

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

Wednesday, June 14, 2023

10:01 a.m. – 12:17 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Rachel Short, Chair

Erick Allende, Vice Chair

Christopher Ho, Member

Kelly Valenzuela, Member

Denise Nakanishi, Member

Sylvia Wan, Deputy Corporation Counsel

Sinclair Salas-Ferguson, Deputy Corporation Counsel

Kelsie Chang, Secretary

1. CALL TO ORDER (10:01 a.m.)

Ms. Short called the meeting to order at 10:01 a.m. Present were Rachel Short, Erick Allende, Christopher Ho, Denise Nakanishi, Kelly Valenzuela, Sylvia Wan, Sinclair Salas-Ferguson and Kelsie Chang.

Ms. Short: Just as a friendly reminder under the HRS §92-3 of the Sunshine Law, this board may remove any person who willfully disrupts a meeting to prevent or compromise the conduct of this meeting. All persons appearing before this board are reminded to conduct themselves in a courteous manner. Do we have any statements from the public at this time?

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:01 a.m.)

Ms. Wan: Uh Chair, Deputy Corporation Counsel Sylvia Wan, we currently have no statements from the public.

Ms. Short: Okay, perfect. So, with that being said, we will move forward to the approval of the regular session minutes from May 10, 2023.

3. APPROVAL OF THE REGULAR SESSION MINUTES (10:02 a.m.)

a. Approval of the regular session minutes of May 10, 2023.

Ms. Short: Did everyone on our board have a chance to review those minutes? Would someone like to propose or make a motion to approve those minutes?

Mr. Ho: Chris Ho, move to approve.

Mr. Allende: Erick Allende, second.

Ms. Short: All in favor? Aye. Seeing no nays.

Ms. Wan: Well, you can still....

Ms. Short: The motion passes.

Ms. Wan: Okay, since you did a voice vote, everybody did respond but you should also ask if there's any nays.

Ms. Short: Oh, any nays? Seeing none, the motion so passes.

Ms. Wan: Thank you.

Motion and Vote: Mr. Ho moved to approve minutes from May 10, 2023; Mr. Allende seconded. All members voted aye. (10:02 a.m.)

Ms. Short: Um moving on to agenda item #4A, communication from the House of Representatives from the House Resolution 8.

4. COMMUNICATIONS (10:02 a.m.)

a. Comm 2023-01: Communication from the House of Representatives re: House Resolution 8.

Ms. Short: Did everyone have a chance to review that resolution?

Mr. Allende: Yes.

Ms. Short: Should we discuss it?

Ms. Valenzuela: Yes.

Ms. Short: What is the intent? Okay.

Ms. Wan: Um, so it would be the...the appropriate motion that someone would need to make would be to move to accept and close file on the communication.

Ms. Short: Would someone like to move and accept a closed file on communication 2023-01?

Mr. Allende: But if we close file, will we be able to have a discussion about it?

Ms. Wan: Yes.

Mr. Allende: Okay.

Mr. Ho: Chris Ho, move to accept and close file on communication.

Ms. Valenzuela: I second.

Ms. Short: All in favor?

Ms. Wan: No...now this discussion.

Ms. Short: Oh, any discussion?

Mr. Allende: Yes.

Ms. Short: Any discussion?

Mr. Allende: Yeah. So, how would we go about utilizing what the...the...the State's suggesting here to help the Board of Ethics be more useful to the community?

Ms. Wan: Um, I believe that's a question to Corporation Counsel. If you're asking for legal advice you...you should be entering into executive session and then I can provide legal advice regarding the rules, responsibilities, liabilities, powers, and obligations of the board. Um, if...right now this particular item was placed as a communication on the agenda because it is not a petition. It is not something that falls within the authority of the board, it is merely just a notification of a House Resolution. Um, the...what it is uh addressing is...falls squarely within the authority of the County as a whole but not this board, even though it is addressing things that might concern the board. It's not...how do I say this? It's not board business. Does it...does that clear?

Mr. Ho: So, as I understand it, resolutions are more a communication, doesn't necessarily carry with at the weight of any law whatsoever. Um, it's more suggestive from the legislature towards each of the counties to look at their own budgets to try to figure out if they can, where they can, if they can't, how can um type of thing. So, in no way shape or form does it um really give us something.

Ms. Short: Okay. So, just to clarify, my understanding from this discussion is that this would be something we would need to discuss with the County individuals mentioned here as board members if did want to see something come of this resolution.

Ms. Wan: Um, not necessarily because what you are just proposing would be lobbying.

Ms. Short: Okay.

Ms. Wan: Which is outside of the authority of the board out...

Ms. Short: Well, obviously.

Ms. Wan: Um, what you're talking about generally is lobbying that's outside of the authority of the Board of Ethics. Um, there is a limited amount that is...would be considered lobbying that is within the powers of the Board of Ethics but, that is squarely defined within the code.

Ms. Short: Okay.

Ms. Wan: And it's regarding making um amendments to the code of ethics. Suggesting amendments to the code of ethics specifically.

Ms. Short: Okay.

Ms. Nakanishi: So, this is just comm....sent to us to inform us that this is happened, and that County Council has it as well and it's....

Ms. Wan: Yes, it would be also provided to County Council.

Ms. Short: And the Mayor, right?

Ms. Wan: Yeah.

Ms. Short: Okay.

Ms. Wan: I mean....every...everybody can obtain a copy of this if they want to.

Ms. Short: Right.

Ms. Wan: So, this is merely just for educational purposes.

Ms. Nakanishi: But if there was action, it would come from them. If there was any action.

Ms. Wan: If there was any action, it would come from County Council.

Ms. Short: Okay. Any further discussion?

Mr. Ho: Chris Ho, um, so, with this being sent to the Council, would they then have the ability to come before us and ask an opinion of the Council? So, it's just purely from them, whatever they chose to do with it is whatever they do with it?

Ms. Wan: That is correct because right now you're talking about separation of powers, right.

Ms. Short: Okay. Any further discussion?

Mr. Allende: Not for me.

Ms. Nakanishi: None.

Ms. Short: Shall we vote? We have a motion on the table, I believe it's been seconded. All in favor say aye. Any opposed, say nay. Seeing and hearing no opposition, the motion so passes.

Motion and Vote: Mr. Ho moved to approve and close communication 2023-01; Ms. Valenzuela seconded. All members voted aye. (10:07 a.m.)

Ms. Short: Moving onto agenda item #5A, unfinished business. Uh, petition 2023-04, review the draft informal advisory opinion regarding...

Ms. Wan: I'm...I'm sorry chair. Um, uh I need to back track just a little bit before we move onto the next agenda item. I...the uh procedural portion of accepting the minutes went by so fast. As my brain was catching up, I believe we forgot to ask for discussion on the minutes.

Ms. Short: Oh.

Ms. Wan: I think there was a motion, a second and you went straight to vote. Um, I think to...in order to keep with procedure, we need to at least allow the option for discussion of the minutes.

Ms. Short: Is there any discussion on the minutes?

Ms. Valenzuela: No.

Mr. Allende: No.

Ms. Short: Seeing none. The motion stands.

Ms. Wan: Okay. Uh...

Ms. Short: Or do we need to re-make a motion?

Ms. Wan: Chris...

Mr. Ho: Um so procedurally since we did have a motion and it was seconded, um since it kinda went a little out of control there, I would suggest that you just restart the whole thing all over again just so that we make sure that were doing it exactly the way we're supposed to.

Ms. Short: K. Would someone like to make a motion to approve the session minutes from May 10, 2023?

Mr. Ho: Chris Ho, I move to accept the minutes from May 10, 2023.

Ms. Short: Would someone like to second that motion?

Ms. Nakanishi: I can second.

Ms. Short: Any discussion?

Mr. Ho: I don't really have discussion, I just wanted to um make sure that was on record. Thank you to Chelsey for amazing minutes.

Ms. Short: Kelsie.

Mr. Ho: Kelsie, sorry.

Ms. Short: K. Seeing no discussion, all in favor say aye. Any opposed say nay. Seeing no opposition, the motion so passes. Onto item #5A, did everyone have a chance to review the informal advisory opinion um of the police commission ethics code violation petition 2023-04?

Motion and Vote: Mr. Ho moved to approve minutes from May 10, 2023; Ms. Nakanishi seconded. All members voted aye. (10:09 a.m.)

Ms. Wan: Uh thank you chair for bringing us to the next agenda item. I'm just going to inform the board, I do have a conflict as to agenda items #5A and #5B, so I will now be uh recusing myself and uh replacement Deputy Corporation Counsel, Sinclair Ferguson...Salas-Ferguson will be replacing me.

Ms. Short: Thank you.

5. UNFINISHED BUSINESS (10:09 a.m.)

- a. Petition 2023-04: Review draft Informal Advisory Opinion regarding a County Officer of the Police Commission, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

Ms. Short: So, did everyone have a chance to review that?

Mr. Allende: Yes.

Ms. Short: Would someone like to make a motion to approve it?

Ms. Valenzuela: I make a motion to approve it.

Ms. Short: Would someone like to second Kelly's motion?

Mr. Ho: I'll seconded it. Um, just for the record, you may want to state exactly what you're approving. The item number.

Ms. Valenzuela: Um, no we don't....

Ms. Short: Petition to approve uh 2023-04. So, say I move to approve...

Ms. Valenzuela: Petition to approve 2023-04.

Ms. Short: Would someone like to second that? Informal Advisory Opinion regarding a County Officer of the Police Commission.

Ms. Nakanishi: I second.

Ms. Short: Any discussion? Oh. Got it. Any discussion? Seeing no discussion, we will vote. All in favor, aye. Any opposed say nay. Seeing no opposition, the motion to approve petition 2023-04, the Informal Advisory Opinion regarding a County Officer of the Police Commission alleging violation of section 2-83 (Fair Treatment) of the Ethics Code so passes.

Motion and Vote: Ms. Valenzuela moved to approve Petition 2023-04 Informal Advisory Opinion; Ms. Nakanishi seconded. All members voted aye. (10:10 a.m.)

Ms. Short: Moving onto agenda item #5B, petition 2023-06.

b. Petition 2023-06: Review draft Informal Advisory Opinion regarding a complaint regarding a Police Department employee, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

Ms. Short: Did everyone have a chance to review that Informal Advisory Opinion?

Mr. Allende: Yes.

Mr. Ho: Yes.

Ms. Nakanishi: Yes.

Ms. Valenzuela: Yes.

Ms. Short: Would someone like to make a motion to approve petition 2023-06, the Informal Advisory Opinion regarding a complaint regarding a Police Department employee?

Mr. Allende: I'll make a motion to approve petition 2023-06 with Anthony uh Sur Informal Advisory Opinion.

Ms. Valenzuela: No. Petitioner.

Mr. Ho: You would just read exactly what's written cause that's on the agenda.

Ms. Short: Is that motion, okay?

Mr. Salas-Ferguson: Sorry, you can um...you can just make a motion to approve the Informal Advisory Opinion regarding petition 2023-06.

Mr. Allende: I move to make a...approve the petition 2023-06 Informal Advisory Opinion.

Ms. Short: Would someone like to second Erick's motion?

Ms. Nakanishi: I can second.

Ms. Short: Any discussion? Seeing no discussion, we will vote. All in favor, say aye. Any opposed, say nay. Seeing no opposition, the motion to approve 2023-06, the Informal Advisory Opinion regarding a complaint of a Police Department employee alleging violation of section 2-83, (Fair Treatment) of the Ethics Code so passes.

Motion and Vote: Mr. Allende moved to approve Petition 2023-06 Informal Advisory Opinion; Ms. Nakanishi seconded. All members voted aye. (10:12 a.m.)

Ms. Short: I think at this time, Sylvia can return. Thank you.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, just um noting for the record the exit of Deputy Corporation Counsel Sinclair Salas-Ferguson and um my coming back to the board. Thank you.

Ms. Short: Thank you. Now moving onto agenda item #5C, petition 2023-02, reviewing the draft order dismissing a complaint regarding a County Officer of the Leeward Planning Commission, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code. Would someone like to motion to approve petition 2023-02.

c. Petition 2023-02: Review draft Order Dismissing a complaint regarding a County Officer of the Leeward Planning Commission, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

Mr. Ho: Chair, I'd like to move us into closed or excuse me, into executive session.

Ms. Short: Okay.

Mr. Ho: For review. Is one that needs...

Ms. Wan: No this is not the one. Um...

Ms. Short: It's D & E where we can't say their names.

Mr. Ho: Oh, okay gotcha.

Ms. Short: So, do you still want to move into executive session?

Mr. Ho: Sure, do not.

Ms. Short: Kay. So, would someone like to make a motion to approve petition 2023-02?

Ms. Wan: Uh, order dismissing the petition.

Ms. Short: The order dismissing the petition.

Mr. Ho: Um, Chris Ho, move to, I'm sorry just blanked on the word.

Ms. Short: Move to approve...

Mr. Ho: Thank you. Move to approve petition 2023-02, review draft order dismissing a complaint regarding a County Officer of the Leeward Planning Commission, alleging violation of section 2-83 (Fair Treatment) of the Ethics Code.

Ms. Short: Thank you. Would someone like to second his motion?

Mr. Allende: Second.

Ms. Short: Any discussion? Seeing none. All in favor say aye. Any opposition say nay. Seeing none the motion to approve petition 2023-02, the review draft order dismissing a complaint regarding a County Office of the Leeward Planning Commission, alleging violation of section 2-83 (Fair Treatment) of the Ethics Code so passes.

Motion and Vote: Mr. Ho moved to approve Order Dismissing Petition 2023-02; Mr. Allende seconded. All members voted aye. (10:14 a.m.)

d. Petition 2023-05: Review draft Informal Advisory Opinion regarding a petition from a County Employee seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Moving on to agenda #5D, and I do believe there....we need a motion to enter executive session for this one.

Ms. Wan: Um...Uh Deputy Corporation Counsel Sylvia Wan, just to clarify, I will just note for the record that um agenda items #5D and #5E, were both previous heard within closed sessions at the prior meeting. However, the uh draft advisory opinions that are before the board, you can still uh prove, have discussions as far as editorial remarks that might need to be made regarding the draft opinions. Um but, you can not discuss or name the individual. You can't discuss basically the confidential matters that were in the hearing. So, as long as the board is okay with just um discussing approval or not approval of the advisory opinion, you're okay to stay in open session.

Ms. Short: So, would someone like to make a motion to approve 2023-05, the informal advisory opinion regarding a petition from a County Employee seeking clearance and guidance regarding a potential conflict of interest?

Mr. Ho: Move to approve petition 2023-05 review draft informal advisory opinion regarding a petition from a County Employee seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Would someone like to second that motion?

Ms. Nakanishi: I second.

Ms. Short: Any discussion? Seeing no discussion, we will vote. All in favor say aye. Any opposed please say nay. Seeing no opposition, petition 20...the motion to approve petition 2023-05, the Informal Advisory Opinion regarding a petition from a County Employee seeking clearance and guidance regarding a potential conflict of interest so passes.

Motion and Vote: Mr. Ho moved to approve Informal Advisory Opinion for Petition 2023-05; Ms. Nakanishi seconded. All members voted aye. (10:16 a.m.)

e. Petition 2023-07: Review draft Informal Advisory Opinion regarding a petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Moving on to agenda item #5E, which is petition 2023-07, the informal advisory opinion regarding a petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest. Would someone like to motion to approve that?

Mr. Ho: Move to approve petition 2023-07, review draft informal advisory opinion regarding a petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Thank you. Would someone like to second that motion?

Mr. Allende: Seconded.

Ms. Short: Any discussion? Seeing none, we will vote. All in favor, say aye. Any opposed please say nay. Hearing and seeing no opposition, petition 2023-07, the informal advisory opinion regarding a petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest so passes.

Motion and Vote: Mr. Ho moved to approve Informal Advisory Opinion for Petition 2023-07; Mr. Allende seconded. All members voted aye. (10:17 a.m.)

6. NEW BUSINESS (10:17 a.m.)

- a. Petition 2023-08: Review of a Petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Moving on to agenda item #6A, Petition 2023-08, the review of a petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest. Did everyone have a chance to review petition 2023-08?

Mr. Allende: Yes.

Ms. Valenzuela: Yes.

Ms. Short: Are there any statements from the public regarding this petition?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, there are presently no statements from the public on this matter.

Ms. Short: K. Perfect, so would someone like to make a motion to approve...

Ms. Wan: I believe this is for a hearing.

Mr. Allende: Yep.

Ms. Short: Oh, yes, it is, sorry!

Mr. Allende: New business.

Ms. Wan: Um, so you have....do you want to call?

Ms. Short: Yes. Hang on...hang on...hang on. K. Let me get where we are, 08.

Ms. Wan: There you go.

Ms. Short: K. Ms. Herkes, is that...did I say that correctly?

Ms. Herkes: Yes.

Ms. Short: K. Awesome. If you would like to come up, please. And if you'll please state your name and the reason.

Mr. Ho: I have...sorry, point of order. Um, with this particular item being closed, as the selection, would we not need to enter into....

Ms. Wan: So, um, similar into uh last meeting. Uh, I will just note for the record that Ms. Herkes is requesting a closed hearing. Um, the board can question Ms. Herkes as to the reasons for her requesting a closed hearing, make that determination whether to keep it open or closed, and then we'll take appropriate action from there. Does that make sense?

Mr. Ho: It does. I have a follow up question if I may.

Ms. Wan: Yes.

Mr. Ho: Um, with the individuals name, the petitioners name being used prior to if we do enter into closed, would that name then be stricken from the minutes?

Ms. Wan: Um, yes. I will do a motion to strike if the board does decide to enter into closed.

Mr. Ho: Okay. Thank you for clarification.

Ms. Short: We good?

Ms. Wan: Yes.

Ms. Short: Aloha, good morning.

Ms. Herkes: Aloha.

Ms. Short: If you would please state your name...um...

Ms. Wan: Well, let's not...

Ms. Short: No.

Ms. Wan: Let's just have her explain.

Ms. Short: Okay. Explain why you would like a closed hearing this morning.

Ms. Herkes: Actually, um, when I answered the uh forms online and saw that it could be closed, I just thought, that's great it'll be closed but, I have no specific reason or um...uh conflict with it being open.

Ms. Short: So, you're okay with us....

Ms. Herkes: I am.

Ms. Short: Continuing without moving into executive session. Everyone okay with that?

Mr. Allende: Yeah.

Ms. Short: Okay, so if you'll please state your name and you'll have five minutes and the reason for your petition.

Ms. Herkes: Joanna Herkes, the reason for this petition was...was it was brought to my attention that there might be a conflict of interest. So, due to that fact, I said that's fine, I'd come before the board and um uh answer any questions that you may have and to fulfill whatever obligation that I may need to have in order to service on this commission.

Ms. Short: Does that conclude your statement?

Ms. Herkes: Yes.

Ms. Short: Do you want to explain anything else about the reason for your petition or what it is your seeking our guidance on?

Ms. Herkes: Well again, I did not ask for this hearing. I was told that due to the fact that I work for an engineering firm, that uh we have several contracts with the County and have over many...many...many years, we've had that honor, that there may be a conflict.

Ms. Short: Okay.

Ms. Herkes: And I don't know what that conflict is so I'm coming before you to answer any questions that...that may be involved with that conflict.

Ms. Short: K. Does the board....

Ms. Nakanishi: So, Joanna you...you don't serve on any County boards or commissions?

Ms. Herkes: I...

Ms. Nakanishi: Oh, you're on the salary commission.

Ms. Herkes: That's correct, however, many...many years ago I did serve as a police commissioner for the County of Hawai'i.

Ms. Short: Please.

Mr. Ho: Um, just out of curiosity with your roll with the engineering firm, do you have any direct contact or connection to anyone who maybe um brought before you as a salary commissioner?

Ms. Herkes: Absolutely not.

Mr. Ho: Thank you.

Ms. Herkes: Mmhmm.

Ms. Short: Does anyone else on the board have any questions? Kelly.

Ms. Valenzuela: Yeah, actually I have a question. So, you made mentioned that it wasn't your idea to have this hearing. If you don't mind me asking, who's idea was it?

Ms. Herkes: I received a letter from the County saying that there may be potential conflicts and if I would be willing to um appear before the board uh to clear anything that may be questionable with whether or not I serve on this commission.

Ms. Valenzuela: Okay. And what is your role, your job description with the firm that you're with right now?

Ms. Herkes: The firm that I'm with right now, I do business development. I've been with the company for about 22 years now. Uh, I live of course here on...on the island and in the district that um is open for a commissioner and with business development, I...I service my clients...existing clients potentially new clients, whether it be government or private.

Ms. Valenzuela: Okay. Thank you.

Ms. Herkes: And I work out of my home. Um, I have uh...as I mentioned, been with the company for 22 years and since covid, I've had the privilege of being able to work at home full time and I've also reduced my hours with my company as I hope to retire soon. So, of course it's allowing me time to serve on um this commission or anywhere else that I could help our um our county.

Ms. Valenzuela: Thank you....thank you.

Ms. Herkes: You're welcome.

Ms. Short: Do you remember who it was at the county that sent you the letter asking you to appear before us, which office? And I'm wondering if they mentioned in there why they saw a potential conflict if you could share that with us.

Ms. Herkes: Uh, the potential conflict was because our company holds contracts with the county.

Ms. Short: K.

Ms. Herkes: And um right now I believe, it may not be exact that I have a...a SSFM is...has four or five existing contacts that we're working on in...uh for the different agencies.

Ms. Short: Okay. Do you know which department....can you share with department it was that sent you that.

Ms. Herkes: Um, it was sent to me by Kelsie Chang.

Ms. Short: Oh...Okay...okay. So, it was the Board of Ethics that asked you to appear.

Ms. Herkes: Yes.

Ms. Short: Not a specific County Department like Parks and Rec or the Mayor's office?

Ms. Herkes: No.

Ms. Short: Okay.

Ms. Herkes: No.

Ms. Short: Alright, thank you for the clarification.

Ms. Wan: Uh, Deputy Corporation Counsel Sylvia Wan, um I will just note, if there are contracts with the County, I will note that the petitioner's petition has mentioned there are contracts held with the County of Hawai'i through the Department of Public Works, through Mass Transit Agency, as well as Planning, Parks and Recreation and the Department of Water. Um, all of those departments in order for a contract to be signed, ultimately yes, it's signed by the mayor but, it's also signed with a recommendation from those department heads. So, no contract is gonna come through without the approval of those particular department heads. So, I believe that is the conflict that this board needs to be thinking

about um in connection to Ms. Herkes and her employment with SSFM International Engineering.

- Ms. Short: So....
- Ms. Valenzuela: So, I actually have a question for you Sylvia, is that a um a mainstay that anytime someone comes before...to wanting to serve on a volunteer capacity on a commission, that has contracts with the County of Hawai'i, do they all get a letter like that, that would come before us?
- Ms. Wan: Um, Ms. Uh....I'm sorry, I was just uh connecting with our clerk in this matter. So, the letter that Ms. Herkes has in front of her is actually the letter just telling her about the meeting today. I'm not exactly sure who referred her to the Board of Ethics.
- Ms. Short: That's what I'm trying to figure out.
- Ms. Herkes: It was I believe um....and if I recall a phone call, I believe it was through Corporation Counsel....
- Ms. Short: It was....
- Ms. Herkes: That it was referred my name then went to Corporation Counsel, and that there was this concern...
- Ms. Wan: So, was it from your Deputy Corporation Counsel of the Salary Commission, Ms. Dakota Frenz?
- Ms. Herkes: I'm sorry, I don't recall.
- Ms. Wan: Okay, so um...
- Ms. Herkes: Um...
- Ms. Wan: As....as Deputy Corporation Counsel Sylvia Wan, I am aware that Ms. Dakota Frenz has informed a number of this...of various salary commission members that they may want to seek a uh clearance regarding confidentiality as far as an opinion from this board um regarding various entanglements um I....I know this board has heard I believe two others....
- Ms. Short: Mmhmm.
- Ms. Wan: So, I'm only making an assumption uh...but that's probably where it came from.

Ms. Short: Okay.

Ms. Herkes: If I could, maybe this would help as well. Um, I had received um communication from Mayor's office through....oh I....forgive me, her....her name just went blank.

Ms. Short: Pomai?

Ms. Herkes: Yes, and um with her forwarding my name to whomever she copies on that this would be a potential um commissioner, that's what then came about, and I believe from Corporation Counsel that they said okay, well maybe we should uh continue this way because of our contracts with the....with the county.

Ms. Short: In your work at the engineering firm....

Ms. Herkes: Mmhmm.

Ms. Short: Do you help to secure contracts?

Ms. Herkes: No.

Ms. Short: Okay.

Ms. Herkes: No. I....

Ms. Short: Where....what role do you play in terms of...

Ms. Herkes: Okay. As Business Development, at one time I did, again I've been with the company for a long time, and I've worn many hats. But at this point, no. I service the contract. For instance, like Mass....

Ms. Short: What do you...Can you elaborate on what that means.

Ms. Herkes: Sure.

Ms. Short: Yeah.

Ms. Herkes: With Mass Transit, I was one of the um managers at that time in which we service the contract and...and help Mass Transit um...we did a master plan and so, with Mass Transit we then lead them through the process after it was approved by County Council, uh the master plan. So, that's what I do now. I don't secure contracts, I don't write contracts, I don't um....I...I'm not involved with any interviews of contracts at all.

Ms. Short: But do you work directly with any of these department heads listed such as Department of Public Works, Mass Transit, Planning, Parks and Rec or Department of Water?

Ms. Herkes: There's always that possibility. Right now, with Mass Transit I'm in direct contact and have been for the past five years because we have been um helping them uh get your buses on the road and...and working with the contract, yes.

Ms. Short: Okay. But so, you do work directly with the heads of these departments whose salaries you would be making decisions on, correct?

Ms. Herkes: No.

Ms. Short: No?

Ms. Herkes: I don't make decisions on their salaries. I'm....maybe you'd like to clarify that.

Ms. Short: I...I mean as a salary commissioner, you would be looking at the salaries of the people working in these departments that you work with at your engineering firm.

Ms. Herkes: No. No, I would not be involved in that part...of contracting for my company. So, I have no idea....I would be involved in knowing what the contract worth is and keeping track of our budget that we....that the county has contracted us for.

Ms. Short: But as a salary commissioner....

Ms. Herkes: Mmhmm...

Ms. Short: You're going to be in a position to influence the salaries of these department heads that you work with. Do you see what I'm saying?

Ms. Herkes: No, I don't. Sorry.

Ms. Short: So, you were....you just said you work directly with the Department of Public Works, Mass Transit, Planning, Parks and Rec, and Department of Water, right?

Ms. Herkes: Mmhmm.

Ms. Short: So, I do see a potential conflict there if you have personal relationships with those people and you're gonna be making decisions on their salaries. My thought would be that there be a motion that you would have to recuse yourself anytime a salary discussion um is had regarding employees that you also work with at SSF....SSF International Engineering Firm.

Ms. Herkes: Well, I...I see that as being opposite. Um, the county and the contract would be looking at our salaries to determine whether or not in negotiations, it is within that budget or....or whatever you....you deem....

Ms. Short: I'm talking about it reversed. I'm talking about your potential role as a salary commissioner. So, as a salary commissioner you're going to be looking at the salaries of the people in these departments.

Ms. Herkes: Oh, I see. I'm sorry.

Ms. Short: Do you see what I'm saying?

Ms. Herkes: Yes. I'm sorry.

Ms. Short: So, flip flopping it. That's where I think just the little bit of concern arises for me because if you have twenty-two years of you know personal relationships, contracts back and forth with these people, how do we know that...that isn't going to influence your decision making in terms of these people you have long standing working relations with.

Ms. Herkes: Well, what would be my responsibility as a salary commissioner to...in...in looking at those salaries, what...what's my responsibility there?

Ms. Short: So, I can't speak clearly....Maybe Sylvia can speak more regarding the role of the salary commission. I don't feel educated enough to do that...

Ms. Wan: Uh, Deputy Corporation Counsel...

Ms. Herkes: Sorry.

Ms. Wan: Sylvia Wan, um, I do not advise the salary commission but, as has been previously presented to this board from other salary commission members, the role of the salary commission is to

determine the salary of the administrators of the various departments in which will affect, depending on the make up of the departments, which will affect then, the salaries of employees kind of downstream depending on. So, there will be direct discussions regarding the salaries of certain department heads. So, in that respect, it does appear that there is a...a legitimate concern held by this board regarding the discussions that you may have regarding administrators that you may either need to talk to because of the contracts in your professional capacity. Right so, it does appear that from what you're saying, therein lies the question.

Ms. Herkes: Okay.

Ms. Wan: Okay.

Ms. Herkes: Okay.

Ms. Wan: So, I can't tell you what you're...your role is cause I'm only here to advise this board. I'm very well aware of what this board's role is. But if you are...have questions or concerns about your role as a salary commissioner, then I...it...it would appear that you need to speak with your Corporation Counsel, for your board.

Ms. Herkes: For this....

Ms. Wan: For the Salary Commission.

Ms. Herkes: Salary Commission.

Ms. Wan: Yes.

Ms. Nakanishi: So, um Ms. Herkes, uh what we have done in the past because as they mentioned, we've had two others come before us, is to just um have you recuse yourself when it comes to these departments, you're negotiating a contract...actively negotiating contract with or could possibly be influenced by your business relationship and....and we....

Ms. Wan: I'm sorry Ms. Herkes, is your mic on? Because you sound very soft.

Ms. Herkes: There we go. Oh...

Ms. Wan: Yes, okay.

Ms. Herkes: Okay.

Ms. Short: Yeah, I think that would just be my...oh, my mics not on. Uh, I think that would be my thought as like we've done in the past, is we um just request that any time you're discussing the salaries of people that you currently have or have had in the past, contracts or done business with through SSFM International Engineering Firm um such as the Department of Public Works, Mass Transit, Planning, Parks and Recreation, Department of Water, and any other County agencies that...that engineering firm may enter into contract with. I think it would be appropriate that you recuse yourself from any salary discussions regarding those departments or people you have relationships with.

Ms. Herkes: I definitely understand, and I have no problem with that.

Ms. Short: Okay.

Mr. Allende: How...just a question...how soon would you be looking to retire? If, that was like best case scenario?

Ms. Short: Yeah.

Mr. Allende: The...the only reason I'm asking is...so that way we can appropriately uh say the...the right motion type or thing. That's all.

Ms. Short: Yeah, that makes sense.

Ms. Herkes: I...um...I've actually been trying to retire for the past two years.

Ms. Short: Oh...

Mr. Allende: Understandable. No problem.

Ms. Herkes: But I have a wonderful company and they've just adjusted to my needs and...and made it very comfortable for me and...and I'm very happy to represent them.

Mr. Allende: Okay. No, the only reason why I brought it up is I believe uh...um a commissioner's term is four years...

Ms. Short: Yes.

Mr. Allende: Five years...

Ms. Valenzuela: Five.

Mr. Allende: So if you...

Ms. Herkes: I'll be retired before five years.

Mr. Allende: No, and so then that way you know, in the motion I think that you know we should say that she recuses herself until....

Ms. Herkes: Oh, until that time.

Mr. Allende: That time, until you retire.

Ms. Short: Yeah.

Ms. Herkes: I understand.

Mr. Allende: That's....that's the only reason why I asked that question.

Ms. Herkes: Okay.

Mr. Ho: I would be very cautious with that. Um, due to the amount of years...

Ms. Short: Yeah, there's [inaudible...] relationships....

Mr. Ho: That the individual has been with the company and the relationships built with the individual and the company that she works for, that if you insert that component of, uh retirement, there's still twenty plus years of we....

Ms. Short: Yeah.

Mr. Ho: Obviously they trust you, to keep you that long and you do an amazing job with what you do. Um, so that was....that may be a little concerning. I think for me the...the concern is not necessarily you directly working with um a head of the depart....of one of these departments, it's um the potentiality of um possible, not that this would happen, influence to others with relation to that particular department um...um contractually. Um so that...that in a...in itself for me um is kind of the...the ethical area. Um, but ultimately, it's your decision when it comes....when it comes time to recuse yourself, you are the one that will have to determine whether or not you can or cannot do that.

Ms. Herkes: Okay.

Ms. Nakanishi: And to...to Erick's point though, you know I...it was always explained to me that it is a personal decision whether to recuse yourself and once you retire, there is no direct way you can influence it and you just have to...would have to make that decision yourself. I...I think we have put that caveat in previous decisions that, as long as that potential relationship exist then you would agree to recuse yourself.

Ms. Wan: Uh, Deputy Corporation Counsel Sylvia Wan, if it will help the board and its decision making, I'll just kinda refocus the board on the petition. So, right now the outlines of the petition is that she's currently employed with SSFM International. Um, and so the guidance that she's seeking is while she's maintain...she maintains that employment.

Ms. Short: Yeah.

Ms. Wan: Um, so I understand that uh this board is already kind of talking in its discussions about when that employment ends. But I believe if you just stick with the tenants of the petition, uh you will....you'll....

Ms. Short: Yeah....yeah.

Ms. Wan: You'll answer that question.

Ms. Short: So, I...I think what the board is saying is we do see a potential conflict so um, we will probably make a motion. I just want you know, say this to you one on one that you....it would be appropriate for you to recuse yourself um when you are discussing the salaries of anyone in these departments that you've have had contracts with in the past or in contract negotiation with.

Mr. Ho: Sorry, are there other departments that are not listed here that you may um have contact with?

Ms. Short: That's what I'm saying. Yeah.

Mr. Ho: Cause I...I'm just...I would be cautious to say these particular ones and then another one pops up and all of a sudden, we're here back again. Um so, if possible...

Ms. Short: That's what I'm saying, I think in the motion...

Mr. Ho: Blanket for all.

Ms. Short: Yeah, we would have to say um or any county departments that enter into contract or potentially entering into contract with SSFM International Engineering Firm.

Ms. Herkes: As of now there are....I mentioned all of those that I know that we have contracts with.

Ms. Short: Okay but, there....is there potential that they could enter into other departments with the county?

Ms. Herkes: There's always that possibility as we're you know uh also a preferred vendor for um the County of Hawai'i.

Ms. Short: Right.

Ms. Herkes: And uh...uh based on our qualifications so, it depends on what comes up, what the county's needs are.

Ms. Short: So, if you um to learn of SSFM International Engineering Firm being in potential or discussing or negotiating a contract with any other county departments....

Ms. Herkes: I'd be happy to divulge that.

Ms. Short: Okay. You'd be happy to divulge that and recuse yourself from those discussions as well?

Ms. Herkes: Absolutely.

Ms. Short: Thank you.

Ms. Valenzuela: Um....sorry, just to try and play catch up. So, you've already gone before County Council. First, I want to say thank you, let me just say that.

Ms. Short: Yeah.

Ms. Valenzuela: On behalf of all of us because even ourselves, you know I've served on many commissions over the years and we're all volunteer.

Ms. Short: Yeah.

Ms. Valenzuela: And we're all trying to do...and they just put you over the coals so, I wanna apologize and not....not do that and recognize your talent and your willingness to serve.

Ms. Herkes: No...no...

Ms. Valenzuela: Um, but I...I'm still kinda stuck with that letter that came to you suggesting for you to come before us. Um number one....

Ms. Herkes: Well...

Ms. Valenzuela: But the other thing I want to say is, you know anytime you work with government, especially today right, we have to be above reproach just for the sake of what things look like. The public you know, they love to just tear anything down and so, with this, because of your talent and your dedication and your relationships to the company, and many of the entanglements pretty much with the County of Hawai'i, it's going to create a red flag and so, I would recommend any and all contracts with the County of Hawai'i you would have to step....step away and you know, you being you know someone my age, I mean you're thinking well I'm an honest person, the public doesn't think like that. They're always looking for just one little you know dishonest move and so, with the years you have, and these are prominent departments....

Ms. Short: Yeah.

Ms. Valenzuela: These contracts....you know this isn't you know the County Clerk, this is you know Department of Public Works, it's you know Mass Transit, these are huge issues that the public watches and is very concerned with. And so, with that being said, I don't know if um...I...I probably honestly would suggest maybe serving maybe on another commission. But the Salary Commission is such a touchy commission because it has to do with people's money. Not only the department heads, it funnels down to the other workers and so, I would just caution you.

Ms. Herkes: Thank you.

Ms. Valenzuela: But I don't want to discourage you. I just....I wanna say from my heart, thank you so much for even throwing your hat in the ring.

Ms. Herkes: Um, I'm sure...perhaps you do recognize my last name, Herkes. My husband was a long-time politician here on the Island of Hawaii and served in the State House and State Senate so, scrutiny...

Ms. Valenzuela: With my dad.

Ms. Herkes: Oh my gosh, is that right?

Ms. Valenzuela: It's how small Hawai'i is. Yes.

Ms. Herkes: Who was your dad?

Ms. Valenzuela: My dad's name was Buddy Soares.

Ms. Herkes: Oh my gosh! Yeah!

Ms. Valenzuela: Small word. Anyway, okay.

Ms. Short: This totally happens in the Hawai'i County Council Chambers.

Ms. Herkes: Yeah, it's a Big Island but a small world.

Ms. Valenzuela: Yeah.

Ms. Herkes: You know.

Ms. Valenzuela: But that's why I'm saying thank you.

Ms. Herkes: Yeah. But scrutiny um with my husband in politics for many years, and my being by his side, I've got pretty thick skin um and I...if this...if this board feels that...that my worth would be um appreciated on the Salary Commission, I'd be happy to serve. I'd be happy to serve on another commission as well if that's...if that's an issue. I don't want to make it difficult for the public, myself, the Salary Commission, or the Ethics Board.

Ms. Valenzuela: Okay, thank you.

Ms. Short: I think what we're saying is we see a potential conflict here. So, um you came to us seeking our opinion right, that's what this was, and I don't know if we want to make a motion or just continue this discussion.

Ms. Wan: Well, I...I mean yes, cause it sounds like your edging towards a conclusion and that conclusion can only....

Ms. Short: No...no...no, sorry. Back up.

Ms. Short: Can only be made by the board.

Ms. Short: Back up.

Ms. Wan: Okay.

Ms. Short: Um, so, I would like to discuss a potential motion that...

Ms. Wan: You got to do the motion first. Then discussion.

Ms. Nakanishi: Yeah.

Ms. Wan: Right now, you were...

Mr. Ho: Sorry Chair, we have some more questions.

Ms. Short: Oh, continue your questions, thank you.

Ms. Nakanishi: Maybe more appropriate for the...but we have this exact same situation two times before and we found that we've given em specific directions and we...it didn't disrupt anything and we...it...it was fine. You know, as long as she recuses herself when they have discussions about salaries for...with these department heads, then I don't see any problem with her serving. But maybe that should come under discussion after a motion is made, I don't know.

Mr. Ho: Uh, just a quick question. Um, are you...have you already been approved um for the commission or confirmed for the commission?

Ms. Herkes: No.

Mr. Ho: Okay. So, you're seeking confirmation, but they wanted to check the....okay, thank you very much.

Ms. Valenzuela: Yeah, I was just gonna say, this is easy. So, I...I would say in my opinion, I would appreciate...I think it would be great when you have the department heads with the County of Hawai'i with contracts, recuse yourself at that time but in other things, I'm sure you'd be very valuable.

Ms. Short: I also want to be mindful for us as a board, side bar that we don't um reference past opinions in the ones we are hearing. I understand that we have heard similar things, but I don't think that their the same. Each petition we hear is different and sometimes there's you know, 20 years history and sometimes there's 2 years history and that does play a role, correct?

Ms. Wan: I'm...I'm...okay, one second. Deputy Corporation Counsel, Sylvia Wan. Um I...how do I say this, right now, we are in boards questions to the petitioners.

Ms. Short: Correct.

Ms. Wan: That is the part that were in. It sounds like with some other comments they were having along the side....

Ms. Short: Mmhmm.

Ms. Wan: This board is ready to hear a motion so you can properly provide these comments in that discussion of the motion.

Ms. Short: K. So, Rachel Short, I make a motion to find that there is a potential conflict with Ms. Herkes serving on the Salary Commission but to rectify that potential conflict of interest, this board would hear by request that she recuse herself from any discussion regarding employees or their salaries where departments have previously held, currently hold, or could potentially hold contracts with SSFM International Engineering Firm. Does everybody understand my motion? Would someone like to second my motion?

Ms. Wan: Um, I would just note, its gonna be employees and/or officers because...

Ms. Short: Employees and/or officers. Thank you, that's why we have you.

Ms. Valenzuela: With....I would put with the County of Hawai'i.

Ms. Short: Okay. Can I....So, I need to restate the whole thing or can I...I amend my motion to include with the County of Hawai'i at the end.

Ms. Wan: Uh, yeah so, uh what it's regarding employees and officers of the County of Hawai'i.

Ms. Short: Regarding employees and officers of the County of Hawai'i. Would someone like to second my motion?

Mr. Ho: Second.

Ms. Short: Discussion?

Mr. Ho: Sorry. Sylvia, do you have it all?

Ms. Wan: I'm still writing.

Mr. Ho: Okay.

Ms. Short: Would you like me to restate my motion?

Ms. Wan: Uh, not at this time.

Ms. Nakanishi: I would like for it to be read back.

Ms. Wan: Might need to restate it at the end though.

Ms. Short: Okay. Discussion.

Ms. Nakanishi: Could we read back the motion?

Ms. Wan: Rachel moves that uh the board finds that there is potential conflict of interest with Ms. Herkes serving on the salary commission when it involves discussions of salaries of employees and officers of the County of Hawai'i um...of departments that have previously, presently, or potentially have future contracts with SSFM International.

Ms. Short: Engineering firm and that....

Ms. Wan: Well, it's a....an Engineering Firm is an adjective, its not a part of the name.

Ms. Short: I'm adding onto my motion. Right, Engineering Firm and that that...

Mr. Ho: That...that's not their name. So, SSFM....sorry.

Ms. Wan: Their name is SSFM International.

Ms. Short: Oh, not engineering firm, okay. SSFM International.

Ms. Chang: Your mic is not on.

Ms. Short: SSFM International and the rest of my motion was, the conflict can be resolved...

Ms. Wan: Oh, I'm sorry. Um, I guess I was dealing with the conflict first and then um....

Ms. Short: And then well go into the potential resolution.

Ms. Wan: And then you can talk about how you can resolute. Yeah.

Ms. Short: Okay. So, that's my motion and then we could discuss but to me the way to potentially resolute that would be that she recuses herself during any discussions of County employees or officers which have previously held, presently held, or could potentially hold contracts with SSFM International.

Mr. Ho: So, point of order, when it comes to voting on this, would we need to vote on the fact that we as a board identify a conflict and have an...have a vote on that and then move into the resolution of said conflict?

Ms. Short: Or can my resolution be included in my motion?

Ms. Wan: Um, one second, I'm trying to wrap my brain around it. It is a very large motion. I do appreciate the board trying to handle it all one time. Um, how do I say this, so if you remember how the orders go, the informal advisory opinions right, there's usually a conclusion, conflict/not conflict, and then there's going to be um what the board proposes as far as a remedy to that conflict.

Ms. Short: Okay.

Ms. Wan: And it'll usually be a separate point. Um, I understand you're trying to put it all together now. So, I will try to do that. I will restate the motion again if the board will entertain me so that you can try to handle the entire thing one time if the board wants.

Ms. Nakanishi: Yes, I agree.

Ms. Valenzuela: Yes. I would just think it's pretty simple.

Ms. Wan: Okay.

Ms. Valenzuela: There's a conflict. Any and all contracts with the County of Hawai'i.

Ms. Nakanishi: Potential....

Ms. Valenzuela: Put...

Ms. Wan: Well, I...I'm sorry, I'm not in discussion yet. We're not in discussion yet. That sounds like it's for discussion. Okay.

Ms. Short: Okay. So, we need to...

Ms. Wan: I'll restate the motion.

Ms. Short: Yes.

Ms. Wan: And then it's already been seconded by Chris.

Ms. Short: So, we can vote....

Ms. Wan: Okay. So, here's the motion. The board has moved or rather um...Ms. Short has moved to find that there's a potential conflict with Ms. Herkes serving on the Salary Commission regarding the salaries of uh department employees or officers uh that are related to previously, presently, or future contracts between the County of Hawai'i and SSFM and in order to resolve that potential conflict, um Ms. Herkes would be required to recuse herself from salary uh discussion regarding the department heads and/or employees of those departments that presently, previously, or could potentially in the future have contracts with SSFM.

Ms. Short: That is my motion. Thank you very much Sylvia. And I believe it's already been seconded. Do we have any further discussion on the motion at hand?

Ms. Nakanishi: Yeah. How....how come we're going like past....you know why...why aren't we just discussing on going contracts. Why do we have to go back 21 years for anybody....I mean she's...she can decide which....

Ms. Short: Because there's a...

Ms. Nakanishi: Certainly, the people they have an ongoing relation...contracts with, she needs to recuse herself but to...to say past, it seems a little bit onerous but its just me and the motions pretty long. I wish we could clean it up.

Mr. Allende: But I want to say just the....the....what is the last one, it's the...that can possibly have.

Ms. Short: Potentially.

Mr. Allende: Potentially I think we gotta eliminate that, just because the potential is any...anybody who needs, and engineering could have contract with that company.

Ms. Short: But I think we need to say something if they're negotiations or....

Mr. Allende: I just think its that anybody who is....like what you just said, anyone whose entering in negotiating or currently with....contract with.

Ms. Short: Okay, so, are you proposing to amend my motion to instead of stating um could....

Mr. Allende: Look the past and um whose she had, who she is. Its more of a...um anybody that SSFM International currently or [inaudible...] with entering into a contract.

Ms. Short: I uh....I think we also need to address past relationships because I mean there is the potential for influence if there's a 21 year long held relationship. I don't know that we can overlook that. That's my concern.

Ms. Nakanishi: I think the likely hood of any....I do have to leave in one hour so then I don't think we'll have quorum but, uh I think that anybody that was here 21 years ago is not the department chair any longer so, that's why I'm just trying to combine that...I mean just take that out because it seems unlikely.

Ms. Short: I'd rather have it in there than not, personally.

Mr. Allende: I think if we just amend it like what we were saying then I'm fine.

Ms. Short: So, propose an amendment, Erick. You motion to amend...

Mr. Allende: Motion to amend the motion said by Chair Short. Is uh....the...that we would say anybody currently with a contract with SSFM International or entering into a contract with SSFM International.

Ms. Wan: Okay. Uh Deputy Corporation Counsel, Sylvia Wan. I'm going to try to re state what the motion would appear like if the amendment is seconded, cause right now its just being proposed. So, the amendment that is being proposed by Mr. Allende is that um the board finds a potential conflict with Ms. Herkes serving on the Salary Commission and uh regards to salaries of employees or officers of departments that currently have contracts with SSFM or with contracts that are being negotiated uh for completion in the near future and that the resolution to this conflict be that Ms.

Herkes recuses herself from the salary commission discussion regarding employees and officers of departments for said contracts.

- Ms. Short: I personally think we still need to include the past.
- Ms. Wan: So, that uh that motion...that amendment would need a second.
- Ms. Valenzuela: Of the County of Hawai'i.
- Ms. Wan: Of the County of Hawai'i, yes.
- Ms. Nakanishi: I'll second.
- Ms. Short: Is there a discussion?
- Ms. Wan: On the amendment.
- Ms. Short: Discussion on the amendment. I'm not comfortable if it doesn't include past relationships. I just don't think we can ignore history, the way things work and that there could be a personal relationship and a potential influence if she's worked with someone for 22 years and there now, even if there not a...you know a chief, they could still be an employee and they could still have influence over the salary. So, I'm...I'm not comfortable with that amendment personally.
- Ms. Wan: Uh just...Deputy Corporation Counsel, Sylvia Wan, I will just note um if they're currently still an employee with one of those departments it would still be covered by the present motion.
- Ms. Valenzuela: Mmhmm.
- Ms. Short: Oh.
- Ms. Wan: Yes.
- Ms. Valenzuela: Yes.
- Ms. Wan: Okay. Then never mind. That makes more sense.
- Ms. Nakanishi: We'll get you trained one day. You're doing good.
- Ms. Short: So, any further discussion?
- Ms. Valenzuela: No, I have no...

Ms. Short: Shall we vote? All in favor say I aye.

Ms. Wan: Uh just a moment. I'll just clarify, you are voting on the amendment at this point.

Ms. Short: K. We are voting on the amendment. All in favor say...

Mr. Ho: Now say it again.

Ms. Short: All in favor, say aye. Any opposed, say nay.

Ms. Nakanishi: Nay. Oh, sorry.

Ms. Short: Wait.

Ms. Nakanishi: It came out.

Ms. Short: Now we have too re-do it. K.

Ms. Nakanishi: That came right out.

Ms. Short: All in favor, say aye. Any opposed, say nay. Seeing and hearing no opposition, the amendment to the motion so passes.

Ms. Short: At this time, I believe that concludes....

Mr. Ho: Nope.

Ms. Wan: No.

Ms. Short: No?

Ms. Wan: Now you got to....now the motion has been amended as stated. Erick...Erick's version has been amended. Now the board can further discuss....

Ms. Short: Oh, okay.

Ms. Wan: Or you can go to voting.

Ms. Short: Further discussion or are we ready to vote?

Mr. Ho: I'm sorry, if we're going to go into vote, what exactly are we voting on? Cause I know we....

Ms. Wan: You're now voting on the main motion as has been amended.

Ms. Short: My motion, my original motion with Erick's amendment.

Mr. Ho: Just for peace of mind can you just restate the whole thing.

Ms. Wan: Yes. The motion as...as been amended by the board is that the board finds potential conflict with Ms. Herkes serving on Salary Commission in regards to uh employees and officers of departments that uh presently hold contracts with the County of Hawai'i and with SSFM and for uh contracts that are currently being worked on as potential future contracts with the County of Hawai'i and as a resolution of that conflict, Ms. Herkes should recuse herself from salary discussions regarding employees or officers of departments of said contracts with and between the County of Hawai'i and SSM.

Ms. Short: FM.

Ms. Wan: FM.

Ms. Short: International.

Ms. Wan: I'm sorry, that's...the letters are hard.

Ms. Short: Everyone have a clear understanding of that motion?

Ms. Valenzuela: Yes. I make a motion to take a vote.

Ms. Short: So, you have to second my motion I believe.

Ms. Wan: No...No...No, it's a...if she's calling...

Ms. Short: You're calling for the vote. Okay, perfect. Let's vote. All in favor, say aye. Any opposed, say nay. Hearing and seeing no opposition, the motion so passes. Thank you very much for your time.

Ms. Wan: No because it was already seconded earlier.

Mr. Allende: Thank you so much.

Ms. Short: Do you understand that Ms. Herkes?

Ms. Herkes: Yes, and so, where do I go from here? What's next?

Ms. Wan: Uh, Deputy Corporation Counsel, Sylvia Wan, thank you very much Ms. Herkes. The uh board will um have a draft opinion put

on the...put on the agenda at the next meeting, once that draft opinion is approved by the board, uh a copy of it will be sent to you.

Ms. Herkes: Okay.

Ms. Wan: Okay.

Ms. Herkes: Thank you very much.

Ms. Short: Thank you.

Mr. Allende: Thank you.

Ms. Valenzuela: Thank you.

Motion and Vote: Ms. Short moved to find potential conflict of interest in Petition 2023-08; Mr. Ho seconded the motion. Mr. Allende moved amend Ms. Short's motion; Ms. Nakanishi seconded the motion. All members voted aye (10:58 a.m.)

Mr. Allende: Can I make a motion for a...a...a five-minute bathroom break?

Ms. Short: Yeah, cause you drank 4 bottles of water. I'll second that motion. Any discussion? All in favor of a five-minute bathroom break, beginning recess at 11:01 resuming at 11:06 say aye. Any opposed, say nay. No opposition, we are now in recess, we will resume at....[inaudible...].

RECESS (11:01 a.m. to 11:09 a.m.)

Ms. Short: Chair Rachel Short, 11:09 a.m., the Hawai'i County Board of Ethics now resumes on Wednesday, June 14th, again 11:09 a.m., we are on agenda item #6B, Petition 2023-09, the review of a petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest.

b. Petition 2023-09: Review of a Petition from a County Officer seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Um, do we...we have statements from the public I believe as to this specific petition.

Ms. Wan: Deputy Corporation Counsel, Sylvia Wan, there is no statements from the public for this matter.

Ms. Short: Oh.

Ms. Wan: But I will just note for the board that this particular petitioner has requested a closed hearing.

Ms. Short: Okay.

Ms. Wan: So, um, before we say the petitioners name, you could call up just the petitioner to come forward.

Ms. Short: Petitioner, if you would like to please come forward. Good Morning, thank you for being here with us. Would you like to explain to the board your reason for requesting a closed hearing this morning?

Petitioner 2023-09: Exactly the same as Jo-Anna Herkes.

Ms. Short: Hahahahaha. So, so you still see the need for a closed hearing after....

Petitioner 2023-09: I do not.

Ms. Short: Okay. Perfect. So, you're alright with us proceeding in open session.

Petitioner 2023-09: Yes.

Ms. Short: Thank you very much uh for being here Mr. Cross. At this time, if you could please state your name and the reason for your petition, you'll have five-minutes to share with us.

Mr. Cross: Uh John Cross. Um born and raised in Hilo, Hawai'i. Um, I am a sitting member of the Windward Planning Commission and I do have a conflict of interests so, there is no uh discussion needed on that.

Ms. Short: Hahahahaha.

Mr. Cross: Um, I am a land planning or land management consultant and I do a lot of work for many clients and when I'm doing land management/land planning work for a client that does not show up before the Windward Planning Commission, well there is no conflict. But when a client requests my assistance to bring um an application before the Windward Planning Commission and I provide that help to that client, that's a conflict. And as has been done in the past, um the past year cause I'm....I...I've been on the planning commission for 1 year. I'm fulfilling the unexpired term

of a resigned commissioner that um my term expires in November of this year. Um but when that applicant comes before the board, I state my reason for conflict, and I walk out the door. Um, it was suggested to me by Planning Director Zendo Kern, uh that I come before this board uh to get clearance or...or proper guidance cause he was questioning whether I had the ability to work for that applicant at all. Thus, I cannot work for anyone that has....that brings something before the planning um the Windward Planning Commission. That to me is a far-reaching thing that I would have to um I would have to take financial loss to not work for someone because they potentially would come before the Windward Planning Commission. And I simply ask that I...I cannot sit here and represent my client before the Windward Planning Commission, that's clear. I...that's...I cannot do that but, I can supply information to their agent or to the applicant/owner himself and they make their presentation. And I recuse myself when the discussion comes before the Windward Planning Commission.

Ms. Short: Could you clarify that for me. There...there is a potential, you acknowledge there's a conflict.

Mr. Cross: Oh, there is, yeah.

Ms. Short: So, what's your resolution to that conflict?

Mr. Cross: My resolution is I recuse myself.

Ms. Short: During what, I guess is my question.

Mr. Allende: He's saying, he's going to do the same thing that [inaudible...] would um...asked Ms. Herkes is that....

Ms. Short: Okay.

Mr. Allende: He would leave...that he would leave the...the...the...the room.

Ms. Short: Right.

Mr. Allende: And...but he's gonna be able to provide information that is necessary for the applicant or those that he's been employed by, to make their case in front of the Leeward um....

Ms. Wan: Windward.

Ms. Short: Windward.

Mr. Allende: Sorry, windward uh...uh Planning Commission, and then that way by him recusing himself, he'll be leaving the room and not have anything to do with that applicant's application.

Ms. Wan: Um Deputy Corporation Counsel, Sylvia Wan, um I think...excuse me, there's a...I...I need a little bit of clarity...

Ms. Short: Yeah.

Ms. Wan: Because I'm not exactly sure what you were saying. As far as the matters that you are recusing yourself from before the Windward Planning Committee, it seems you were quite clear that you're recusing yourselves when you provided direct advice to a client and they end up presenting um but, you were also mentioning that you have clients that may not ever present before windward. We're you saying that you're also recusing yourself from those members.

Mr. Cross: No. If they do not make or apply or become before the Windward Planning Commission, I would not hear it. They would have...

Ms. Wan: The Windward Planning Comm...the Windward Planning Commission wouldn't hear it.

Mr. Cross: Wouldn't hear it. I...it...it only comes before the board when the applicant or the owner brings a...a case forward to the Planning Commission and if I had some part of being paid to provide information to that...their agent or that owner, that's a conflict. Where I am being paid to provide information of my 40 some years of experience um, I need to disclose that to the Chair and recuse myself from the discussion and vote.

Ms. Nakanishi: Madam Chair, I...I do need to disclose it. I do have a business relationship with Mr. Cross. Um, but because of the nature of this petition, I see no conflict, but I do want to make full disclosure.

Ms. Short: Does she need to recuse herself or are we...

Ms. Wan: That's up to...well, uh she's announced that she...this potential conflict, it's up to the board to decide whether she needs to take an affirmative action to recuse herself or not because she's decided that she doesn't need to.

Ms. Nakanishi: I've been told by J that it was my decision.

Ms. Wan: It is...it is your decision whether or not you want to recuse yourself, yes. Um, if the board wants to contest it for some reason, they can. Generally speaking, most do not but....

Ms. Nakanishi: That's fine.

Ms. Wan: I just wanted all of the options.

Ms. Short: Does the board see any need to...Okay, thank you. Um, thank you for your statement, at this time....oh, Kelly. I was going to move into questions.

Ms. Valenzuela: Yeah.

Ms. Short: K. So, at this time does anyone on the board have any question for Mr. Cross?

Ms. Valenzuela: I do, so, thank you so much for coming before us. Um, I...I think uh with the conflict that I see is you have a client, you're on the commission, you know the temperature of the commission, you know their personalities, you know um pretty much how people are gonna vote after a while of being on a commission. So, in your discussions with your clients, you don't...you can recuse yourself, but you can also you know, and I'm not saying you would do this, I'm just saying the appearance of stuff right. You could also advise them on how to do the best presentation to accomplish their goal before the Windward commission. My point in being is like I shared with the last gal, you may want to serve, even though you have tons of knowledge on the commission that you're on, on another commission, wanting to serve but serving in a capacity that does not conflict, especially with Zendo sharing that with you because if anybody knows that, he does right, because he does something or what did do something similar to what you do. So, those conversations um can take place and that's where the conflict gets sticky from the appearance of an outsider looking in and you are on the Salary Board, the Leeward Planning Commission, the Windward Planning Commission, those are hot commissions, I...my hats off to any those people that serve on them cause they're very controversial and they get pretty heated but, I would just um in my opinion recommend....

Mr. Ho: Oh, sorry....

Ms. Valenzuela: That....

Mr. Ho: Was there question? Cause I think were in the questioning component of it.

Ms. Valenzuela: Yeah so, I guess um my question to you would be, do you think you could not advise them in your....do you understand what I'm saying as a capacity as your client that's going to do a presentation before the commission. Like do you think you could....they would ask you....you know what you think? I mean I'm thinking that they would but....

Mr. Cross: So, you're indicating that I cannot work for that person and provide the information to that person for his application?

Ms. Valenzuela: Um, not necessarily that but advising them on their presentation before the commission, yes. I mean if you're putting together right.

Mr. Cross: Oh, that, no...no way. I....I can't do that.

Ms. Nakanishi: So....

Mr. Cross: That...that's....

Ms. Nakanishi: JC let me ask you this, if you have....if you are a member of the public, would you have this...and you watched a lot of these presentations to the Windward Planning Commission, could you advise um based on that, just as easily as being...you could haven't been a member? You can just use common knowledge you know from watching videos or attending meetings. It doesn't take being a commission is what I'm asking.

Mr. Cross: Um, let's see. What I...what is currently happening now, is SMA's, the special management area applications so, that involves a lot of...of preparation and....and um....uh research into the property within the SMA. So, I manage the whole coast of....Hilo coast. Maunakea sugar and um Kau Ager business um I've got a lot of knowledge on the land so I know the intricacies of the land and I...and I have the...the personal knowledge of...of these lands and how to answer those questions regarding chapter 343 or....or a chapter 205a and...and the um native Hawaiian uh....uh collect....what is it uh traditional access and...and....and gathering rights. I....I know it because I've been managing that land and I can assist my clients in answering the questions that are on that form.

Ms. Short: But I think right there you just identified the conflict.

Mr. Cross: Yeah, that is a conflict. I assist them. So, I...I...I get them the information. They pay me for my time and...and then when it comes before the board uh the commission, I have to disclose that I provided information on this SMA. So, I need to....

Ms. Short: But I think that right there is the concern, is you can except funds and tell people how to apply before the commission on which you serve and could potentially have influence. I don't know if that's....

Ms. Nakanishi: But Chair Short, I think that the concern was that his being on the commission gives him some special uh insider information that will allow him to coach his clients to present and I don't think, I mean this is just my opinion that serving on that board gives him any better information than just attending hearings over and over and over. But yes, clearly there's a conflict but I don't know that the conflict lies with prepping his clients.

Mr. Ho: Okay. Hi Mr. Cross, I have a few questions for you. Um, question number one, can you explain exactly what you do as a consultant? Not....not...not all of it but when it comes to um in individual who may come before the Planning Commission um, honestly, I have no idea why they would come there or what they would be doing um but, what role do you serve with that person. What do they hire you to do?

Mr. Cross: Um, I work for several clients um, Edmund C. Olson trust is one, Kau Mahi LLC is another out in Kau, um Ola Brew is another, um Mahilani Partners, I...I...probably five to ten at the most and I provide information and if they want a [Inaudible...] record determination or a parcel consolidation resub, I'll...I'll provide them that. Now, when it comes before the board...before the commission, before the Planning Commission, that...that has strict rules and answers or...or questions that you need to answer, the applicant need to answer. So, I tell my clients and Zendo and Jeff and Daryl and all of them, is that I cannot represent them before the commission. I just...I simply can't because I sit in that chair and um, I can provide the information, I can help them answer those questions about what happens within that...with that land, within the shorelines setback or the...or the special management area and...and you answer those questions and you submit them to Alex Roy and...and...and get it all done.

Ms. Short: Mmhmm.

Mr. Cross: And then they go through the whole vetting, they...they send out everything for agency review and that comes back and if the client says, well what does this mean John, I mean do you have to get an archeological inventory study? So, you gotta hire someone for that. So, I...I tell em to go contact and ark firm. So, it's...it's answering the questions that are needed for a plan approve for an SMA, for a minor or a major um or shoreline setback um, I provide...I help them provide the information. I don't sit here, and I don't present.

Mr. Ho: So, would it be....

Mr. Cross: But I'm back of it.

Mr. Ho: So, it would be fair for me to say based on your answer that, companies pay you to help them acquire land?

Mr. Cross: Acquire.

Mr. Ho: Or...or permits.

Ms. Valenzuela: Permits.

Mr. Ho: To get the land. It's not as though they're paying you to sit next to them and fill out a form that's being submitted. That's not what they're paying you for.

Mr. Cross: They're paying me for information.

Mr. Ho: So, in that....I have another question somewhere but I gotta figure it out.

Ms. Nakanishi: That information is the same information you use to advise...as part of your decision making on the Windward Planning Commission and nobody else right, that I know of, and this is yes or no, has that kind of knowledge on this island period. So....

Mr. Cross: That's what's coming down is that I don't know why but I can't forget things and I've got a lot of knowledge up here and people come to me and ask, and I answer, and people tell me don't die please, don't...don't cause you're the only one who knows this stuff and you know, there's a lot of skeletons out there. I go yeah, I put em there.

Mr. Allende: I'm curious.

Ms. Short: Erick then Kelly.

Mr. Allende: Oh, uh how much....are you able or are you looking to be back on the Windward Planning Commission once you...your....your...your time ends in November?

Mr. Cross: The...that is my out.

Mr. Allende: That's your...you're done.

Mr. Cross: Yeah. Its where, if this is a problem for the Planning Director or his staff, then...then it'll just come November and I'm gonna say it was nice to serve out the term and see you guys later and I'll be sitting here.

Mr. Allende: Right.

Mr. Cross: You know in the future. So, that's....but I...I enjoy sitting on the Planning Commission. I was hoping I could get an opinion from the...the Board of Ethics that it's okay for you to do this however, you must....

Mr. Allende: Right.

Mr. Cross: Disclosure and recuse yourself each time one of your...

Mr. Allende: Client comes type of...

Mr. Cross: Clients shows up.

Mr. Allende: And then my next thing that just had to ask is, do you have you know because how often does this Windward meeting, is it once a month like this?

Mr. Cross: Once a month. Yeah.

Mr. Allende: So, do you have clients that are gonna be coming before the...the Planning Commission before November?

Mr. Cross: Yes.

Mr. Allende: Okay. Nah, I think that's pretty much the real issue of it because you know if you didn't have any clients, there's a chance that it may not be so much of a conflict in that aspect. But, um yeah. Thank you.

Mr. Cross: One. There's only one client that is likely to have an SMA coming before.

Ms. Valenzuela: Um, so I have a question so, um for maybe educational, her and I are both realtors, so we understand SMA and all that kind of stuff. Maybe the others don't understand, what is the role? You as a commissioner at the Windward Planning, what is the role of the Windward Planning Commission? So that...just so everyone understands what the commissioner's role is and why do people come before them. I know but I just want...I'm just doing this for the sake of everybody else.

Mr. Cross: We listen to the applicant or to the petitioner about what they want to do their land or subdivide their land or get a special permit to perform um non-conforming uses of their ag land or land and...and the...the commission sits, listens, ask questions and is it appropriate use of that land to be um...to have a short term vacation rental...uh to...to have a bed and breakfast. Uh, is it appropriate to subdivide this land or rezone it from ag 20 to ag 1 and is this an over burden of...of the infrastructure. You know we...we just...we look at whatever's before the...us and...and because the Windward Planning Commission is diverse, I'm...I'm South Hilo but I...I have knowledge from Kohala too. Kau and all that. So...so, we all have our different areas of expertise and...and mine happens to be an expertise of sugar cane lands cause that was my job and when I retired um...um from C Brewer, I was Vice President of real estate for the Big Island and I controlled about 38 thousand acres of land on the coast and um, I...I work with Kau Mahi that...that the niece is working with on...on disposing land or selling land and um frequently a buyer will come in to her and she can't answer the question so, they....she comes to me and I can answer the question.

Ms. Valenzuela: Thank you.

Mr. Ho: I have a question for Corporation Counsel. Um, with the petitions citing section 2 um and the after mentioned subsections, can you clarify something for me when it comes to um actually, section 2-84, um officer or employee, does a commissioner count as an officer or an employee?

Ms. Wan: Yes.

Mr. Ho: K. Um....

Ms. Wan: A commissioner on the...so, not all commissioners but, a commissioner on the Windward Planning Commission does count as an officer.

Mr. Ho: K, um Mr. Cross, when it comes to your commission position, do you....does the commission itself say yes or no to an actual um approval of a petition?

Mr. Cross: Yes, it does.

Mr. Ho: Okay. I have no more questions.

Ms. Nakanishi: Is it an approval or is it a recommendation to the Planning Department.

Mr. Cross: Oh, yeah, that's...that's what it is, it's...it's um the Planning Department makes the recommendation and we either deny the recommendation of the Planning Director or we approve it.

Ms. Nakanishi: Right.

Mr. Cross: And then that...then that goes before the County Council.

Ms. Nakanishi: So, it's not [Inaudible...] by the time it gets to you guys.

Ms. Wan: Um, sorry, just Deputy Corporation Counsel, I'm clarifying. So, the uh Director of the department, the Planning Department either says, yes, we um recommend approval or we recommend denial of this particular permit application and then the commission decides whether or not to approve or deny this application.

Ms. Valenzuela: Yes.

Mr. Cross: Or amend.

Ms. Wan: Or amend this application for whatever reasons.

Mr. Cross: Conditions. Conditions of approval.

Ms. Wan: Okay. So, you...so it is the board that is approving the application for the permit, maybe subject to conditions.

Mr. Cross: Correct.

Ms. Wan: Okay.

Ms. Nakanishi: And...but then when you represent somebody it's a very specific um application that they're making, it's not like Ms. Herkes was here, and it could be before, after, during, and in the future. It's a specific limited application.

Mr. Allende: Can I make a....a motion?

Ms. Wan: Well, I...I just want to provide some clarity for the board so I'm going to...if...if the board is okay, I'm going to read the appropriate um Hawai'i County Code of the Code of Ethics. Um, which is revolving around his particular petition. So, that is uh section 2-84, subsection c, reads no officer or employee shall represent private interests in any legal action or proceeding against the County or on behalf of private interest before any agency except as otherwise provided by law. Provided one, this prohibition shall not apply to a County employee or officer who is an architect, landscape architect, surveyor, engineer, registered or is under provisions of chapter 464. I'm assuming that does not apply to you.

Mr. Cross: That does not apply to me because I do not represent the client before the commission.

Ms. Wan: Okay. So, in that matter I'm gonna skip to then subsection 2. Um except as provided by law provided 2, no officer or employee shall be denied the right to appear before any agency to petition for redress of grievances caused by any official act or action affecting such person's personal rights, privileges, or property including real property. Um I assume that also does not apply to you.

Mr. Cross: That does not apply.

Ms. Wan: Okay, and then uh I'm going to move onto subsection um 2-84 subsection d, notwithstanding any provision of this article to the contrary. A member of any board, commission, or committee may appear on behalf of private interest before agencies other than the board, commission, or committee on which the....on which such person's serves. So, you have to look at um 2-86, I'm sorry 2-84 subsection c, no employees shall represent private interests and any legal action or proceeding against the County or appear on behalf of private interest before any agency except otherwise provided by law and we have determined that neither of those exceptions currently within the code apply in this situation. And then d, um notwithstanding any provision of this article to the contrary. A member of any board, commission, or committee may appear on behalf of private interest before agencies other than the board,

commission, or committee in which the person serves. I hope that helped and did not confuse.

- Mr. Allende: Just more clarification for the subsection d, since he sits as a commissioner on the Windward, that's not saying that he can't recuse himself and therefore not becoming or representing somebody right?
- Ms. Wan: So, um in this...in subsection d, what it's saying is...is if Mr. Cross wanted to represent a client on a different commission, he could.
- Mr. Allende: I think you just clarified everything a lot more so, thank you. I...I was just gonna uh...did you have something? I was going to make a motion.
- Mr. Ho: Um, with your petition, what exactly are you seeking from us?
- Mr. Cross: From that...the Deputy Corporation Counsel just read. Kinda clearly indicates that it's okay for me to work for someone as long as I don't represent them and as long as I don't present them, I can help them but I cannot be their representative, I cannot be presenting their plan and that's how I started my conversation is...is that I know there's a conflict of interest so I have to recuse myself. The question was whether I can work for them at all and that is financially damning to me.
- Ms. Nakanishi: And you know I hate to be...go back historically but, we did make Zendo appear before this board, and I recused myself, but we did give him parameters similar limitations that allowed him to do his job and....
- Mr. Allende: He's gotta be able to make a livelihood.
- Ms. Nakanishi: And we've done it with other people and because of the depth of knowledge it...his working on the Windward Planning Commission but I...I do have a question here though, when I've been in those hearings, Jeff Darrow did the actual presentation, it was...he...he was the mouthpiece and then the client just answered questions, is that correct?
- Mr. Cross: That's from the Planning Department.
- Ms. Nakanishi: Yes.
- Mr. Cross: But often time you'll have a landowner who sits over here.

Ms. Nakanishi: Right.

Mr. Cross: And Sydney Fuki will be sitting here for Darren Arai....

Ms. Nakanishi: Right. Yeah....

Mr. Cross: Or...or some other agent.

Ms. Nakanishi: Planner...mmhmm.

Mr. Cross: An agent of the owner applicant or...or owner. An agent or applicant on behalf of the owner shows before the commission and makes the presentation on behalf of the owner. That...that's the difference.

Ms. Nakanishi: Right.

Mr. Cross: That's where....

Mr. Allende: I'd like to make a motion to find, there is a conflict with the way to um absolve that is if Mr. Cross uh recuses himself from presentations and um any um communication on behalf of that client to the board.

Ms. Wan: Uh, Deputy Corporation Counsel Sylvia Wan, um when you talk about communication to the board, are you also including the filling out of the application that gets submitted to the board because that is....

Mr. Allende: No.

Ms. Wan: Technically a communication.

Mr. Allende: It's more the...the communication as to afterwards to try to say that once he's done his job and given the information to be presented, that there's no communication with the board to try to help or to sway influence the board's decision on that client.

Ms. Wan: I'm sorry, I...I understand where you're going, I'm trying to...I'm trying to distill it to say if maybe I can restate your motion so it's a little more clear. Um please correct me if I'm wrong, uh you are moving to find that there is a conflict of interest with Mr. Cross representing his clients before the Windward Commission and that conflict can be resolved by Mr. Cross recusing him from

himself...himself from uh permit applications that become before the Windward Planning Commission that are his clients.

Ms. Valenzuela:

Right.

Mr. Allende:

Correct.

Ms. Short:

Would someone like to second that motion?

Ms. Nakanishi:

I'll second.

Ms. Short:

Any discussion to be had on the motion on the table? Seeing no discussion to be had. We'll vote, all in favor, say aye. Any opposition please say nay. Hearing and seeing no opposition, the motion so passes. Thank you very much for your time, Mr. Cross, thank you for being here with us today.

Mr. Cross:

And Kelly, did you guy live up Ainako?

Ms. Wan:

I'm sorry, who was my second? I forgot.

Ms. Short:

Denise.

Ms. Valenzuela:

My parents lived up in Piihonua.

Mr. Cross:

Piihonua, yeah...yeah, I use to deliver papers to your house.

Ms. Short:

So funny.

Motion and Vote: Mr. Allende moved to find there is a conflict of interest for Petition 2023-09; Ms. Nakanishi seconded the motion. All members voted aye (11:42 a.m.)

Ms. Short:

Okay, at this time, thank you Mr. Cross.

Ms. Valenzuela:

Thank you.

Ms. Short:

Thank you for being here. Um, at 11:42 a.m. I need a motion for us to enter into executive session.

Ms. Valenzuela:

I make a motion to enter into executive session.

Ms. Nakanishi:

I second.

Ms. Short:

Any discussion? All in favor, say aye. Any opposition, say nay. Hearing and seeing none, at 11:43 a.m. the Hawai'i County Board

of Ethics is officially in executive session. Lock the doors, do the things, are we good?

Ms. Wan: Just....give us a moment, we're running slow today.

Ms. Short: Come on.

Motion and Vote: Ms. Valenzuela moved to enter executive session; Ms. Nakanishi seconded the motion. All members voted aye (11:43 a.m.)

7. EXECUTIVE SESSION (11:43 a.m.)

Ms. Wan: Um, I'm sorry, uh I just realized and I...I apologize because I...my brain is running slow. We forgot to say the reason why we're going into executive session.

Ms. Short: Can I state it now? Do we have to state the reason?

Mr. Ho: Yep.

Ms. Short: Okay, um....

Ms. Wan: So, I'm sorry, can we....um I'm just going to open the blinds, we'll jump back in, you can say I'm sorry there was a mess up with the motion and just re-do it again.

Mr. Allende: Wait, but she's gonna...she's gonna have to be leaving already yeah.

Ms. Short: Yeah, we're still gonna have a quorum.

Mr. Allende: I was just gonna say can we just take a break when she leaves instead? And then we'll just do it when we come back.

Ms. Wan: Yeah, as long as you have 4, you'll still be okay.

Ms. Short: Well, let's just do it.

Ms. Chang: Yeah, cause she needs to sign stuff.

Ms. Short: Let's just push through cause she has to sign stuff. Okay.

Ms. Wan: I'm sorry.

Ms. Short: Okay, so there was an error regarding our previous motion to enter into executive session, could I get someone to please make a

motion stating the reason why we need to enter executive session which I believe is to review the executive session minutes and the review of financial disclosure forms and gift forms.

- Ms. Chang: And the gift disclosures and the closed minutes.
- Ms. Short: And gift disclosures and the closed minutes. Would someone like to make that motion?
- Ms. Nakanishi: I'd like to make a motion we enter executive session to review financial statements, gift disclosures and what else was it...minutes.
- Ms. Short: Executive session minutes.
- Ms. Chang: Closed minutes.
- Ms. Short: And closed minutes.
- Ms. Nakanishi: The minutes of May 10, 2023.
- Ms. Short: And closed minutes.
- Ms. Nakanishi; And the closed session minutes.
- Ms. Wan: The purpose of entering executive session is because it...you are reviewing personal confidential....
- Ms. Nakanishi: The purpose of entering executive session is because we are um reviewing personal confidential information.
- Ms. Short: Second on that motion.
- Ms. Valenzuela: I seconded it.
- Ms. Short: Any discussion? All in favor, please say aye. Any opposition, please say nay. Hearing and seeing no opposition, at 11:48 a.m., the Hawai'i County Board of Ethics will now enter into executive session. The doors are shut. The curtains are shut.

Motion and Vote: Ms. Nakanishi moved to enter executive session to discuss financial disclosures, gift disclosures, executive session minutes and closed session minutes from May 10, 2023; Ms. Valenzuela seconded the motion. All members voted aye (11:48 a.m.)

EXECUTIVE SESSION (11:48 a.m. to 12:16 p.m.)

Motion and Vote: Mr. Ho moved to leave executive session and enter open session. Ms. Gibbon seconded the motion. All members voted aye. (12:31 p.m.)

- a. Review of the executive session minutes of May 10, 2023.
- b. Review of the closed session minutes of May 10, 2023.
- c. Continued 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.
- d. 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.
- e. Review of Gift Disclosures filed pursuant to Section 2-91.5(a), by County board and commission members and designated County Employees, where personal matters will be reviewed.

Motion and Vote: Mr. Ho moved to exit executive session. Ms. Valenzuela seconded the motion. All members voted aye. (12:16 p.m.)

Ms. Short: For the record let's note that Denise left at 12:00 p.m. but we still have enough to make quorum. So, at this time, we are back in regular session. I will entertain a motion for approval of the executive session minutes of May 10, 2023.

Mr. Ho: Moved to approve the executive session minutes of May 10, 2023.

Ms. Short: Someone...

Mr. Allende: Second.

Ms. Short: Any discussion? Seeing none, we will vote. All in favor, say aye. Any opposition, say nay. Hearing and seeing none, the executive session minutes of May 10, 2023, are so approved.

Motion and Vote: Mr. Ho moved to approve the executive session minutes of May 10, 2023. Mr. Allende seconded the motion. All members voted aye. (12:16 p.m.)

Ms. Short: Moving onto the closed session minutes of May 10, 2023. Would someone like to make a motion to approve them?

Mr. Ho: Moved to approve closed session minutes of May 10, 2023.

Mr. Allende: Second.

Ms. Short: Any discussion? Seeing none, we will vote. All in favor, say aye. Any opposed, say nay. Hearing and seeing no opposition, the closed session minutes of May 10, 2023, are so approved.

Motion and Vote: Mr. Ho moved to approve the closed session minutes of May 10, 2023. Mr. Allende seconded the motion. All members voted aye. (12:17 p.m.)

Ms. Short: This leads us to agenda item #8A, announcements.

8. ANNOUNCEMENTS (12:17 p.m.)

a. The next monthly meeting of the Board of Ethics is scheduled for Wednesday, July 12, 2023, at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

Ms. Short: The next monthly meeting of the Board of Ethics is scheduled for Wednesday, July 12, 2023, at 10:00 a.m., here at the Hawai'i County Building, Council Chambers, um at 12:17 p.m. I would like to make....entertain a motion to adjourn.

9. ADJOURNMENT (12:17 p.m.)

Mr. Ho: Move to adjourn at 12:17 p.m.

Mr. Allende: Second.

Ms. Short: Any discussion? All in favor, say aye. Any opposition, say nay. 12:17 p.m., we conclude the Hawai'i County Board....adjourned, not conclude...the Hawai'i County Board of Ethics meeting. Thank you very much for everyone for being here.

Motion and Vote: Mr. Ho moved to adjourn the Hawai'i County Board of Ethics meeting; Mr. Allende seconded the motion. All members voted aye. (12:17 p.m.)

Respectfully submitted:



Kelsie Chang, Secretary