Appearance of Fairness Doctrine".**

Motion and Vote: Ms. Nakanishi. moved continue those items to the next meeting. Mr. Allende seconded the motion. 4 members voted aye; Ms. Self opposed. (12:13 p.m.)

Board member Nakanishi left the meeting at 12:16 p.m.

Motion and Vote: Mr. Heintz. moved to enter executive session. Ms. Valenzuela seconded the motion. All members voted aye (12:17 p.m.)

7. EXECUTIVE SESSION (12:17 p.m.)

- a. Review of the Executive Session minutes of March 16, 2022

Motion and Vote: Mr. Heintz moved to approve the executive session minutes of March 16, 2022. Mr. Allende seconded the motion. All members voted aye (12:33 p.m.)

- 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.

8. ANNOUNCEMENTS (12:34 p.m.)

Mr. Heintz announced that the next meeting will be held on Wednesday, May 11, 2022, at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

9. ADJOURNMENT (12:34 p.m.)

Motion and Vote: Mr. Heintz moved to approve adjourn the meeting. Mr. Allende seconded the motion. All members voted aye (12:34 p.m.).

Mr. Heintz adjourned the meeting at 12:34 p.m.

Respectfully submitted:

Liza Osorio, Secretary