

**HAWAI'I COUNTY BOARD OF ETHICS**

**MINUTES – REGULAR SESSION<sup>1</sup>**

Wednesday, July 11, 2007  
Ben Franklin Building  
333 Kilauea Ave., 2<sup>nd</sup> Floor  
Hilo, Hawai'i 96720

**Present:** Wayne Joseph, Chair  
Ann Lum, Vice Chair  
Kendall Sharpless, Member  
John Dill, Member  
Lincoln S. T. Ashida, Corporation Counsel (Counsel for the Board)  
Renee N. Schoen, Deputy Corporation Counsel (Counsel for the Board)  
Karen Delimont (Secretary for the Board)

**Others present:**

Hunter Bishop, Dr. Keola G.A. Downing, Ph.D., Barbara Hale, Desmon Antone Haumea, Barbara Kahn-Langer, Gwendolyn Kupahu, Laurie Lloyd-Roberts, Ophelia Kennealy, Gerard Lee Loy, David (Kawika) Mattos, Emily Nae'ole, Athena Peanut, Stanley Roehrig, Esq., Amy Self, Esq., Steven Strauss, Esq., Donna Walker, James Weatherford, Antoinette Wilson, (and others, names unknown)

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**1. CALL TO ORDER (10:00 a.m.)**

**2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS**

Chair: Will the County Board of Ethics meeting come to order. There are statements from the public. I have one here on my desk. Is there any more statements that are forthcoming from the public?

Ashida: Maybe Karen can do a roll call. Ladies and gentlemen, good morning. As Karen mentioned, there is a sign-up sheet. Is that the sign-up sheet?

Delimont: Yes, this is the sign-in.

Ashida: What the Board is going to do today—I suspect that you are here today to hear Item 6(b) under the Unfinished Business on the agenda, the case involving Ms. Nae'ole. If you are a witness, listed as a witness, then the Board has decided that they will take your testimony at that time when Item 6(b) is called. However, because this is a public meeting, under HRS

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<sup>1</sup> Minutes are verbatim for agenda items 2, 6 (a), and 6 (b) due to the subject matter. For the rest of the agenda, minutes are summarized.

92, any member of the public who wishes to testify on any agenda item, including Item 6(b), now is your opportunity to do so. So if you would like to, please see Karen now and fill out one of these blue forms. The reason we get that information is so that when the minutes are transcribed we make sure that we are spelling the names correctly, and so forth, okay? So, Mr. Chairman, how many do you have there?

Chair: I have four.

Ashida: Just have four, so if you are not one of those four, go ahead and sign up with Karen now. Thank you, Mr. Chairman.

Chair: All right, when I call your name, could you step up and present your three minutes of statements. David Kawika Mattos.

Mattos: Good morning.

Chair: Good morning.

Ashida: Make sure the mic is on. It is.

Chair: We did get his deposition and I do have his affidavit, and it was my understanding that he filled one of these out because he cannot stay for the proceedings.

Mattos: Yes, sir.

Chair: So, we will take him first.

Mattos: Okay.

Lee Loy: I was only going to ask, if I may suggest—

Chair: Yes.

Lee Loy: Did he prepare this declaration, is it true?

Chair: Well, I would like to hear his statement first.

Lee Loy: Okay.

Mattos: Okay, good morning everybody. My name is David Mattos, they call me Kawika, and I am representing Boys and Girls Club of the Big Island. I am their Chief Professional Officer. As Mr. Lee Loy said, I prepared a statement which I think you have received, on behalf of my acquaintance and getting to know Ms. Naeole. Is there any questions about that statement?

Chair: Is your statement true and accurate to the best of your knowledge?

Mattos: Yes, it is.

Chair: Board members, did you have an opportunity to look at witness statement number three? Do you know why you were called as a witness today?

Mattos: Yeah, I understand that the Boys and Girls Club was named in documentation in regards to a bike that did not come from Mrs. Nae'ole, although we made a connection and I presented it at her Pāhoa Town Meeting a few months back. We decided to use that bike as an opportunity to award one of our Pāhoa Club kids, well deserved. It was a great opportunity to do this in front of the two members' parents, family members, and people from the community.

Chair: Just for the record, there were two bikes, correct?

Mattos: Correct, two bikes.

Chair: Two bikes, and two bikes were given to under-privileged youth of the Pāhoa Community—

Mattos: Correct. Correct, a few months back, I think back in December. Either at the ending of December or the beginning of January, Oceanic Cablevision called me from O'ahu, their personnel office, and said they were doing a management training here and the activity was to divide up their management team and put these two bikes together for kids. They offered the bikes to us, because they were going to do their management training here, and we accepted. In the interim I got to know Mrs. Nae'ole, and ironic enough, when we got a call back that the bikes were done, that the management training was done, I was also invited—well, previous to that, actually at that point we were deciding which kids to give the—to what group, or to what club, and I decided to give it to the Pāhoa club. So the directors there was assessing which kids to give them to. It was given to two teen-aged girls. Then I was invited to the Pāhoa Town Meeting, which was great timing, and so we decided to use that along with having the Oceanic Cable come with me to do the presentation and explain what the project was about and then present this to the two deserving teenagers.

Chair: Did Mrs. Nae'ole ask you to use those two bikes in any other way other than what was done?

Mattos: Initially—initially, when I told her that I had these bikes, she asked me if they could be used as a drawing for gathering as an incentive to have more people there—I had told her—I did consider it. However, when I talked with the staff and the club director of the Pāhoa club, they felt that these two girls were well deserved, was well deserving of these bikes as great role models, and we decided to take that route instead. So when I let Mrs.

Nae'ole know that that was what I wanted to do, yeah, she definitely accepted that, and that is what we did.

Chair: Board members, any other questions? I would like to thank you for coming in.

Mattos: You are welcome.

Chair: Thank you very much.

Mattos: Thank you.

Chair: Barbara Kahn-Langer.

Kahn-Langer: Hello, my name is Barbara Kahn-Langer, and I will be providing testimony during the section when Councilwoman Nae'ole's issue is brought up.

Chair: Are you one of the witnesses on the witness list?

Kahn-Langer: I do believe that I am. Apparently, I am not on the witness list.

Chair: Yeah, I don't see you listed on witness the list—

Kahn-Langer: So—

Chair: —and may I just interject, and I will give you a full three minutes, but I was just going to call those people listed on the witness list, and perhaps any other witnesses that the Board deems fit. So, if you have something relevant to say about these proceedings, I suggest you'd say it now.

Kahn-Langer: Thank you very much. The reason I am here goes way back to the beginning, when Councilwoman Nae'ole was seated and took over the office. Within the first week of her being in office, I came into the office. I congratulated her. I gave her a hug, as is customary, and I said I wanted to give her a heads-up about a park exchange that had been discussed with the prior councilman, Councilman Safarik, with a group of people in Hawaiian Paradise Park called The Park Committee. At that time, Councilman Safarik had been working with The Park Committee, supposedly to put together an exchange of land from Paradise Park to the County Council, to the County, so that the County would essentially take over the park land. It would be a gift of park land to the County, and the County would therefore go ahead and take over the park and take care of it, put in whatever amenities were necessary. When I walked into the office, there was apparently no records about that exchange that had taken place, and I offered my assistance.

The next time—and that time I was ushered out of the office by Barbara Hale in a very generous way. At first, pardon me, to back up a little bit. Barbara Hale came when I was sitting there talking to Councilwoman Nae‘ole. Barbara Hale rushed in and said I think this is something I need to take notes about. So she took whatever notes she needed to take, and she ushered me out of the office, and to the elevator, and thanked me very, very much and told me I was welcome in the office at any time.

The next time I came to Councilwoman Nae‘ole’s office was to talk about two bills that were on the agenda. Councilwoman Nae‘ole was in support of those bills, and they had to do with—I think it was a storage facility in Pāhoa that would be—*[timer goes off to indicate three-minute time limit]*—Okay, that would be—

Chair: You need to summarize real quick.

Kahn-Langer: Okay.

Chair: And get specifically to the point.

Kahn-Langer: Okay, specifically the next time I came into the office, I was in opposition to where Councilwoman Nae‘ole was. Barbara Hale ushered me into a conference room and for an hour-and-a-half went through the strangest, wildest series of discussions. First of all, I was told that whatever Councilwoman Nae‘ole and I —

Chair: I am sorry, I am going to have to interrupt. Do you have a specific point you are trying to get at here?

Kahn-Langer: Yes, my specific point is this—that Barbara Hale operated as if she was the council person. Her behavior was abrupt and rude, and when I left after an hour-and-a-half, I came home and specifically told my husband at no time would I ever go into a meeting with her again, without having someone else present to record what went on, and that I would only go as well with a tape recorder in hand. Thank you very much.

Chair: Okay, thank you very much for coming in. Athena Peanut. Athena?

Peanut: Aloha, kākou. Good morning. I am very, very close to Emily Nae‘ole. I am hānai’d into the family. We talk an awful lot in the evenings on the telephone, so I know I’ve been privy to a lot of information about what has passed during her, during the campaign. Not so much during the campaign, but definitely since she has been in office. It was my distinct impression that Barbara was setting her up for disaster from the very beginning. I let her know that, but I didn’t harp on it. I understood. She was a newbie, and she was definitely in a disadvantaged position. She was dealing in a realm that she had never entered before, and she depended very much on Barbara, and Barbara led her to do some very,

very strange things that later she's accused her of. I saw the charges, and I read through them very quickly, and Barbara said that she hadn't done anything for six months about the legislation and the initiatives. But that was Barbara's work—Barbara didn't do anything. I had heard about this \$1,000 loan at the time it was made, although I wasn't present at the meeting, but I heard about it right afterwards. Aunty Emily told me that Barbara said don't put my name on it, don't put my name on it, don't put my name on it. I told Emily her name or somebody's name has to be on it. She's given it, and it's a campaign—but she said don't put my name on it. Well, check it out with the Elections Board, with the Campaign Spending Committee, and find out what to do. That was just one example. I mean, she—what I saw was continual setting her up to do things that made her look bad, and made her look bad in the public eye about how she dressed. And a lot of the charges Barbara made went into *[inaudible]* because she was using the coconut wireless, and she was using a blog, Hunter Bishop's blog, and said terrible, untrue things about Emily—that she was an illiterate *[timer goes off to indicate three-minute time limit]*—you know, all these very slanderous, she was constantly making very slanderous comments about her, the person she was employed by.

Chair: I am going to have to excuse you. If you'd like to take a sentence or two to wrap this up.

Peanut: I don't understand the motivation behind this. I've tried to. I've tried to really understand what's caused this. But I have seen from the very beginning that Emily was being set up for disaster and for criticism, and that when Emily finally got to the point where she was comfortable, where she was after six weeks and two months, she knew the ropes, she knew where the ladies room was, she knew what these records were for. Then tension began in the office.

Chair: I am going to have to stop you here.

Peanut: That's it. That's my testimony.

Chair: Thank you very much for coming in.

Peanut: And I can answer to specifics if there are any questions. Thank you.

Chair: Thank you. Laurie Lloyd-Roberts.

Lloyd-Roberts: I am actually not on the list, though, so I don't know—am I allowed—

Chair: —No, you are not on the witness list.

Lloyd-Roberts: I am not on the witness list.

Chair: So, this is your opportunity here.

Lloyd-Roberts: Excuse me if I am a little nervous, this is not my forte. My name is Laurie Lloyd-Roberts, and when I moved to this island I moved here for many reasons, and Emily—and the way Emily is, is probably one of the biggest reasons. I've had my heart really opened by her. I'm not what you would call one religious person. I don't believe in God, but having worked on Emily's campaign we would pule, before and after. At no time —being as one of the accusations is that Ms. Hale was saying she was being forced to pule in the office —do I believe, even during the campaign, was anyone ever forced. If anyone wanted to step out of line and not participate, would Emily ever say anything? Of course Emily wouldn't do that. I just feel it is an accusation that has no—especially knowing Ms. Hale and what a strong personality she is—nobody can make her do anything.

Chair: Thank you for coming. Thank you.

Lum: I have a question. Excuse me. Ms. Lloyd-Roberts—

Lloyd-Roberts: —Yes.

Lum: In the pule situation, is that happening in the office, or is that—

Lloyd-Roberts: —I'm talking in regards to the campaign, when we worked on the campaign, and I guess my testimony is that also knowing Barbara Hale and how strong a personality she is, that—and the type of person that Ms. Nae'ole is—that she would never force Ms. Hale to pule in the office. That if Ms. Hale chose not to do so, that she could walk away and do whatever it is she would need to do and that Ms. Nae'ole would do what she needs to do, which is part of her culture, and we need to understand that, too. So I mean pule is not about we—sometimes as white people think about praying—there is part of it that is cultural, about blessing something before it begins.

Lum: Thank you.

Chair: Thank you. Antoinette Wilson.

Wilson: Aloha. I am just here to—I am a person from Puna. That is the area she represents, and I'd like to say that my dealings with her—issues—I'm not here from Hawai'i Community College, but I am here for myself—but dealt with her on issues from our campus and from our area of Puna. And when I have dealt with her, I felt she was very knowledgeable and her heart has been there. I have seen her before she was a Councilwoman, that she helped out a lot of the down-and-out people and the minorities, that she advocated very strongly. So I feel that she is woman of big aloha, and big heart and advocacy, and I don't—I feel in my na'au—that these charges just don't sit right. That, you know, I don't think she's the type of person that a character would do these kinds of things. So that's all I

wanted to say—that we support, that I support, the people of my area, of my family, Emily, and that we don't think these are founded. Thank you.

Chair: Thank you. James Weatherford.

Weatherford: Thank you, Mr. Chairman, and good morning to you all. My name is James Weatherford and I live in Kea'au. Ms. Nae'ole is my council district representative. I wanted to relate an incident, and to do that, you have to understand that I previously worked with the County Council, one of the members, in the very same sort of role that Ms. Hale is supposed to have been in.

Shortly after Emily was elected, my wife and I agreed that we should organize a talk-story with her and some of our neighbors to discuss several issues of concern to us, and I must say that most of them Emily agreed with and few of them she didn't, but that is the way those discussions go. Nevertheless, during the process of the night Emily was there, so was Ms. Hale and so was Gwen, Ms. Nae'ole's secretary, or council aide. Through the process of discussion, having previously served in that role, I was absolutely stunned at Ms. Hale's behavior in terms of interrupting, ridiculing constituents for raising issues, and assuring them that they didn't need to worry about anything, that she would take care of it all. The election victory was continuously referred to as "we won," and I can say for any situation in a social group, in a conversation, one would raise questions. But as a professional that had worked in that position, I was literally stunned, and I have been around long enough that it is kind of hard to surprise me. I thought it was so unprofessional that I, a few days later, sat down and wrote Emily a letter, didn't mention any names, but made a few suggestions, as one of her constituents having experience with the Council. A few things that I recommended, I put it that way—I recommended—that one of those included making sure that all of her staff knew that it was she and not any of her staff that was elected as representative. I would be very glad to answer any questions that you might have. Thank you.

Chair: Thank you Mr. Weatherford. Desmon Haumea.

Haumea: Good morning. I would like to say hello to all the kūpunas, my family, this morning. My name is Desmon Antone Haumea, currently employed at the University of Hawai'i as a faculty member. I would like to apologize for my attire this morning. I am in the middle of an ocean safety and awareness program at—down at Hilo One. I am here this morning in support of Barbara Hale Barcena and Emily Nae'ole. I have known these people since childhood, which is almost over 50 years. While living on Maui, actually while being employed here at the Orchid Isle Hotel, I worked with Barbara and on Maui as a court clerk with the Second Circuit District Court for almost 20 years of experience, some criminal activity that the alleged perpetrator was Barbara Barcena. So I

have personal knowledge of the on-goings behind closed doors, I guess you could say.

Basically, what I wanted to say this morning is Emily had called me. I am a practitioner of the Hawaiian healing arts, and I was called upon to do a ho‘oponopono, a session that helps right things, yeah. It is difficult for me in the workplace because it doesn’t involve family. However, knowing Emily, she has ‘ohana, a family atmosphere, wherever she goes. She is not my councilmember in my district. I live in Puna, but in a different district. However, I know her personally and her life. Based on her life and the way she conducts her life, that’s why she has so much support this morning. It is unfortunately that this hearing is happening today, because personally it is a waste of taxpayers’ money which is ma‘i make. Things like this—apparently there is some disagreement between individuals, and should be handled in a ho‘oponopono situation. Because these people are family, and they are working together and that’s why they came together, for this political reason. There is a solution in the Hawaiian culture. In any ancient culture there is no problems, only solutions. I think if that if we address that solution first and foremost, then you can go ahead and perform your duties as far as civil litigation or criminal litigation. But this is something that needs to be handled at the family level. Because this whole campaign, this whole political adventure for Emily, was based on family, and should be handled with that. Mahalo, thank you and aloha.

Chair: Thank you. Dr. Keola Downing.

Downing: Aloha, Mr. Chairman and members of the Board. I’m here today to speak on behalf of Emily Nae‘ole as a character witness, and also to lend a little bit more credence to the words that James Weatherford mentioned, because I also was at that meeting at James and Elizabeth Weatherford’s house. And I sat next to Barbara Hale, and I also was very stunned at the way—when I would ask a question or anyone else would ask a question—she would not allow Emily to answer, but would jump in, and I felt like this was a very risky way to handle business, even if there was some kind of expertise that Barbara thought she had that was superior to what Emily had. But we had come to talk-story with Emily Nae‘ole, our representative person that we voted for that we wanted to represent us. And it was impossible to make Barbara stop doing what she was doing, which was butting in, overriding things that Emily would say. And I, in my heart, felt very bad because I was very afraid that this woman, for whatever reason, had determined that she was better placed and better set up, you might say, to run the business of the Council, and of course she is not the person that we voted for. And I was distressed that Mrs. Hale would perform her duty as council aide by rough-riding the actual content of what Emily would try to respond. And one of the things that came up, for example—was the widening of Highway 130. A very, very hot issue in Puna, and Barbara just acted like, you know, you guys who are opposed to four lanes can just forget it. That’s going to happen. We know that’s

going to happen. And as a matter of fact, pretty much all the people at that meeting were in opposition to widening Highway 130 and wanted to have a bigger approach by having a second route to Puna, so that there was more than one way in and one way out, and for Barbara to just jump in and basically end discussion with her dictatorial sort of approach was shocking. And I knew at that time that this was not going to end well. And then later, when Emily was in Alaska and this whole issue came to the floor because of the messages brought on Hunter Bishop's blog, I realized that something was not right. And I am not capable of making accusations as to why Barbara would act this way towards an elected council official that she is working for. But I just wanted to reassure you that these things that are being said about the way Barbara Hale conducted herself in the presence of her boss are all real. These are true stories, and I would like to be available for questioning if it ever is needed. Thank you.

Chair: Thank you. Ophelia Kennealy.

Kennealy: Aloha. My name is Ophelia Kennealy. I am a business woman in Pāhoa for about 20 years. I've known Emily for about 15 years, and I've seen how she conducts herself with people. She loves people. Her character—I am here basically to attest that she has incredible character, and in the years that I have known her, I've only seen it get polished, and in the last five years. I believe she is an awesome woman, that not even considering the position standing, but just as a person she loves people. She would never assert herself on anybody, and if she has views or points of views, she would not force her way into anybody's life. She is always there to give everybody a hand to whoever is wanting one, whoever is needing one. And I have watched her. I have worked with her and I've helped her a little bit in her campaign, and her character is incredible. She is a wonderful, wonderful woman. I know a lot of people. I have been here most of my life on the Big Island of Hawai'i, and she stands out, her character, because she doesn't wait for somebody to pat her on the back. She just does it because that is who she is, and for her to be here today to have to defend herself against accusations is pretty sad. And I just want to say that I think there is a lot of people—that is why we voted for her, because of who she is, and I think a lot of people in Pāhoa and on this Big Island who know her, love her, are feeling the same way. Thank you.

Chair: Thank you. Are there any further statements from the public? If not, we will continue on the agenda items. Number 3, approval of minutes. Has the Board read the minutes from the Regular Session?

### 3. APPROVAL OF MINUTES

**Motion and Vote:** Ms. Lum moved that the Board accept and file the minutes for the Regular Session of the June 13, 2007, meeting. Ms. Sharpless seconded the motion. There was no discussion. All members voted aye. Motion carried.

**Motion and Vote:** Ms. Lum moved that the Board accept and file the minutes for the Executive Session of the June 13, 2007, meeting. Ms. Sharpless seconded the motion. There was no discussion. All members voted aye. Motion carried.

#### 4. COMMUNICATIONS

Communication No. 2007-61: *The High Road* publication by the Hawai'i State Ethics Commission, June 2007.

**Motion and Vote:** Ms. Lum moved that the board accept and file Communication 2007-61, *The High Road*; Ms. Sharpless seconded the motion. There was no discussion. All members voted aye. Motion carried.

#### 5. NEW BUSINESS

Review of Gifts Disclosure Statements received from:

- a. Brenda Ford, Councilmember
- b. Kenneth Goodenow, Deputy County Clerk
- c. Donald Ikeda, Councilmember
- d. Bob Jacobson, Councilmember
- e. Casey Jarman, County Clerk
- f. Emily Nae'ole, Councilmember.
- g. K. Angel Pilago, Councilmember
- h. J Yoshimoto, Councilmember

**Motion and Vote:** Ms. Lum moved to accept and file the Gift Disclosure Statements as listed on the agenda; Ms. Sharpless seconded the motion. There was no discussion. All members voted aye. Motion carried.

#### 6. UNFINISHED BUSINESS

- a. **Petition No. 2007-03: Further discussion on Nancy Burns' petition alleging violation of Article 15, Section 2-83, Fair Treatment, of the Hawai'i County Code of Ethics by Councilmember Bob Jacobson.**

Chair: Is either Nancy Burns or Amy Self here representing Bob Jacobson? Would you just take a seat? I would like to ask the Board a few questions first of all.

Self: Okay.

Chair: I know that was enduring to look at the Council tapes. I think we had approximately eight or nine to review, but have all of you had the opportunity to review the tapes?

Lum: Yes, all fourteen hours of it.

Chair: Now, now having reviewed the tapes, do you feel we should go forward, or do you feel there was no violation based upon what you saw?

Lum: Based upon what I saw, I detected no violation. There are certainly different personalities among the Council members. Bob Jacobson is no Angel Pilago in his soft-spokenness, but I detected no disrespect. It was an emotional issue. There was a lot of—a lot of emotion in that discussion on flooding. There was, I found it very interesting, there was a lot of listening, I thought, by all the Council members to all of the professionals, and there is just a lot of past history in that whole issue, but I detected no real disrespect.

Chair: And the Chair would tend to agree with that. So could we entertain a motion that we would find no violation of Article 15, Section 2-83?

**Motion and Vote:** Ms. Lum moved to find that there was no violation of Article 15, Section 2-83. Ms. Sharpless seconded the motion. There was no further discussion. All members voted aye. The motion carried.

Chair: Mr. Corporation Counsel, could you write an informal statement recommending that we found no violation of the County Code and prepare it for Nancy Burns?

Ashida: Yes.

Self: Thank you.

Chair: Thank you very much.

**b. Petition No. 2007-04: Hearing and/or investigation into allegations of misconduct brought by Barbara Hale against Councilmember Emily K. Nae‘ole, pursuant to Rule 5.2(a) of the Rules of Practice and Procedure of the Board of Ethics.**

Chair: In our scope of this inquiry, we shall be limited to the following two questions: One, did Councilmember Emily Nae‘ole utilize her staff to do her personal work from her Council office, thereby violating the Code of Ethics? And two, did Councilmember Emily Nae‘ole utilize her official position to solicit campaign donations from her office, thereby violating the Code of Ethics?

We are going to conduct this hearing of the Board of the Ethics as an investigation, not as a trial. The burden of proof in this matter will be by the preponderance of evidence, and we will use that as our standard. As this is an investigation, only Board members will be asking questions of the witnesses, and I will be calling all the witnesses that are listed on both sides. And finally, we need three votes to carry a motion, and I’d like everyone to understand that. That being said, I would like to begin by offering counsel the opportunity to present a five-minute opening statement, and I would like to start with Ms. Hale’s counsel, Mr. Strauss.

Strauss: Thank you, Mr. Chair and members of the Board. My name is Steven Strauss. I represent Barbara Hale as a witness. I'm testifying here voluntarily at the request of the Ethics Board. There are a couple matters that I need to address at the outset. One is—I think that there are some rules that the commission is considering reviewing, requiring some updating, and I encourage you to continue with that process so that any decisions that you make can be upheld in the event that they are challenged.

Also, too, there has been some statements made that as a lawyer, I interpreted them as potential threats. This case started, for me, when Ms. Hale came to me after she believed that she had been threatened with termination from a County job, and some communications were sent to Ms. Nae'ole and to counsel relative to that employment, and I understand that Mrs. Nae'ole's counsel would like to have to be considered as part of the record. We don't think that they should be. But again, she is testifying as a witness, not as a party. So those things that she testifies about are her own testimony. The submissions she has made to the Ethics Board are her own submissions. I am not her advocate in this proceeding. I'm not trying to prove any case. I am representing her as a lawyer represents a County employee and a citizen called to testify before a government agency.

There is some limits on the testimony that I expect Ms. Hale to give, and that's because one of the communications we received from Mrs. Nae'ole's lawyers raised the prospect of a criminal prosecution, and so I would instruct her to take the Fifth Amendment with regard to any matters dealing with Mr. Gardner. She would like to be able to testify about that, but I'm going to instruct her, and I expect her to follow all of my advice, to not respond to any such questions. Thank you. That is the limit of my remarks.

Chair: Thank you. Mr. Lee Loy or Mr. Roehrig.

Roehrig: Thank you, Mr. Chairman. May I take a minute to get set up here?

Chair: Certainly.

Roehrig: Mr. Chairman, before I give an opening statement, we have a few procedural things that we believe need to be at least considered by this commission. Perhaps the counsel for the County might have a view on that, or you may have one as the chairman. We thought it wise before we started to pull out the—what we thought were the relevant, legal issues that are before the commission—so that as we proceed with the witnesses and the exhibits in particular, some of these issues can be considered. May I approach the Chair, Mr. Chairman, and provide the commission with the three sets of matters that we think are relevant that you may wish to consider?

Chair: Has that already been provided as our July 2<sup>nd</sup> deadline for submitting?

Roehrig: These are just legal, these are just legal matters, these are not exhibits.

Chair: As I am a layperson, I would rather stay away from conducting this as a formal trial, but instead conduct this as an investigation, which I believe we are very competent in doing.

Roehrig: Right. Why don't I give a heads up of what these items are, and then your attorney can—

Chair: Well, I am sorry, but I am going to limit you to a five-minute opening statement.

Roehrig: That's fine.

Chair: And, if you would like to do that in within your five-minute opening statement—

Roehrig: —I think I should—

Chair: —in all fairness to both sides.

Roehrig: That's fine, Mr. Chairman. The first is the standard of care that is involved here, is involved in the Code of Ethics, and in particular the section that is, that is presented is the question of whether there was unwarranted conduct in the office relating to personal business or campaign matters, and that seems to be the test. That's the first item we were going to pass out. The second item relates to the admissibility of the letters we received from Mr. Strauss. He says he does not want the commission to consider those letters. If you take a look at the Rule 408—

Chair: —Are those letters already submitted?

Roehrig: Those letters are submitted.

Chair: Then we have already read them.

Roehrig: Okay, then I won't raise that issue. The last matter that procedurally we wanted to discuss is that we have a number of witness statements that you folks have, and we think that is fine procedure for you just to question the witnesses and ask them if this is their statement and any other questions the commission might have. The last thing I would say is this, as far as the opening statement. I think this is a very important proceeding. This is a very sensitive proceeding, and this proceeding is unprecedented. The reason why it is important, the reason why unprecedented, is because this proceeding has been driven by dynamic political forces at work in this community and particularly in Puna. This dispute isn't just before this commission. It has been on the blogosphere almost daily, and the blogosphere has been driving this dispute, tearing people apart. The blogosphere, in my judgment, is like an empire where whoever writes the blog is the emperor, and he or she chooses the point of view of anonymous names, and the scurrilous matter that is discussed in the blog is, in my judgment, is—tends to be un-American. However, that is part of life, the Justice White said, that the responsibility for the public, whether irresponsible speech is more speech. So we are here in this process, and

we are going to do our level best to help this commission come to a just decision. There are other people in the community who want to get after other public officials because they don't like what they are doing. They disagree with them on the issues, and this commission is uniquely situated to provide justice and fairness to elected officials who find themselves in the spotlight, as Councilwoman Nae'ole does in these circumstances. So we appreciate what you are doing, and we are prepared to help you. Thank you.

Chair: Okay, we are going to start the proceedings by first calling Barbara Hale. And after Barbara Hale, I am just going to go through her witness list and call her witnesses first. And then when I have completed the witness list, I will go to your witness list. Good morning, Mrs. Hale.

Hale: Good morning.

Chair: The statements that you provided the Board, are they all true and accurate to the best of your knowledge?

Hale: Yes, to the best of my knowledge.

Chair: And is there anything you would like to add to your statement?

Hale: Yes. I have a copy of a torn up check that Ms. Nae'ole's attorney was requesting. It is the original.

Chair: I would like to start the questioning by asking—you made a claim that Councilwoman Nae'ole was using office staff to conduct her personal work, personal business. Could you elaborate on that for us?

Hale: Yes. I need to just a little bit explore what the types of seminars and classes we have here at the County. I believe Lincoln Ashida is one of them who presented that class. And that was to explain to us that there are certain things that we are not allowed to do in our office. There is—sometimes we can give an excuse for it if we have to run down and get a pill for somebody or do a quick shop, or a quick pickup of something of great urgency. We just had that class not long ago, and now it seemed that—

Chair: —Well, was Councilwoman Nae'ole present at that class?

Hale: Yes. With saying that, I had submitted a list of exhibits, both for this body, for this Ethics Commission, and for the Campaign Spending. I had discovered that over—this was prior to the tax deadline in April. The atmosphere wasn't really good for a number of weeks for me in that office, and I could hardly explain without really picking out at the time what brought it on. But it was an uncomfortable atmosphere. I noticed that whenever I got to get—after I print at the Xerox machine, there were papers always being scurried so I don't look at it. I noticed this for quite a number of weeks, and I didn't talk to anybody, because I was not favored already. I could sense that atmosphere was very bad. I couldn't

figure out what was wrong. Then on April, on May 9, this was after Emily and Gwen took the trip to NACo in Alaska—what was found, I found that only because it—I was listening to a very disturbing—it was an emotional call for me. It was from Kawika Mattos from the Boys and Girls Club. I listened to the message at Gwen’s desk. The message was to thank just both of them for all the work and planning in the community. Yes, I was slighted, because I was the one that does all of the written work. The making sure that deadlines are met so that they can get their money, both in discretionary funds as well as the County grants. When I heard his thank you, it didn’t include me. I was slightly slighted. But already on May 7<sup>th</sup>, I learned from Hunter Bishop, the blog, that I was going to be fired because Gwen and Emily did not like my work. When I stood up from that call, I was standing at her desk, and I wasn’t looking, excepting when I looked over I saw that bunch of papers that I recognized because of the manila envelope. It had a lot of names on it, and I pulled it, placed it down and it was all campaign materials, and that was worked on for weeks. And I took it and removed it from the office and brought it home. I’d like to say at this time I am the co-chair for Emily Nae’ole, Friends of Emily Nae’ole. I was selected by the committee in her committee, the campaign committee. I have never seen that records during campaign time, excepting when it was in the office. Thank you.

Chair: Now, that records were provided to us?

Hale: Ah yes, that’s the original. Copies was provided to Mr. Lincoln Ashida and a copy was sent to Stan Roehrig.

Chair: Is that listed as Exhibit 19, Mr. Strauss?

Strauss: I’m not sure. If you could give me a minute.

Ashida: Mr. Strauss, is this the items that you dropped off at our office yesterday?

Strauss: Yes, the original folder, the original manila folder was included in that. I think these were—I’m sorry, to answer your question, Mr. Joseph, I believe this was a supplemental exhibit and I am not sure of the number yet, but I will get that for you—

Chair: Well, what is the—

Hale: —It would be handwritten.

Chair: What is Exhibit A? I mean Exhibit 19?

Strauss: Where is your list? May I see your exhibit list? I have three exhibit lists. Thank you.

Ashida: Copies were given to Mr. Lee Loy, right Steve?

Strauss: Yes, copies were given to Mr. Roehrig, actually.

Chair: This is what I am looking at here.

Strauss: It is not that exhibit.

Chair: It's not.

Strauss: It is not here, let me go back here for the record.

Hale: Yes, that is part of Exhibit 19.

Chair: Thank you for clarifying that. Now, to continue with the questioning. I don't think you answered my original question, in that how people were doing her personal work for her in the office, but allow me to get back to that. You said in April, because of the tax deadline, there was a lot of scurrying going on in the office, and you had already fallen out of favor. But that is hard for me to comprehend when on April 23<sup>rd</sup>, your boss gave you a letter with glowing remarks and saying that you get a pay raise. So how did you feel you were falling out of favor?

Hale: Well, that came up—was exactly April 23<sup>rd</sup> when Emily called. Actually, we were in her office with Gwen, in her particular office, and she brought up the fact that we worked so hard. And I was a bit disturbed that day, because there was a lot of additional granting favors, whispering. It was going on for weeks. On that particular day when she asked, told us actually, she didn't ask us, she told that she was going to ask for a step-up raise, I responded with why? Because we haven't done anything terrific, we were learning the process. Her answer was that she was going to give both Gwen and I a raise. I distinctly said, why Gwen? She's not able to type more than ten words, and that's okay, but when we need to type, we need to type, we need to make deadlines. She's not able to compose a letter, she does a lot of other things but work. Emily's reply was, "Well how many people do all these things for me, my personal things for me?" I looked at her and I said it really looks like a Mancho case to me. I said, Emily, we don't deserve a raise. We haven't learned the process yet and we have a community that is waiting for us to do something. We can't be asking for a raise. We already, I thought, were paid pretty nice. We have a situation here that people depend on us, we cannot be getting raises for jobs we cannot do. I was surprised when the letter arrived, and it arrived on time as far as I was concerned. I didn't know that I was going to be let go from the job after I was praised. I was praised in the letter, but I never was praised in the workplace. It was a difficult thing. The first thing I thought was to give, as a good way to give Gwen a raise. Then the blog comes out that they both was dissatisfied with my work. Now, how would they know what my work is? I carried both of their work. I have the experience in the office, I was fine. But to have learned this from the blog, from Hunter Bishop, very early in the morning, was very difficult to take. But coming back, the morning that he told me, this was May 7<sup>th</sup>, the one thing that saved me from embarrassment was the letter that I was not expecting. That letter I learned was typed by Maxine Pacheco, who works in the Legislature Auditor Office. I called her to find out who might be writing this

type of letter. The letter was really outstanding. The only thing it lacked was that I didn't go into a telephone booth, put on a cape and fly. It was an outstanding letter and by the way, I can do the work. Then I was annoyed that this was taking place and I was treated very badly in the office. And then being fired—was told to be fired. Nobody told me that they didn't like my work.

Chair: Let me ask you, because I'm really not familiar. What was the sequence of events that led to an interview with Hunter Bishop to begin with? I mean, did Hunter Bishop approach Councilwoman Nae'ole for an interview? Were you present? What?

Hale: On that May 7<sup>th</sup> of—

Chair: —No, no prior to that.

Hale: Prior, it was Hunter Bishop that contacted our office. He never—he always called, and the first time he called it was over a rumor that I was seeking a recall, and I was kind of dumbfounded by that. I didn't know anything of it, and I told him I didn't. Then I didn't know, until after he came to the office and was seeing Dana, I believe, and I could have been off that day, but I don't think so, and he called for a meeting with Emily and Gwen. I recalled being on the phone, Gwen coming in to ask me to join in the meeting, and I couldn't get off the phone because I was talking to somebody in the County about setting up an appointment. And when I got in there, he asked us questions again, and I said I wasn't aware of that. Right after that, there was no talk, there was no discussion after that. I asked Auntie Gwen, this is what we refer to. I said Gwen, where do you think this is coming from? And she said she didn't know. She said she heard it at the Farmer's Market. That was a Sunday, and I said, that's strange, nobody brought that up with me in the office. And I wondered why there was this coldness towards me. While this was going on for some time, there were other reasons. And that was the end of that. I realized that in the statement somewhere it said that we had a screaming match in the office on that day. That's not so. We just let it go, and I think it was a letter to all of us, because Emily brought it up with me because I called her in Alaska at the request of Casey Jarman. She told me to give her a call and find out what this fire, and this blog, was all about. I was humiliated. A lot of people had read that blog. I wasn't told, and the letter tells you that. It is such a mixed—it's a mixed story. You don't get treated good, you get this letter, then you get fired, almost immediately. I'm thinking, no one ever once, not Emily, not Gwen, approached me to say they didn't like my work.

Chair: Yes, it was printed that there was a profane office shouting match after the April 25<sup>th</sup> interview that Hunter Bishop conducted, but you are saying there was nothing?

Hale: No, if it was going to be referred to a date, then I would suspect it would be the 23<sup>rd</sup>, because it was loud. You've got to remember—I don't know if you are aware of this, but all of our offices are—the walls don't go all the way up to the ceiling so you can hear, it carries. Anybody with a normal tone will carry, because

we don't have walls that go up to the ceiling. There was a discussion, more than our pay raise. The discussion was Emily asking me, Aunty what you going to do, you made any bill for me? I said, Emily we cannot make bills unless we study about what we need. We need to carry an argument if something comes up on our bill, and there was a strong discussion on that, because of our previous bills that got carried with good researching. It is not a difficult thing to do to develop a bill, but to get it passed, you really need to have background in that and she doesn't study.

Chair: Now, going back to what you found in the office Xerox machine, those large amount of documents that were printed, that you say were part of Councilwoman Nae'ole's campaign spending.

Hale: Okay, let me go back—when I said Xerox—I'm sorry—

Chair: No, go ahead.

Hale: It was at our printer machine, but she wasn't printing that.

Chair: Our printing machine, meaning what?

Hale: We have a printing machine that's for the general office, but our printer that prints out in our personal office. You have to go on a computer and print out something. So it is different, a Xerox machine versus our printing machine.

Chair: So it was from your computer printer?

Hale: Yeah, I was printing something. Gwennie had that material at her desk.

Chair: I see.

Hale: And whenever I get up, that thing is moved. This is, and I am not too sure if this is all the reasons, but we have a locked cabinet in our office. I've never heard of a locked cabinet in our office.

Chair: And you believe this was conducted during County time.

Hale: Yes, it was found on her desk on County time.

Chair: Do you have any other incidences in which Councilwoman Nae'ole may have used office staff for her own personal business?

Hale: Yes.

Chair: Could you tell that to us?

Hale: It was several occasions. It's difficult because nobody really talks to me, but it was over a photo. I recall Emily having problems with having too many car

payments, so they were trying to call the car company to give up one, or consolidate, I am not clear. But she sent Gwen out early from work—she gets to work early, and went to take pictures of the truck so they can come back and send it to the bank and whatever. I submitted that to—as an exhibit.

Lum: I have a question. Ms. Hale, this incident that you just mentioned. You did mention that she comes to work early, so possibly that was on her own time before her office hours started, or was it after office hours started do you think that she went out to take those photographs?

Hale: It was during office time.

Lum: Thank you.

Chair: Ms. Sharpless?

Sharpless: Yes. I need clarification. This Exhibit 19 that we got, that you claim is an example of doing campaign work at the office. What about this tells me that this is campaign work?

Hale: I recognize it to be campaign work because if you look, it came as an entirety. It was torn out of the same book, and you would have to see the original to know that. But, there was—one would have to know it because I was co-chair and I recognized the names. If you look, they were all together, along with a whole stack of things and the listing of names. And there were names like Linda Callahan. She sits on our committee. You are looking at the typed version. I am looking at any page at this point, I just pulled one out. Desmon Antone, Desmon Haumea, he is a personal friend also, helped us in the campaign. Julia Paul—they're all typed, these were typed from, I guess, from another piece of paper. And if you notice, some of these are handwritten, a lot of it, and they were together in the envelope.

Sharpless: Okay, my follow-up question is, were these—was this Exhibit 19 submitted in any way to indicate the quality, or what you deemed to be the quality, of work for Ms. Gwen?

Hale: Yes.

Sharpless: Could you explain that, please?

Hale: Well, you need to have a quality of work. This is the quality of work that she has done in our office. You know, why would it be in the office, and at her computer typing? We had no reason to have this campaign material in our offices.

Sharpless: Is there a particular rule that campaign material cannot even be present?

Hale: Okay, that's a good question, because behind me sits Helene Hale. We both were—I worked with her as a legislative office manager. Helene knows and I

know—I didn't bring it with me because it is quite a bit of materials, and I don't have it in the capitol anymore. One of the things we cannot have at the capitol, the grounds of where we operate and make laws, is anything of campaign material, and I just looked at it the other day and it had my name and Helene's name on it, and we both had to review those things with the Ethics Commission. We cannot, and I have to say this, I did say it to Emily that we cannot—when we just open up our office, do not bring anything of campaign material on the premises. These are things that I know. And let's say the laws says we can, why are we working on campaign materials anyway on County time?

Sharpless: So, let me clarify.

Hale: Thank you.

Sharpless: This was, you identified—or you allege—is campaign material. You found it in the office. Are you also alleging that it was being worked on in the office?

Hale: Yes.

Sharpless: Okay.

Chair: I have more questions. You also allege that Councilwoman Nae'ole solicited campaign donations from her office. Could you explain that?

Hale: Okay, we need to just clarify that. Let's shape the language on that, this is campaign. What had happened, and I think I looked at the affidavits of both Lucille Chung, who I think is the Director and President of Malama Hawai'i Nei, and I looked at the affidavit of Kawika Mattos, also known as David Mattos, from the Boys and Girls Club, 'cause he is the local director here. I am familiar with both of them. I was really stunned to read their statement, because it was not directed at them. This is a situation of discretionary funds and the County of Hawai'i grant. We—Emily is the chair of the Human Services Committee and also in our district, in each district, I should clarify that, we have discretionary funds that can we can use in our district—

Chair: —Excuse me a second. Let me take this opportunity to ask anyone with cell phones to shut it off, please. Excuse me, go ahead.

Hale: Okay, and so we—that whole, about bringing what goes on in our office. It wasn't about the organization, it's the way we skirt things in our office. We were told by Mr. Lincoln Ashida back in January of this year, and I made that part of the exhibit list, we were warned not once but twice not to accept lunch of any sort from anyone that we are doing business with here in the County. With knowing that, we have—you know Emily campaigns a lot, there is nothing wrong with that, what is skirting that is we are giving, for instance, Malama Hawai'i Nei. I like Mrs. Chung. I don't know her not to like her. I walked in the office. I was called, and Emily wanted to give her discretionary funds of \$5,000. I just sat there, I wasn't going to challenge—I am not going to challenge Emily. It wasn't the time,

anyway. She wanted to give \$5,000, and I understand that the organization is a good one, and it is located in Laupāhoehoe. That would be Councilmember Dominic Yagong's budget. She claims it was a good—that Aunty Lucille is a good person, does a lot of things for the community. She belongs to QLCC. Anyway, she said she would like to help my Hawaiian people. That was really good things to say. I went on and I did that. I was really—if you look at the exhibits I turned in, there was a chart from the Department of Liquor Control, Public Works, you will see how many programs we did fund, and Aunty Lucille's program is out of our district. That is a good thing. We wanted to help everyone. What wasn't good was no sooner she gets it, I thought it was out of line for us to ask for a donation for a community meeting that we put together. To me, it's a lot of skirting. Especially if it was for 100 people giving beef stew. I think it's a generous offer. But referring back to what we were told we cannot do, we are asking. We're giving donations to someone who's not in our district. Okay, we have to explain that to Mr. Yagong. I also had to explain that to LRB, which is our Legislative Reference Bureau. They don't just let us do outside work, outside of our district. Rodney Oshiro did ask me, and I skirted lying, and I said, well, she does help everyone according to what Emily says and that she belongs to QLCC, and left it at that. So I wasn't angry about giving. But to me, we are giving donations when we are too closely connected. That whole day did not sit right with me, and I continued to do my work. I am saying this because I have been accused of not doing my work when I do my work. I do what I am instructed, I take care of it in spite of the fact that I knew we were skirting somebody else's district. It is important that our district benefit by our discretionary funds. I'm sure Mr. Yagong would have loved to give to Malama Hawai'i Nei also. But it wasn't about the organizations. It was about us asking for donations. We called them. I was pretty annoyed by that, because I didn't want another note from Mr. Ashida. As with the Boys Club, that was an awful testimony he gave for me. Why, it was my suggestion in this very room, that—tell him—he didn't get—Boys and Girls Club did not get County grants for several years. This was the first year. It was an exciting time for them. But the discretionary funds, the idea came from me, was in this very room. In fact, I was sitting opposite this table, and I said that he should really approach, because we only had \$900,000 of County grant. I knew that we were in a budget. We had to choose, to pick and choose who gets it. Well, fortunate for a lot of programs this year, I think they agreed to increase it to \$500,000 more, actually \$600,000 more. So when I looked at the Boys and Girls Club, we gave discretionary funds of \$20,000. No one else worked on that. I did. I worked on doing the resolution, getting it passed, watching it carefully so it does get money and funded, and it did get funded. And the County, they benefited by \$285,000. I don't know why I couldn't be thanked for that, but then again I didn't ask for any donation. I think it was wrong. I think it's skirting what we do. We develop a community program, we develop inviting everyone. It is the same thing we are doing when we are campaigning. We spend a lot of time calling on doing community meetings. I thought we could attend at this point, and then we ask—

Chair: —If I could interrupt. I would like to go back to Lucille Chung. I read in a statement that, I believe it was 25 tickets that were to be sold for the Laupāhoehoe fundraiser. Do you know how many of those 25 tickets were sold?

Hale: None, and it was—I have to tell you that Emily was really upset she couldn't sell it. I was the one that said to her, don't feel bad, you are a County person, you are busy. I don't think that Aunt Lucille was going to be mad. I think she is going to understand. She was feeling pretty low, and she was trying to get me to buy. I am not going to buy any because I wasn't going to be in Laupāhoehoe. It was \$10 a ticket. I didn't buy, and neither would Gwen. She was really sick, feeling really sad about it, and I felt bad for her. I said, don't do that to yourself, they know you are a County person now. You are not out there soliciting laulau and everything else. You are busy doing this work. It was almost that same afternoon that Aunt Lucille arrived, and it was the first time I met her. Very nice lady. Emily was feeling really bad, I have to tell you. She was feeling really bad, and I think it brought up an emotion. I don't think—even if she wasn't on this she would have given, but it was that whole gesture that bothered me, and that whole saying, "I want to help my Hawaiian people." You know, it is all the people, and I just sat there and I did the work. Malama Hawai'i Nei got before Lions Club, that's in our district. They got before anyone.

Chair: Let me continue along that line. After the discretionary funds were given, the \$5,000 was given to that organization, how did it come about that she was asked to provide food for the Pāhoa Town Meeting?

Hale: Because, um—

Chair: —No, how did it come about?

Hale: Well, they called her. They called—

Chair: —They, who called her?

Hale: Gwen, excuse me, and I don't think that Gwen just did it on her own, they would have had to sit down and plan this, and think of who to call to donate. That is quite a bit of skirting, and I was the one that received two of the calls. She wasn't at her desk, so I picked it up and I spoke with Lucille, and she was hurt. She said "I don't know what they want." And I didn't know what she was talking about, actually. I said, well I'll leave a message for Gwen. When Gwen got back to her desk, I said Aunt Lucille called, and something about what do you folks want, and she immediately called her back.

Chair: I'd like to now turn to Tim Gardner and how that came about. I have this sworn statement here, and I'd like to ask you a couple questions concerning that. It appears that your office was doing work for Mr. Gardner, is that correct?

Hale: Okay, at the advice of counsel I am going to assert my Fifth Amendment rights.

Chair: Okay. At some point, Mr. Gardner was very grateful for what the office was doing, and he suggested making a \$1,000 donation. Do you recall that?

Hale: At the advice of counsel, I'm going to assert my Fifth Amendment rights.

Chair: Did Mr. Gardner at any time make a \$1,000 donation to Emily Nae'ole's campaign fund?

Hale: At the advice of counsel, I am going to assert my Fifth Amendment rights.

Strauss: Let me make the representation, Mr. Chair, that again with regard to any questions—

Chair: —Because there are several questions regarding this that we need to ask.

Strauss: I understand, and I would—I am sure my client would like to help you, and had Ms. Nae'ole's attorneys not raised the prospect of criminal prosecution, we'd be able to talk about that, but because they have, she can't, and that's what my advice will continue to be with regard to any communications concerning Tim Gardner.

Chair: Okay.

Ashida: Mr. Chairman, if I may?

Chair: Yes.

Ashida: The assertion of the Fifth Amendment right with respect to the right to remain silent and not answer questions is a question-by-question inquiry. So you can still ask questions.

Chair: And that is why I was asking several questions.

Ashida: Right.

Chair: And I still have a few more that I would like to ask.

Ashida: That is your right.

Chair: At any time, did you approach Mr. Gardner and ask him to give you the \$1,000 to pay off a loan that was owed to you by Councilwoman Nae'ole?

Hale: At the advice of counsel, I am going to assert my Fifth Amendment rights.

Chair: Did Mr. Gardner offer to take members of your office staff, including Councilwoman Nae'ole, to a birthday function on Maui, and provide airline tickets?

Hale: At the advice of counsel, I am going to have to assert my Fifth Amendment rights.

Chair: When was the last time you personally spoke with Mr. Gardner?

Hale: At the advice of counsel, I will have to assert my Fifth Amendment rights.

Chair: To your knowledge, does Mr. Gardner have any further contact with Councilwoman Nae'ole's office?

Hale: At the advice of counsel, I going to have to assert my Fifth Amendment rights.

Chair: Changing the subject. You apparently were upset with your potential firing, and you went and spoke with Mr. Hunter Bishop and made some accusations, to which you could have filed a petition with the Board of Ethics. Why did you not file a petition with the Board of Ethics?

Hale: Well, actually I did call the board of—Teri Spinola. I was so upset at first I couldn't think, and then I went to see Casey Jarman immediately. That was on May 7<sup>th</sup>, and I already told her that I had called Teri. I was kind of alarmed that Teri, when I asked her, because she taught us the class, she did the class right here in this room. I asked her what can be done for me, because I was—it wasn't just the firing. I was insulted. I really was ashamed, actually. I didn't know what was going on. And one of the things that I really remember is one of the things she said to me. She said, you know, some of these rules may not apply to you, because you were hired by the County Council and you don't have the same protection. And my response was, what? She didn't know, and I was quite upset by that, and I said, well, I think somebody better figure this out. I'm left here not wondering what my rights are suddenly. I was seeking help then. True, I did not file, and I thought I better find me counsel, and that's when I got a hold of Steve. But prior to that, I did seek Casey. She asked me to call Emily, because she already knew that she had arrived in Alaska, and told me to call, because she had called Ken to say that she was there. I called Emily. I wanted to find out for sure, because this is Hunter Bishop. I didn't seek Hunter Bishop. He called me early in the morning. There was somebody standing in my office when that happened. And so I did call, and I did go see Ken Goodenow as well. No one could answer my question.

Chair: But you do understand that the charges you've made with Hunter Bishop were violations with the County Board of Ethics? Did you or did you not?

Hale: No.

Chair: You didn't realize it was ethical violations, even after taking the class from Mr. Ashida—

Hale: —It didn't say—when I—I don't know what the violations would have been. He asked me the questions, and I answered. I was stunned. In fact I didn't ask him the questions, he offered, and I said, I was what? Because I was incompetent? I don't think so, I replied, I don't think so. If there was anybody who was going to call me incompetent, it shall not be either Gwen or Emily. Now I didn't know that I was violating the Ethics Code. How does it work in reverse?

Chair: No, but the statements you've made to Mr. Bishop. You knew that Councilwoman Nae'ole, or at least in your opinion—thought that Council member Nae'ole, was violating the Code of Ethics, did you not?

Hale: I am not looking at these, you need to point that part out to me—

Chair: —Well, you did say that she was using her staff to do personal work?

Hale: Yes.

Chair: Do you not know that that is a violation of the County Ethics Code?

Hale: Well, yes, I think it is a violation.

Chair: You did make statements or innuendo suggesting that she tried to solicit campaign funds, and do you not realize that that's a violation of the Code of Ethics? So, my question to you is, why didn't you bring it before us and petition us at an earlier time? Why did you choose to just take it to the media and not pursue it in the proper direction that it should have been pursued?

Hale: My apologies for that. I answered in anger, too. And I did take it. I took it the same day and nobody could help me. So I sought to get counsel, and I did it very quickly, too. I went to Casey. I didn't know. In fact if you look at the book, I went to the right people. It was the County Clerk.

Chair: Is Casey Jarman one of your witnesses today? She's on your witness list.

Hale: Yes, and Ken Goodenow.

Strauss: Let me clarify something for the Chair, and I think it started at the beginning when you talked about both sides. There aren't two sides here. There is an ethics investigation, Ms. Hale is a witness. We did not subpoena any witnesses. We suggested witnesses that you may want to hear from. What you do is up to you. Again, we are not presenting a case. We didn't call any witness. That is up to you. If you want to, you can. So, that is not the way we responded to this dispute. We did not review this as a contested case. My reading of the rules shows that as you stated before, it is an investigative hearing. We don't have a side.

Chair: Kendall?

Sharpless: Yes—in the normal course of office events, are there procedures within your Human Resource rules and regs, or maybe if you're a member of a union, in terms of resolving office disputes?

Hale: We are not part of the union, and as far as having office disputes, I would have to go to my superior, which would be Emily Nae'ole.

Sharpless: Within the Council administration, is there any mechanism for employees to voice concerns about office practices?

Hale: That would be the County Clerk. It is the County Clerk. We attempt to go to her. When it comes to County and ethics complaints, I understand now that it is Ken Goodenow, the Deputy Clerk. When we—it is quite confusing, I don't understand what you are asking. Let me put it this way. When I went to see Casey about this, and there was a lot of dialog about me getting fired and trying to get this straightened out, one of the things she did tell me was, you know, Barbara, you are hired by the County Council person, therefore she is powerless.

Sharpless: Who is powerless?

Hale: Casey Jarman.

Sharpless: Okay, my next question. Do you feel that in going to Mr. Bishop you violated any rules of confidentiality, either written or implied, one has to their superior, or that you violated any issues of—I don't want to say decorum, but that—just stick with the confidentiality. By going to Mr. Bishop, do you feel that you had violated any, or were violating any, issues of confidentiality that go on in your office?

Hale: No.

Sharpless: Thank you.

Dill: Ms. Hale, just to clarify—your main motivation for going to Mr. Bishop first, rather than seeking counsel or going through the proper channels of an ethics investigation—you stated anger was your main motivation. Do you want to elaborate on that or any other motivations you may have had?

Hale: Okay, it wasn't that I went to Hunter. He called my office early in the morning. It was like a quarter to seven or even earlier. I was at my desk. I got the call. He asked me how I was. It was an odd thing in the morning. I said I was fine, and he said, are you sure? I said, yeah. Then I said, well, you know you sound like you know more than I do about something. He said, well, I just saw Emily and Gwen at a community meeting, and they both said they are very dissatisfied with your work and they're thinking to fire you when they get back. I was stunned. I was—in fact the gal that was standing in the office—I said fired? It wasn't retaliatory, it was a response. I said what? And I was angry, yes.

Dill: Did you elaborate more after that then?

Hale: Not right after that, because he kept saying—he was talking, actually, and I was responding. He said, how do you feel about that, have you done your work? He's here.

Dill: More importantly, at that time, during that conversation when you found out about the so called potential to be fired, did you make any allegations at that point about

the allegations you are bringing before us—are being brought before us—about campaign work being done in the office and personal business being done in the office? Did you bring up any of those two issues during that first conversation with Mr. Bishop?

Hale: I brought up that I was really mad. I said if anything, if you are talking about incompetent, then you better be talking about Gwen and her. I was really upset, because I know my job and if she thought that I couldn't do the job earlier, she could have said something. But I had passed quite a bit of resolutions and did all my homework and my office work. So yes, I was really upset, there is no doubt. I don't know anyone who would not be upset when someone hits you blindsided, and this went on the blog. Yes, I'm angry.

Strauss: Could you repeat your question?

Dill My question is, at that time, during that specific conversation, in your reaction to finding out about the intentions of Ms. Nae'ole and Gwen, did you make those specific accusations at that first conversation with Mr. Bishop in the morning when he called you? You made that clear, he called you. Did you make accusations of campaign work being done in the office or personal work being done?

Hale: No.

Chair: Ms. Lum?

Lum: I would like to get back to the two questions that we're investigating. Do you have any more—you mentioned the photos that were being taken for some loan or insurance, personal automobile. Are there any other incidences where you'd like to bring up where Ms. Nae'ole utilized her staff to do her personal work in her office?

Hale: Well, that's—a lot of days when she leaves the office, a lot of times they are going to go to pick up pills or something from the doctors.

Lum: Who is she?

Hale: Gwen, excuse me. Then there are times Gwen had to leave the office to go and get Kopa from school, or meet him at the Prince Kuhio, the movie theater. These are times—not even Gwen liked it, because she was—she didn't have a cell phone. Then I thought—I didn't know where she went, actually, until Emily's son called and said he didn't get the ride he expected from school, in Kea'au, to go to the Prince Kuhio. And I said—he said, is Aunty Gwen there? I said no, she already left, waiting for you I guess. I had to guess at all these things. But that went on quite a bit. They leave early. We come to work—I get to work early for two reasons, I think Gwen will verify that too, there is a terrible traffic. In order to get to work on time, we better leave early. But when I'm there, I am working. And I don't leave till late, because I'm working. And I don't go on—and this is one of the things why I am not favored for—I don't like taking errands for anyone. It's

like [*inaudible*] trying to park and trying to run around, especially. I don't care to leave the office once I get there unless I'm going to do research. I'm questioned when I go and research, and I am fine, I am fine with the questions. But I don't recall Emily ever questioning Gwen when she doesn't come back on time, or is not at her desk. She never questions, and I don't think she realizes that it's often.

Lum: So, my question, really—was incidents of Ms. Nae'ole asking, not a staff member doing something on her own, and not being questioned, but Ms. Nae'ole actually asking staff to do her personal errands?

Hale: Yes, she does ask.

Lum: So, that's like picking up the child from school.

Hale: Go take pictures.

Lum: Thank you.

Chair: No other questions by the Board members? If not, I am going to ask a couple last questions. Back to Ms. Jarman. You did speak to her about possible ethical violations and she wasn't able to help you, is that correct?

Hale: That's correct.

Chair: Okay. Then, can you— Mr. Strauss, you did supply a list of witnesses, and know I understand your position is you are not the petitioner and you don't necessarily want us to call these witnesses—

Strauss: —That is not an accurate recounting of what I stated. It's up to you who you call as witnesses. We were asked to provide a list of witnesses who we thought would have information that the ethics commission may want to—they want to consider. Sorry, I didn't realize this one wasn't on. But, we're—again, we are not a party. There are rules in the ethics commission that provides for parties, and rights of parties—

Chair: —I understand all that, but when you submit a list of witnesses that we might want to call, it would have been helpful saying why those witnesses are helpful. For example, Liz Bonell—

Strauss: —I had expected you to ask Ms. Hale about that while we were here.

Chair: Then I'll do that right now.

Strauss: Great, and I had expected that you might want to ask her about what these exhibits show, even the exhibits we don't have that we identified for you. That is what I expected.

Chair: I will do that right now.

Strauss: Great.

Chair: Ms. Hale.

Hale: Yes.

Chair: On your witness list that I have in front of me, we have Liz Bonnell—

Hale: —Yes.

Chair: And why would she be a witness in this?

Hale: My complaint was just—I think it was several. One was, I believe it was harassment and my rights in the workplace and—

Chair: —You are going to have to file your own petition on that—

Hale: Okay, that’s—

Chair: —We are not here today for that.

Hale: Ms. Bonnell is—she works for County Services and she is assigned to the Human Services Committee that Emily chairs. When you work in a small place like this, you have to evidently build up relationships. I went to Liz, but she noticed there was something wrong in the office. It was kind of quiet when she comes to the office, and I wasn’t really happy a lot of times, and she asked me, what’s going on Barbara? And I said, I don’t know. I think it’s because I don’t do the things, the personal things, sometimes and it really gets in the way. Then she asks me, like what? I said, well, I tell you—

Chair: —I didn’t mean, you know when I asked that question I, I am sorry, let me retract, I didn’t mean for you to—

Hale: —Elaborate.

Chair: —to say what she had said. I wanted to know why she is on your witness list and how she would be relevant if we called her today, and if you could just interest that specific point.

Hale: Okay, she works with us and I confided in her for different things, and that would be the reason.

Chair: But did she see Councilwoman Nae’ole use office workers to do her personal errands?

Hale: No, that wasn’t the reason I called her.

Chair: Did she see any campaign lobbying or soliciting going on in the office?

Hale: No, I don't think so.

Chair: Okay, see that is what I'm trying to get at. I need to address the two major questions that we are here for today and try to narrow your witness list down. And if we don't need to call these people because they have nothing to say, directly about this, then we won't. So, Ms. Bonnell has nothing that she saw or heard directly in Councilwoman Nae'ole's office?

Hale: Okay, the only thing Ms. Bonnell could bring is to elaborate what I mentioned to her.

Chair: Ahh. Linda Swallow?

Hale: Would be the same.

Chair: Just to collaborate what you said to her?

Hale: Yes.

Chair: Joyce Unoki?

Hale: Joyce Unoki is an accountant, and she could verify the checks that was written to us, and also she pays all of our receipts, and I made that available as part of the exhibit. We had an incident that we paid for leis, and she was the one that actually cuts the checks.

Chair: I see. Maxine Pacheco?

Hale: Maxine was—as I mentioned earlier, she was the one that was asked by Ms. Nae'ole to write that beautiful letter about me.

Chair: I see.

Dill: Ah, Mr. Chairman?

Chair: I see a light on. Go ahead, Mr. Dill.

Dill: That—Mr. Strauss, I don't see that letter here. Was that included in my exhibits?

Strauss: The April 23<sup>rd</sup> letter?

Dill: From Maxine Pacheco?

Strauss: I think so. I think it was in the first submission of the exhibits. I apologize. And again, not being presented as a contested hearing case, or trial case, you are left with a group of exhibits, some of which we don't even have—we just identified

coming in various times, and it's kind of a mess you have to sort through. I apologize for that.

Dill: Thanks.

Chair: So, she is the one that wrote that glowing letter about you.

Hale: Yes.

Chair: But she was instructed to by Councilwoman Nae'ole?

Hale: Yes.

Chair: Ken Goodenow?

Hale: Ken is the one I went to see when I had a complaint about the workplace.

Chair: That was approximately May 7<sup>th</sup>?

Hale: No, I went to see him previous, and I will put this on record. It was the same day that Senator Akaka came to the office to visit everyone.

Chair: And it had to do with complaints you had about what was going on in the office?

Hale: Yes.

Chair: And he gave you advice?

Hale: Well, no. He just listened and he didn't—as with Casey said, we are not—we are at the will of the County Council who hires us.

Chair: I see, and I'm rather naïve about the County government. So Ken Goodenow is—

Hale: —He is a Deputy County Clerk.

Chair: Deputy County Clerk. Thank you. Sir?

Roehrig: Mr. Chairman?

Chair: Yes?

Roehrig: May I address the Chair?

Chair: Yes.

Roehrig: One of the exhibits that we provided yesterday to this commission, through the Corporation Counsel, is the report done by Mr. Goodenow based on the allegations made by Barbara Hale. He actually did an investigation, and we submitted it as an

exhibit—his report. You have that as an exhibit and he found that the allegations were not substantiated.

Chair: Could you direct me to that exhibit?

Roehrig: If I have a minute, I can.

Chair: Okay, we will give you a minute, and if you don't mind I'll continue with this and then redirect us. Kendall, do you have a question?

Sharpless: I just want to know if Mr. Goodenow is here.

Chair: I believe he is in the office.

Ashida: He is in the back.

Chair: In the—so if we wanted to speak with him, we could.

Sharpless: No.

Chair: And you've already explained to us Casey Jarman.

Hale: Yes.

Chair: Aurora Kaipo?

Hale: Aurora Kaipo is the—she is friends with both Emily and I. She will be testifying on the DROA of the \$5,000 that was asked from me at the office. She will be testifying on that, for verification.

Chair: The \$5,000 dollars, you mean for—that was granted in discretionary funds?

Hale: No, it was different. Back in the ending part of February of this year, a call came into the office. That was the second time that happened, and Emily handed me the phone and it was from her daughter, Malama. She's down as Valentino, I've got her down as a witness. And it was to borrow \$5,000, and I couldn't give that money. And I didn't, and everything changed after that. Prior—in January, there was a request came through the office, and Emily handed me the phone, it was really an odd situation for me for both times. The first time was \$700 and it was to—if she couldn't get that to—the money, she was going to lose the house, and so she would be testifying on that. That was what Kaipo—it was over that house.

Chair: I see, and Rudy Valentino the same?

Hale: Rudy Valentino is Malama's husband. When I agreed to loan the \$700, I was asked to put it in his name, and I provided the cancelled check.

Chair: Okay. Leilani Chung, that's the—

Hale: —Malama Hawai‘i Nei.

Chair: Right. And we have already spoken with Kawika, and Gwen—and I know why Gwen is listed there. You listed Emily Nae‘ole, I know why she is listed there. Donna Walker?

Hale: Donna Walker, she is our treasurer of the Friends of Nae‘ole, and the reason I have her down is because of the \$1,000.

Chair: Board members, any further questions? If not, I would like to take a ten-minute recess.

*A recess was called at 11:50 a.m. The Chair called the meeting back to order at 12:10 p.m.*

Chair: At this point, I am going to ask the Board members to look at Barbara Hale’s identification of witnesses. And is there any witness that you might want to call in this matter? I take silence as a no. In that case, as a formality, I was going to call these people.

Ashida: Before you do that, I would just like to take one minute to make a record. During the testimony of Ms. Hale, there was a representation that a torn-up check dated September 26, 2006, in the amount of \$1000. The ripped up check was brought to the proceedings today. I’ve been handed that original check by Mr. Strauss. He represents that this is the item that was referenced in Ms. Hale’s testimony. I conferred with Mr. Lee Loy. He has no objection to the Board receiving this as an additional exhibit, and considering it to the extent that it is relevant to your purposes. So I have it now, and I will just turn it over to you, Mr. Chairman.

Chair: Thank you. Well, because this list was furnished to us by Mr. Strauss—in all fairness to Mr. Strauss, if his witnesses are here, I’ll call them forward. If not, I will move on. So, for the record—Liz Bonnell, not here; Linda Swallow; Joyce Unoki—

Ashida: —Mr. Chairman, just for the record, that is Joyce Unoki with a “u” rather than an “e.”

Chair: It is spelled with an “e” here.

Ashida: Yeah, it should be with a “u,” a good Hakalau girl. Her mom was my teacher at Waiākea Intermediate.

Chair: Is Joyce Unoki here?

Ashida: And I should point out to the Board, these are primarily employees here at the Council office, so you have the opportunity to call them if you want and I can get them.

Chair: Maxine Pacheco, Ken Goodenow, Casey Jarman, Aurora Kaipo, Rudy Valentino, Malama Nae‘ole, Leilani Chun—we already spoke with Kawika Mattos, Donna Walker. Donna Walker.

Lee Loy: Mr. Chair, she is also listed on our witnesses. If it would please the Board—

Chair: —We will reserve it for yours, and Gwen Kupahu is also on your witness list, so we will reserve that as well. Having read Mr. Strauss’ witness list, I would then like to call up Emily Nae‘ole and her representation. Actually, we will give them as much time as they like. We are hopefully going to take a lunch break by one o’clock.

Lee Loy: Mr. Chairman, however you want to do this is how we will do this. I had prepared a very short list of questions for her to feed off of, if you want to—if there are particular areas you want to go into. I won’t waste your time.

Chair: I believe this witness should be allowed to her counsel to ask her certain questions, and I will allow that. And during the course of answering those questions, I may have a few questions of my own.

Lee Loy: Yes, sir.

Chair: Would you like to begin?

Lee Loy: Your name ma’am, please.

Nae‘ole: Emily Nae‘ole.

Lee Loy: Now, Emily, you heard the accusations made against you today, and you have read the blogs? I’d like to ask you some major, some very straight-forward questions. Is prayer an important part of your life?

Nae‘ole: Yes, it is very important.

Lee Loy: What is the most important thing that you pray for?

Nae‘ole: That everybody would—in Hawaiian it says aloha kekahi e kekahi—that we love one another.

Chair: I already appreciate this, but Mr. Lee Loy, there are two major questions that we need to address.

Lee Loy: Okay.

Chair: The prayer is not before us. It’s not relevant and I would like you to stay with the two questions.

Lee Loy: All right, sir. Councilwoman Nae'ole, for the last three months you have read your name in the newspaper and blogosphere, that somehow your office is being used for campaign purposes. Did you ever campaign in or from your office?

Nae'ole: No.

Lee Loy: To your knowledge, did anyone in your office, on your behalf, ever use your office for campaign purposes?

Nae'ole: No.

Lee Loy: Did anyone solicit from your—for your campaign, to your knowledge, from your office?

Nae'ole: No. I already was elected, why should we be campaigning?

Lee Loy: Do you or does anyone in your office do personal business on company time, and if so, would you please explain?

Nae'ole: I had Gwen call my pharmacist to order me some pills that I take. When we had our training with Lincoln, he said if we have to make doctor appointments or something in that realm, it was all right. So I thought that was appropriate. So Gwen did not go and pick it up. I picked it up myself. She just called to make the order.

Lee Loy: After you got in office, you folks had that meeting with Lincoln Ashida where he instructed you on how to do Council business, and County business, and personal business. Did he give you that instruction?

Nae'ole: Yes, he did.

Lee Loy: Have you attempted to follow those guidelines given to you by Mr. Ashida?

Nae'ole: Yes, after we had the training. Before the training, I was so brand new that I didn't know a lot of the do's and don'ts. After the training, we made sure that we stuck very strictly to the rules and if we had any questions we would ask Casey Jarman.

Lee Loy: And have you—since all this has come out, have you tried as best you can to ask the County Clerk, and to make sure that everything as far as you know is being brought above-board in all—in accordance with Code of Ethics, as far as you are concerned?

Nae'ole: Yes, that is why I didn't run out and do anything. I just kind of hold my horses still and had to seek for help, and that is where you both came in and I just allowed you guys to do what you guys had to do. Because I don't know the process of this legality stuff, and so that is all I did.

Lee Loy: And one final question. Mr. Dill asked a question and said about the—you were criticized right, because you were doing personal business, in the blogosphere, even though she denied it—in the blogosphere, she was accusing you folks of doing personal business on the Bishop blog, right?

Nae'ole: Yes.

Lee Loy: Thank you. Sir, I have no other questions.

Chair: Thank you. Mr. Roehrig?

Roehrig: Mr. Chairman, I think the questions by Mr. Lee Loy were adequate. If there's any other matters that I think of during the course of the questioning, I'll respectfully raise them, but at the present time I don't have any questions at all.

Chair: Then the Board will take over asking questions. Thank you.

Roehrig: Thank you, Chairman.

Chair: Ms. Lum?

Lum: I just have a question. When was your training with Lincoln? The training with—

Nae'ole: —I don't know exactly when was the date.

Lum: The month?

Nae'ole: I think it was before we went to Washington, D.C. In March, me and Barbara Hale went to Washington. I think it was before that date.

Lum: So, it was several months into—after you were elected?

Nae'ole: Yes, yes.

Chair: I'd like to ask a few questions. Referring to Mr. Strauss' exhibit list, Exhibit 19, which is what Ms. Hale testified to as finding in your office, which was the records of your campaign spending. How do you respond to that?

Nae'ole: The thing is, after talking to my secretary we seen this pile of paper—my legal aide, Gwen Kupahu, she had a book with all this paperwork in it. And while we were campaigning and prior when we started the job, she used to ride with Barbara Hale a lot. And she said that she misplaced the book with all this information in it, so I—according to Gwen, she said that this, all this paperwork, was in the book. She didn't know where the book went. Somebody, you know, got a hold of it and took it. So Gwen said that she thinks that it was taken. She didn't think it was in the office. You know they rode together and one day she didn't find it when she left the car, and she asked Barbara if she seen the—she had this certain book. Barbara said she didn't see it, but now she sees all this paperwork, and that was

what was in the book. So we came to the assumption that maybe Barbara did—the Hawaiian word for taking something is called ‘aihue—maybe wen ‘aihue this book and now bustin’ ‘em out. So we really don’t know what the mana‘o is, yeah? So, that is what my secretary said.

Chair: My next question is approximately when did this document turn up missing?

Nae‘ole: According to—I think it would be nice if you ask Gwen that question when she comes up, yeah, because I don’t know exactly when that was missing.

Dill: Ms. Nae‘ole.

Nae‘ole: Yes?

Dill: Mr. Chairman did ask if you did know exactly what these documents pertained to—I think you asked that question, right? Could you elaborate on that? You told us the story that you are unfamiliar with the process of how it disappeared from your office or from Barbara’s car, or Gwen’s car. But if you could elaborate a little on what’s in this file?

Nae‘ole: This file 19, Exhibit 19? To me, it looked like people who might have donated some stuff to our campaign. You know, really I haven’t looked at it really well. It is people who have helped us out, you know, who have supported us during the campaign—just by looking at it briefly.

Dill: Do you know what these dollar amounts indicated?

Nae‘ole: I’m not too sure, because it wasn’t my paperwork, so I cannot say exactly what it is.

Dill: Did you ever see this folder, this Exhibit 19, in the office?

Nae‘ole: No, no.

Dill: Thank you.

Nae‘ole: You’re welcome.

Chair: Wasn’t these documents, in Exhibit 19, made by Donna Walker?

Nae‘ole: Yeah. See the thing was, Donna Walker was taking care of my books, for all the finances. Her father had fallen sick and so Donna had to take care of her father. So, Gwen kind of took over for a little while. And then when Donna’s father passed away—you know, we were in support of Donna because she was going through her hardship. And so that is why Gwen was involved. She was like the second treasurer person to take hold of the job.

Chair: Kendall?

Kendall: Yes. After you were elected and in your office, did you direct your secretary, Gwen, to do any work on this packet of 19, Exhibit 19?

Nae'ole: A'ole, no. I just wanted to add to your question. We already won. We didn't have to campaign anymore. We were just moving on to what we had to do as our job.

Chair: Then explain to me about Tim Gardner, and how Tim Gardner approached you and your office and offered to make a campaign donation.

Nae'ole: Well the thing was, when I came to be a Councilperson, Tim already had bill in for my district and he wanted to do a storage center. At the beginning I was kind of hesitant about this resolution, and actually—Barbara was the one told me—no, it's good. She actually—she had this character about herself, that, you know, I think she thought she could come in and control me. And so she persuaded me to support this bill, and so I did. So that's how we met Tim Gardner. He was at the—he came to the meetings, to our Council meetings, and that's how we met him. After his bill didn't go through, he just appreciated all the help we gave him. He offered to give a \$1,000 to my campaign, but I didn't ask him, I never tell him I wanted the money. I never tell him nothing. So 'til today, he never give me nothing, 'cause I never ask for 'em. And so during that time after his bill was taken—wasn't approved, and he wanted us to come to Maui for his birthday party. He called and talked to Gwen, I think. He was offering to give us an airplane ticket and find a place for us to stay. We never go. Barbara was calling him on her own—she had her own little mission in the office that was taking place, and sometimes I never even know about it. She was calling him, and according to what he told us, she said to give her the money, the \$1,000. I'm not too sure, because I never hear 'em myself. I never hear her on the phone with him talking. But that is what Tim said—that she asked for the \$1,000 to be given to her because I owed her a \$1,000.

Chair: And when Tim told you that, what did you tell Tim?

Nae'ole: I didn't say give her the money, because I was responsible for paying her back, not nobody else.

Chair: What do recall you specifically said to him when he told you that?

Lee Loy: Excuse me—he didn't talk to her, he talked to Barbara Hale.

Chair: She just testified that he told her—

Ashida: —Mr. Lee Loy, I don't think you should be interrupting. The Chairman is asking, the Board is asking, the witness questions.

Nae'ole: Okay, yeah, I think once when we was on the phone he did tell me that Barbara asked for that \$1,000. He called my office.

Chair: Do you recall what you responded back?

Nae'ole: I told him no, not to give, because I am the one responsible. I don't want him to give her the money for my kuleana. I got to take care of my own.

Chair: And no money was ever given?

Nae'ole: No money was ever given, and—

Chair: —No tickets—

Nae'ole: —No tickets, no nothing.

Chair: The only other thing, I think, with Mr. Gardner was that he picked up your lunch tab.

Nae'ole: Yes, and—

Chair: —at an impromptu meeting.

Nae'ole: Yes, we were at a meeting. I heard from other council members if it wasn't over a certain amount, that it wasn't—I didn't have to report it. I didn't think I was doing something wrong.

Chair: Okay. My next question would be concerning Lucille Chung.

Nae'ole: Yes.

Chair: You did offer to sell tickets for her?

Nae'ole: Yes.

Chair: For a fundraiser, and you weren't able to sell any of those tickets, is that correct?

Nae'ole: Yes, I didn't sell.

Chair: When she came to your office—

Nae'ole: Yes—I asked her if this was a nonprofit, and she said yes, it was for scholarships for going to college for young kids. And so I decided that I would give her money, because to me education is very important because I used to live in poverty and I used to be very—had hardship in life. I went to college, that gave me a break to advance myself to another level, so I know how important that education is for people, especially in hard times. So, I decided, and being the Councilmember, every Councilmember has given—that is why it is called discretionary funds. We as a Councilperson have a right to give to whoever we want. And so the Councilmember previous to me have given \$50,000 to somebody in Hilo. I knew

about it so I thought I was—I know I did fine. It didn't bother me that I was giving to this group of people \$5,000 for educational purposes. I don't know if you are going to ask me about the stew?

Chair: Yeah, that was my next question.

Nae'ole: Okay, so—

Chair: —How did that come about?

Nae'ole: The thing is, I know Lucille Chung for many years, and because I have been an advocate in our community. She works for Queen Lili'uokalani Children's Center. I worked with her in many functions throughout the years. QLCC helps when we have different functions. They bring food to help out, because they know our community don't have that much money. We said we were planning out everything for our town meeting, and our town meeting for youth using drugs and alcohol. I wanted to call a town meeting because I think in February this boy Tyrone passed away, but was shot. I know my community was having problems with hard drugs and drinking, so that is why I called a town meeting on May 5<sup>th</sup>, and it was at Maku'u Market. I made a lunch for the people that came. We had rice, stew, salad and desserts and stuff. Knowing that Lucille has done this through a lot of functions in my community, I asked her if she would help us with some stew. So Lucille Chung and QLCC is this angle—whatever the Hawaiian organization from Laupāhoehoe—is a totally different thing. She works for them and—

Roehrig: —Mr. Chairman, may I offer something?

Chair: Sure.

Roehrig: Attached to the declaration of, I believe, Gwen Kupahu, our Exhibits 2 and 3—they look like this, and these are just an announcement of the Pāhoa Community Meeting that we are speaking of. It indicates at the bottom that this community meeting was put on by Emily Nae'ole as a Councilmember and Mitch Roth as the Prosecuting Attorney, and the subject matter generally was to talk about the ice problems with teenagers in the lower Puna area, that was the subject matter. You have those two exhibits. That is all I have Mr. Chairman.

Chair: Back to Lucille Chung. Let's see, your discretionary funds. I know they are used at your discretion, but is it fairly common practice within the County Council for Councilmembers to give some of their fund to a different district?

Nae'ole: Yes, well this is what happened with Dominic Yagong. He went to Pāhoa Community Center and he seen that our refrigerator was practically falling apart. And he said Emily, I am going to buy you guys a new refrigerator, you guys really need it bad. I never take notice of the refrigerator, but he went there and he took notice. So, you know, when it came to Council, I have been trying to get everybody in a peaceful mood, you know, all of us nine. So to me—and further, in

the beginning of our Council—I think it was January or February—me and Mr. Yagong had a little hakakā. It was televised, and I been trying to make peace. The only way we can make peace with each other is to forgive each other and to move on, yeah? So in my heart I'm trying to work this out with Mr. Yagong. Previously, when we had that little hakakā, Ms. Hale never like me make peace with Mr. Yagong. She tried to control my life, yeah? I want to make peace, because the thing is about me and the other Councilmembers. It is not about me and who wants to control my life. I think that is why I was having pilikia—it was all about control.

Chair: But, the original question was, is it common practice for County Councilmembers to give discretionary funds to other districts—

Nae'ole: —Yes, to others, yes, we—

Chair: —How much did Mr. Yagong give to replace the refrigerator?

Nae'ole: I think he said it should be about \$1,500 dollars. You know, like Donald Ikeda's legislator's aide asked me to donate \$1,000 for some kind of function in Hilo. I don't know if it was the Easter Egg Hunt, or the Halloween thing that they are having, and I am going to give them. J Yoshimoto asked me if I need any help in my area, he will help me out. So we are trying to all try to work together and we can help each other out, you know, and I don't see no problem with helping each other out. That's my style.

Chair: Now, back to Lucille Chung again. Prior to her getting that \$5,000 in discretionary funds—prior to that, had you ever asked her to bring food to any other events that you were hosting?

Nae'ole: No, no. The event was run by the County. I mean it was run by my office and the Prosecuting Attorney.

Chair: Perhaps—did you feel that after you went out of your way to get those discretionary funds, that she should kōkua on her part and supply—

Nae'ole: —No. You know what, I have had many other functions in the community, and Auntie Lucille Chung has been there to kōkua all the time.

Chair: That is just what I asked you—any time prior did you ask—

Nae'ole: —Not for myself. It's for like Kua 'o Ka La Public Charter School—

Chair: —She did that on her own, without being asked by you.

Nae'ole: Yes, yes.

Chair: This was the only time you ever asked her, and it happened to come after you just gave her discretionary funds?

Nae'ole: Yes, yes.

Chair: Indulge me for a minute, these records are—

Roehrig: —You're in charge here, do whatever you want.

Chair: Just indulge me here for a minute. I got reams of paper sitting before me and they are—

Lum: —May I ask a question while we are waiting? Ms. Nae'ole?

Nae'ole: Yes.

Lum: In every office, as you say, there are medical appointments. We even have an ethics guide that gives some little examples, like picking up a child in an emergency. The level of this kind of thing that happened, and life happens, right?

Nae'ole: Right.

Lum: Are you personally satisfied that you don't overuse those privileges, or with a little more knowledge, have you sort of changed that level at all, the requirement?

Nae'ole: Yes. You know, Barbara Hale puts out things but she doesn't have the full story. So, Gwen lives in Nānāwale. You have to pass my house to get to her house, and so these things that she did was on the way home. She stopped and dropped off a movie ticket that I bought for my son. My son was at the mall, so she just dropped it off. So when she took the picture of my truck, it's on her way home. So I gave her the camera, and she just stopped and took pictures. So this is not on the County time. It is on the way to her house that she stopped to do something for me. In regards to all these allegations, when we went to sit with Casey Jarman, talk with her—because she is the one that we confide in, and we asked her all the different questions, and she said no that's fine, that's fine, okay, thank you that's fine. So we want to make sure the word is pono. For me, I don't pray for nothing. I pray because I want to stay pono. That is why, when I am getting slashed for two months by brother behind there on his typewriter, or his email thing, you know it is rough for me.

Chair: Just for the record, I believed that you pointed at Mr. Hunter Bishop?

Nae'ole: Oh no, behind—oh, yeah, yeah, yeah. That is Mr. Hunter Bishop.

Chair: Just for the record.

Nae'ole: Yes, thank you. So it has been kind of tough for me. I've been trying to hold myself high and not to feel like I am a pile of crap, sorry my language. You know, so much things have been going on. You know, 'eha paha, to watch all this is like, wow this person is so mean, why is people so mean? I have to tell my community.

You know what—my community loves me, and they don't know what is going on and they are so confused now. Because this blob has been helping them become more confused.

Lum: I like your spelling of that, blob.

Nae'ole: Yeah, and so it has been really rough for me. So then to me, I am so happy this day is here, because I have been praying a lot, and I even pray for my Aunty Barbara Hale, every day, and I feel sad that I have to. But I want to make my name right. My husband is sitting there in his box [*Nae'ole gestures to the box of ashes that is sitting on the seat behind her*]. His name is being slammed and dirtied, and I cannot have that, because my 'ohana is going to come at the end of this month because my husband going be passed for one year. They say Emily, what's happening, why you making dirty our brother's name, yeah? So to me it is really rough. That is why I need to come. That is why I asked to come before you guys. I want to present myself. I want you guys to hear whatever she is saying about me and to make it right, because I am a freshman, new, and a lot of these things—that is why I am glad. I appreciated Lincoln's class to us about how to do things. Previous to when Lincoln had the class, we might have made a little mistake, but boom, we corrected it. It is all about knowing, yeah? I just need you guys' kōkua right now.

Chair: Well, let me ask you. What do you think was the incident that set Barbara Hale off?

Nae'ole: Well, this is what happened. May 25<sup>th</sup> Hunter Bishop came to my office—

Chair: April 25<sup>th</sup>.

Nae'ole: Oh yeah, April 25<sup>th</sup>, kala mai. April 25<sup>th</sup>, he came to my office and he is talking to me and Gwen in a private room, and he says Barbara Hale has called, just like a recount or something about—or doing something against me because I am the Council lady. So I told Gwen, go inside and call Barbara. I wanted to hear it from her mouth. She needs to tell me this guy is lying. So she comes in, and then I tell her you know what, he's saying you are doing a withdrawal on me about my election. She says no. Normally, when she is right she gets very mad and angry. This time she just said no, and then she left. So on May 5<sup>th</sup>, when I had that community meeting, Hunter Bishop came, and he was there. Then at the end, this is what he said: What are you going to do about it? What are you going to do about it? So I think brother was trying to plot for us for make hakakā in my office. So then I told him, you know what, I am going to Alaska tomorrow. I'll come back and deal with it. So he goes back to tell her I am going to fire her. So that is why she calls me in Alaska on the 7<sup>th</sup> of May and started yelling at me. The thing is, the truth needs to come out. When she was yelling at me, I hanged up, and after a while I told her calm down Barbara, hanged up, and I called Casey Jarman. I said Casey, could you do me a favor—go tell Barbara to stay home this week. I am not going to be in town. Stay home, take the week off and when I come back I will deal with her. I said go and get the keys from Barbara Hale. Until this day,

that was May 7<sup>th</sup>, this is July 11<sup>th</sup>, I never get the key back yet. So what happened when Casey did that— she came back to call me, and she said Barbara don't want to give me back the keys. I am thinking to myself, oh my God, how this whole thing work? She said I told her not to come to work, but she don't want give back the keys. I called back Barbara and I said, Barbara, you are very disrespectful. You have no respect for me as the Council lady. You have no respect for Casey Jarman as the County Clerk. I said I don't think I can work with you. That was the conversation. I was like, wow. So prior to this whole thing I had to go seek Casey Jarman and ask her, Tita, how this work? She said you the Council lady, you hired these two ladies and they—nobody have no power over the other person. She said they are equal. All right, thank you, I said. I had to come over here to find out how this works, because in our office, things was going a little haywires. The haywires was, Aunty Barbara wanted to control us, and I never let her. For a while I didn't see what was happening, but I think that is what caused the problems. It is about control.

Chair: Was there a big blowout in your office, with profanity and yelling—

Nae'ole: —I think what happened was the big—the little, it wasn't really a big blowout, it was Easter Sunday—I wanted to put this on the record—Easter Sunday, about six-thirty, I was at Waiākea High School, and I was going to sing at this church, at the praise and worship. So I called Barbara, and then she was mad that I was taking Gwen Kupahu to Alaska. Barbara went with me to Washington, D.C., in March for the NACo conference, and in May 6<sup>th</sup> we were going to Alaska. So Barbara wanted to go. She didn't think that Gwen had any chance of going, but Casey Jarman was the one that suggested that I take Gwen, because Barbara already went once, you know, so like make equal for my two people. So that's how I decided to take Gwen. So she found out about it prior to that day and she was angry. She was yelling at me, why I was going to take Gwen and everything, so I think she got kind of mad. When we came back to the office after that Easter Sunday morning, she told me that Easter Sunday morning—and I got to stand over there and pray with you. That's how I realized she never like pray, yeah? From then on, I stopped asking her to participate with me.

Chair: Do you know what day that was?

Nae'ole: Easter Sunday, I have to look at my calendar.

Chair: Oh, it was Easter Sunday.

Nae'ole: Yeah. Easter Sunday, she told me that about praying, standing there and praying with you.

Chair: You still didn't think anything was wrong in your office, right, because on April 23<sup>rd</sup> you had a letter generated—

Nae'ole: —Yeah, you know what, we had a little bit pilikia. When I came back from Washington, D.C., in March, I had a meeting with Gwen and Barbara. And the

reason why I had to have a meeting was Barbara's style—unless you know who she is, she is very aggressive, and like how the lady testified and the other two guys this morning. The thing was, Aunty was too aggressive to many people, and they were my constituents. I never liked that reflection on me, yeah? So I seen some things she did to people, and I was broken-hearted, because that is not who I am. She was—I think she was getting into her head, she was trying to play the role as the Council lady, but I was the Council lady. That is why I had to go see Casey Jarman. The thing was, you know, too much power trip. And I knew—and when I called the thing together, me, Gwen and her, we went down the road and we had a meeting. I said, you know what, Barbara, you need to step back on being too aggressive to my constituents. I said people wrote letters and people are talking to me about this.

Chair: When you had that talk with her, was that before or after you offered to give her a pay raise?

Nae'ole: That was before.

Chair: That was before.

Nae'ole: Yeah, that was before.

Chair: So you were still okay with her up until April 23<sup>rd</sup>?

Nae'ole: Yeah. The thing was, I was trying to make peace—bring peace between our camp, yeah? I was trying to give her another chance. So I told her, you know what, Barbara, you are too aggressive. You no can like this, it reflects on me. You know what was her mana'o? Who's these people? She wanted to scrap with somebody, and she wanted their names and everything because she wanted to go charge after them. I told her I didn't bring this to you because I wanted you to go bust up somebody else. I just want you to know about it so you can step back and try to ease off a little bit.

Chair: Councilwoman Nae'ole, I understand what you are saying—

Nae'ole: —Okay.

Chair: —but what I am trying to understand is why on April 23<sup>rd</sup> you signed a letter saying—

Nae'ole: —The reason why I signed this letter, I was going to do it for Gwen, because Gwen has been going outside in the community. And you can ask the community people—she is the one that was following me all over, wherever I've got to go. I think what happened was after March, when I came back from Washington, Barbara started to step back and not participate in things. I think she was mad. So, then Gwen had to do all the work with me. I was going to give Gwen—but I know how Barbara works—you don't do things the way she likes, she just flips off the handle. We've experienced two months of peace, actually, from May 7<sup>th</sup> to

today, but a lot of flipping off the handle, getting mad, angry. So I was trying to bring—just like Mr. Haumea said, I came to see him for ho‘oponopono. I was trying to do a ho‘oponopono week for the three of us, and that is why I went to see him. When he came in that day to ho‘oponopono, Barbara was representing her husband in court for a situation—I think he got arrested for something. So she wasn’t there when we were trying to call the ho‘oponopono. I was trying my hardest to try and work it out. I wanted to give her another chance, you know, because that is how I am. I am soft-hearted, ‘olu‘olu the word is, trying to make peace. But it wasn’t working.

Chair: So you signed that letter as a hope that it would bring peace with Barbara Hale?

Nae‘ole: Yes, hope that it would bring peace to all of us in our camp. So actually, I—

Chair: —I see my light on here. I’ve got one follow-up question before I let one of my colleagues speak. Barbara Hale is currently on paid administrative leave?

Nae‘ole: Yes. Yes, for two months, a little over two months.

Chair: Now, it is your turn Kendall.

Sharpless: Yes. Barbara Hale is your aunt by blood?

Nae‘ole: No. Her husband is related to a long-time family that lived in Puna since I was a child—her husband. So I have great respect for him and she is married to him.

Sharpless: And that is why you call her aunty?

Nae‘ole: Yeah, yeah. It is all about respect.

Sharpless: My next question is, did Barbara and Gwen also get—or were they—they also went to the training that Mr. Ashida provided?

Nae‘ole: Yes. All three of us went to the training.

Sharpless: Thank you.

Chair: And now that Ms. Hale is on paid administrative leave, are you one staff member short in your office?

Nae‘ole: Yes. Maybe about a month or three weeks ago, Chairman Hoffmann ‘wen loaned me one of the ladies that work here, Susan Caseria. She stepped in to help us out.

Chair: At this time, if it is okay with Counsel, I would like to break until one-thirty for lunch.

Roehrig: That would be fine, Mr. Chairman, and we will come back at one-thirty.

*A lunch recess was called at 1:00 p.m. The Chair called the meeting back to order at 1:35 p.m.*

Chair: Let's call the Board of Ethics back to order again.

Roehrig: Are you still with Emily, Mr. Chairman?

Chair: I have no further questions for Emily—if other members of the Board has questions for Ms. Nae'ole?

Lum: I think that I have asked all of mine.

Sharpless: No, I don't. I have no more.

Chair: Then that being the case, we would like to hear from Gwendolyn Kupahu, please.

Kupahu: Aloha, my name is Gwendolyn Kupahu.

Chair: Kupahu?

Kupahu: Kupahu.

Chair: What is the correct spelling?

Kupahu: K-U-P-A-H-U.

Chair: All right, just for the record, the list—the witness list submitted by Mr. Roehrig and Mr. Lee Loy had it spelled Kapahu.

Lee Loy: Oh, no.

Chair: Would you like to see mine?

Lee Loy: I had made—no, you are right. I had misspelled it before. She corrected me, so the affidavit has the correct spelling, but I didn't go back to the—

Chair: —your witness list—

Lee Loy: —Yeah, I stand corrected.

Chair: Mr. Lee Loy, I will allow you to start this for us.

Lee Loy: Thank you, sir. Gwen, you submitted an affidavit. You folks have the affidavit with the three exhibits. Is everything you said in the affidavit accurate and true and correct?

Kupahu: Accurate, true, and correct.

Chair: Mr. Lee Loy, could you refer the Board to which exhibit you are speaking, Exhibit 1, 2 or 3?

Lee Loy: She makes an affidavit and attached to that affidavit are those three exhibits—

Sharpless: Two. Oh, yes, sorry.

Lee Loy: Three.

Sharpless: Three, you are right.

Lee Loy: The first one is a report from the Alaska trip, the second one is the May 5<sup>th</sup> meeting, and the last one is the May 5<sup>th</sup> meeting. One is a letter and one is a poster. Gwen, you were shown Exhibit 19 and 27. Can I show you Exhibit 19 and 27? It's Barbara Hale's Exhibits 19 and 27. So we will use theirs so we are all talking about the same thing, because I noticed once before some of these numbers you have and I have are different. So this is 19 and 27, so keep these separate please, ma'am. Gwen, would you explain to the Board in your own words, that 27—have you seen it before?

Kupahu: Yes.

Lee Loy: When did you last see it, before it comes up as an exhibit for this hearing?

Kupahu: I am not sure, but this particular one, it was during our campaign.

Lee Loy: Exhibit 27, the big sheet of paper—

Kupahu: The big sheet of paper—

Lee Loy: —that was during the campaign. When you say during the campaign, you are talking about before December 4<sup>th</sup> –

Kupahu: Before December 4<sup>th</sup> —

Lee Loy: —when you went into office. What about the other stuff?

Kupahu: This one here is one of my memos, that I stick it on my file cabinet to remind myself don't forget the sound system and pick up the hot dogs. That was for a meeting May 5<sup>th</sup> at Maku'u Farmer's Market.

Lee Loy: That was your notes to yourself?

Kupahu: Correct.

Lee Loy: On your filing cabinet, for the town meeting which is described in Exhibits 2 and 3 for your affidavit with the prosecutors.

Kupahu: Correct.

Lee Loy: Now, before—when was the last time you saw it?

Kupahu: This two page?

Lee Loy: Yes.

Kupahu: May 4<sup>th</sup>.

Lee Loy: May 4<sup>th</sup>.

Kupahu: This one here, the big one is part of our campaign, so that would be probably in the middle of 2006.

Lee Loy: Middle of 2006. Was that big thing in your office?

Kupahu: No. Not at all.

Lee Loy: Not at all.

Kupahu: Not at all.

Lee Loy: So, although it is both listed on the same exhibit number, two of those things were in your office relating to the May 5<sup>th</sup> event, and one of those things related to the campaign, which was before December 4<sup>th</sup>. Did I get that right?

Kupahu: Correct.

Lee Loy: Now, when you came back from Alaska—when you went to Alaska, was there anything missing in your office? In your office, meaning in your desk or in your filing cabinet when you came back?

Kupahu: Yes.

Lee Loy: What was missing?

Kupahu: This here, this two-page. I had two keys which belonged to Emily's room and our office. I had it in a box in my drawer, where no one can see it. I had that two keys and I also had a file cabinet keys in a box. That was missing, and also my daily log book for incoming calls for any message that I have to write to Emily. That whole book was missing.

Lee Loy: Okay. So have you found the book yet?

Kupahu: No. I had to buy a new one.

Lee Loy: What about the keys?

Kupahu: No. No keys.

Lee Loy: Who's got the keys?

Kupahu: Barbara Hale.

Lee Loy: Were you involved in changing the locks to the office?

Kupahu: Yes, I definitely had Ken and Val look into it and get it changed, because she had the keys to enter the office, and I didn't want her to enter the office, so we had to change the locks, which was the most important thing we had to do, was change the locks for our office door.

Lee Loy: Does she still have the key for the downstairs of this building?

Kupahu: Correct, downstairs, too.

Lee Loy: Okay, now regarding personal work, has anyone criticized—anyone in the County Council, you know, Casey or Ken—has anyone criticized you or your work?

Kupahu: No.

Lee Loy: Except?

Kupahu: Except Barbara Hale.

Lee Loy: Okay. After Casey's four-page—excuse me, after Barbara Hale's four-page statement, or three-and-a-half page statement, the one relating to this Ethics Board hearing, this single-spaced thing. After you got them, did you see that?

Kupahu: Yes.

Lee Loy: Did you review it?

Kupahu: Yes.

Lee Loy: And what did you do with it? Did you go see Casey after that?

Kupahu: Yes, I went to see Casey about it. I asked her if there was any inappropriate thing that was done in the office, and she said no. I explained about me leaving, going home to take the tickets to Emily's son on the way home, and then I also did take pictures of her truck for the insurance company, on my way home. I talked to Casey about that. She said that was okay.

Lee Loy: So in order to—if you were going to do this on company time, just so that the Board understands the allegation, if you were to doing this on company time, it'd be like for you to drive from here, this building, drive out past 'Ōla'a, head

towards Pāhoā, turn into Maku‘u Hawaiian Homelands, take a picture, turn around and come back here, right?

Kupahu: Right.

Lee Loy: If you were doing this.

Kupahu: If I was doing this.

Lee Loy: Not going home.

Kupahu: Right, I did not—I was on my way home from work.

Lee Loy: And so did you ask Casey specifically, was there any corrections or any suggestions about how you should try to do your job differently?

Kupahu: Yes. She said no, that I am doing fine.

Lee Loy: Did you ask her to make sure if you did anything inappropriate—did you ask her those kinds of questions?

Kupahu: Um hmm.

Lee Loy: Does that mean yes?

Kupahu: Yes.

Chair: When, by the way, did you ask Casey these questions?

Kupahu: It was right after, I am not sure exactly what day, but—

Chair: —Was it after your Alaska trip?

Kupahu: Yeah, it was after the Alaska trip, and after the blog. It was actually after the blog came out on Mr. Hunter Bishop’s thing.

Lee Loy: When you say the blog, you’re taking about the May 7<sup>th</sup> blog where she accused you folks of doing personal work in the office, even though she testified differently, right?

Kupahu: Right, correct.

Chair: But that’s when, after that incident, that you went to Casey to check and see—

Kupahu: —Right.

Lee Loy: Were you guys ever—*[inaudible]* ?

Chair: In Exhibit 19—its a large packet of things—and in Exhibit 19, this allegedly was found being run off in the office and copies were made in the office and was found on, I think Barbara Hale said, your desk?

Kupahu: No sir, never.

Chair: Would you like to explain this?

Kupahu: This particular exhibit here is when we were campaigning. I normally write the names of the people who were contributing and stuff. At the time that we were campaigning, I rode with Barbara in her car to go from here to there. This particular thing, all that information, and this was in a brown bag like that with my composition book, which I see Strauss flipping though. He had the page out of there, I could see them from where I was sitting. It was in her car, and then when I went home that night I was missing that particular envelope, that big envelope. I asked her, Barbara, did you see my envelope? No. Did you see my book? No. So I went back to Donna Walker's house where we normally did our meetings, and it wasn't there. I checked my house and it wasn't there.

Chair: And forgive me, again—did you say what date that was?

Kupahu: I'm not sure what date it was. I can't say what date.

Chair: Approximately? Was it before you went to Alaska, after you came back from Alaska?

Kupahu: No, it was way, during our campaign, 2006, when this was missing.

Chair: Oh, it was missing—

Kupahu: —During the campaign time.

Chair: Prior to even—

Kupahu: —Prior to us coming into office.

Chair: Prior to Emily being elected and it just disappeared and there was no accounting for this?

Kupahu: It just disappeared, and I know for a fact that I take my books in Barbara Hale's car and we do campaigning, wave, meetings, so I knew that was the only place I would have lost it, if I did.

Lee Loy: In the middle of this packet there are three pieces of paper. One has a date 9/18, one has a date 10/22, and one had a 10/20—look in the middle of the packet.

Chair: I see the dates, but there is no question that this was used as documents during the campaign. My only question here was—was these documents ever brought into

the office, were they ever stored in the office, were copies ever made on the copy machine or on a computer printout?

Kupahu: Never, never, never. Any of our campaign material ever came in our office because I had no use for it.

Chair: That is what Barbara Hale is accusing you of, is having this in the office and making copies during County time.

Kupahu: No, sir. Never, never, never.

Chair: Well, what would these documents be used for—because I recall that Ms. Hale spoke that April was a stressful time for tax documents. Were any of these forms—

Kupahu: —Okay, let me show you. This is the brown paper she seen and the two, one was a flyer and one the letter to go out on our May 5<sup>th</sup> community meeting at Maku‘u Farmers Market. I was doing that in the office. This is the brown envelope that she is talking about, that is the left over letters that was in there which she assumed that I was doing campaign, but no, this is the one I was doing. The meeting in May, in fact I started some time in April, when Emily and I both organized the meeting. Never did I take any campaign papers, because there was no use for it in there.

Chair: Do we have any questions regarding the documents? Okay, if not, that is all the questions I have. Gentlemen?

Kupahu: Can I say something else?

Chair: Why, of course.

Kupahu: Can I go back to Tim Gardner? If I can, I am not sure.

Chair: Yes, you may.

Kupahu: I just want to say something, what he told me.

Chair: Yes, once you bring Mr. Gardner up I may have more questions for you.

Kupahu: At the time when the \$1,000 thing was going on in the office, Barbara called Tim and asked him for the money. Right after that, Tim called me and said Gwen, what’s going on? Barbara just called me and she told me to give her that \$1,000 and not Emily. I said no, you don’t give it to anybody. Just let it go like that. Don’t give it to her, and not even Emily. Then we parted with that.

Chair: You mean Mr. Gardner?

Kupahu: Mr. Gardner—

Chair: —called Councilwoman Nae‘ole and said the same thing to her, then later called you?

Kupahu: No. Barbara Hale called Tim Gardner, and told Tim Gardner—

Chair: —No, no, I understand. What I am trying to get at is in earlier testimony, Councilwoman Nae‘ole testified that Mr. Gardner called her, asking about that \$1,000 also, and she said not to do it, that she would take care of her own bills. Now, do you mean in a subsequent phone call?

Kupahu: At a different time.

Chair: Did he call you and ask you the same questions?

Kupahu: He told me the same thing. And Barbara herself told me, I just got off the phone and I told Tim to give me the \$1,000. I said what? And then no sooner than later Tim calls me, Gwen, what is going on? Barbara just called me, she wants a \$1,000. I said no, don’t give it to her and don’t give it to Emily. I just want to clarify that part, because I heard it from his ears and from Barbara’s ears, mouth, his mouth and Barbara’s mouth.

Chair: And when he offered a little trip to Maui to go to his birthday party—

Kupahu: —he offered—

Chair: —initially, weren’t you and Councilwoman Nae‘ole going to attend that party, initially?

Kupahu: No. We didn’t confirm it with him.

Chair: When the offer was first made, what was the first response that was given to him?

Kupahu: I said we will think about it, I’m not sure how her schedule will go, I’m not sure if we can go or not, and plus we are not supposed to do that.

Chair: At a later time, did Ms. Hale advise you and Councilwoman Nae‘ole not to take those things—

Kupahu: —No.

Chair: —and to not go to Maui?

Kupahu: No, she did not. And we, Emily and I, forgot about it, actually. We forgot about the whole trip. It wasn’t in our mind to go.

Chair: Any further questions?

Sharpless: Yes.

Chair: Go ahead.

Sharpless: Were these—this sequence of calls, Gwen, was this something that you would normally log in, the sequence of calls from Tim Gardner? Would they have been logged in your—

Kupahu: —they would have been.

Sharpless: Okay, and that document, that log is gone, missing?

Kupahu: Gone.

Sharpless: Okay.

Chair: I have no further questions. Mr. Lee Loy?

Lee Loy: *[inaudible]*

Chair: Thank you.

Roehrig: I wouldn't yell at him, except in the boat.

Chair: Can we call Mrs. Donna Walker, please? I just have a couple brief questions to ask you.

Walker: Yes, sir.

Ashida: Step back, step back. She is not represented by them, they are not her attorney.

Chair: I think that is a good idea.

Lee Loy: She was the campaign treasurer.

Chair: It is just a couple brief questions, and for formality purposes—

Roehrig: —Do we need to get out of here?

Chair: No, just sit back, right in the front row. Just a couple quick questions—

Walker: —Sure.

Chair: —and of course that goes with Exhibit 19, that I am sure you have seen.

Walker: Yes.

Chair: Do you recall when and who you gave those documents to?

Walker: Okay. If I can kind of go off of what Aunty Barbara was saying in respect to my father's illness. When that happened, my mom—as a matter of record, for our campaign, Pearl Kajiyama is our chairperson, and this is a matter of record filed with the Campaign Spending Commission in the State of Hawai'i. Treasurer is myself. Deputy Treasurer happens to be my mother, Patricia A. Hess, because when we tried to open up an account at Bank of Hawai'i, we were told we had to have the two. As far as the Spending Commission goes, Deputy Treasurer, can or doesn't have to be, but because of the account situation we had to have two. My mom gladly accepted it. During that time my father, his illness, got worse, and I did go to one of our meetings on a Monday night. And I explained to them—mentally, I was having trouble focusing, and that because Aunty Gwen was our fundraising chair person of record, it's not filed with the Spending Commission, because that does not have to be filed with them. Everybody was in full agreement, and I felt very safe and comfortable with allowing Aunty Gwen to handle, because she was our fundraising chair. She handled all the monies for the fundraising. Then we would do the reports together, then do the deposit. I would do all the deposits based off of all our information. This here, when I saw it, upon my first meeting with Aunty Emily, Gwen, and Gerard, and Stan, I recognized it immediately as Gwen's black-and-white marble tablet, because what she did, and you know, our whole campaign was grass roots, very low budget, I guess you would say, so I had my bookkeeping style, Gwen had hers, Emily had hers, Barbara—I never really paid much attention to as far as the finances went, because it never became an issue for me at any of the meetings. Gwen's whole part of dealing with the finances in my absence was in that black-and-white marble tablet. What she did was, that was her, I guess you would say, her Bible. And when she turned everything into it to me, what she would do is she would Xerox her book for me, and turn that in with her report of what all the monies were for, and that is how I filed it in our report to the Commission and made the deposits. In my interim absence from when my father passed until after his funeral, Gwen did a lot of the deposits, but everything was turned back to me after she did it and then I continued in my books. At that time, at the end of December, I realized upon trying to balance—the end of November--Barbara Hale called me, and in my efforts of being instructed on taking notes and dates and keeping a log, I was very bad at it during that time, with my Dad's passing—but Barbara had called me because I kept questioning why this check that I had written to her from the campaign account for an expense that she had paid for, for the campaign, which was political literature at Office Max, hadn't come back to our account yet. At that time, she had told me that she cashed it at CU Hawai'i, which was her banking institution, and how come I never got them back yet? I said I don't know, that is what I am asking you. What did you do with the check? If it is lost, I will rewrite it. If it is, you know. She said no, I cashed it at my bank. So I said, okay, so can you check with your bank and find out if they have misplaced it? To make a long story short, January she called me and asked me if I would write a letter to CU Hawai'i, and if she could again have copies of our bank statements, campaign bank statements, which I gladly gave her, because it is public knowledge. Anybody can ask for our books. I have no problem with disclosing it. I again made copies of the bank statements and I wrote a letter to CU Hawai'i, and I

believe at that point and time—I can't recall honestly how I got these documents to her. I can't remember if I handed them personally to her, or if they went via someone else. She told me at that point and time that her and her attorney, Steven Strauss, were going to file a lawsuit against CU Hawai'i for the loss of that check. I said, Barbara, it is no big deal, if they gave you the money. Then I realized maybe it is a big deal, because she is claiming that they gave her the money when she cashed that check. In our exhibits of checks that she is showing, and I personally don't feel it needs to be addressed here because this is ethics for her office for the campaign, that check is listed, and she is claiming that is a donation that I did not declare in our books. It was not a donation, it was an expense reimbursed to her, and I've got all that documentation. And that being said, all of this here was Gwen's bookkeeping and I recognized it as soon as the attorney showed it to me. This here was her way of showing me, okay here was Luquin's Restaurant, his address, because even though, legally with the Spending Commission, anything less than \$100 we quote, didn't have to declare. However, being grassroots and being new and being inexperienced, we chose to declare everything that we could, and I did keep in contact with Tony Baldomero at the Campaign Spending Commission continuously through this whole thing, because I didn't want to make any mistakes or have anything look odd because of my inexperience. He tutored me. He tutored me through the programming of reporting. He would guide me online to ordinances and whatnot in regards to that, which we had to read up on. When Gwen took over the books, she also got that book from me and she went through the whole thing to learn in that brief period of time what it was that we had to do, and how we had to take care of this. I know at one point she called me and asked me if I had seen her book. I said no. She said it is in an envelope, a brown envelope. I vividly remember this, because we held our meeting at where my shop was at the time. I no longer own it. We looked everywhere. I looked in my office. I looked in the garage part where we had our meetings, and I never did come across the envelope. I told her that's okay, because everything that you have given me is reported. I said it is just for her satisfaction, she didn't have it. I know how I would feel if my book disappeared right now, because I have no proof.

Chair: So, everything in these documents—

Walker: —It all took place during that campaign.

Chair: You had already recorded it.

Walker: Yeah.

Chair: And you recorded them approximately when?

Walker: Because—

Chair: —No, not why, but when did you record it?

Walker: Okay. Because the reporting periods are January 1, 2006, to June 30, and then July 1, there is reporting period deadlines that we had. All this may not have been reported in one report. It may have been spanned over several reports.

Chair: But you have all the information?

Walker: Yes.

Chair: Pertaining to this?

Walker: Yeah, there is nothing in here—

Chair: —And you have all that information contained here as of what date, approximately?

Walker: Easily, December. I mean—

Chair: —And the last time you had to file a campaign—

Walker: —I've got one more to file.

Chair: The last one you filed was when?

Walker: Last week Friday I filed one. I uploaded, I've got one more to upload and then I've got the July 31 to upload. But it is all on the new system, which is online, which is most of it, if it can be declared publicly.

Chair: Again, I am naïve in the system—

Walker: —Me too, no worries.

Chair: So, explain to me how often you are required to file. Is it quarterly?

Walker: No, they have—I don't have that with me. However, we were—when we filed for committee status, we were given a packet from the Campaign Spending Commission that explained to us from this date to this date, whatever transpired during our campaigning would be filed on this date. That was like January 1 to June 30, 2006. From July 1 to September 8 was the second report. It was like pre-general, and then a final. Once the general was over, we had to file a final general, and the system that they used at that time was—

Chair: —Was that all filed in the final general? Was all this filed—

Walker: —It compiles, so the first report is here. The second report when I enter everything, it just carries.

Chair: I guess the question I'm really trying to get at is when were these documents no longer needed because everything contained in them was already filed?

Walker: November.

Chair: November of 2006?

Walker: Uh huh, for what is here.

Chair: So there would be no reason why these documents would have been in Councilwoman Nae‘ole’s office in April or May of 2007?

Walker: No.

Chair: And it wouldn’t have been relevant to your filing anyway?

Walker: No.

Chair: Okay. That’s what I was trying to get at and that is all the questions I have for you, unless other Board members have questions.

Walker: Thank you.

Dill: I do.

Chair: Mr. Dill?

Dill: And you were the treasurer, right?

Walker: Correct.

Dill: And you said that your mother was listed as a deputy treasurer?

Walker: Yes.

Dill: Though she didn’t serve in that capacity.

Walker: She did, outside of our campaign meetings, because my dad was a chemodialysis patient. He had to have care 24-7. She helped me at home when I—like gathering of the deposits, balances, you know. Making sure that we were checked and balanced.

Dill: But in your absence, did she do anything?

Walker: No, she didn’t, and because it was my Dad, her husband, that did pose a problem initially because I couldn’t just drop the books down to the deputy treasurer, because it was my mom, who at the time—she is still semi-disabled, because she had a stroke, so it just was like *whoosh*, and Gwen was willing to step in. I still to today, my hat goes off to her, because she did a wonderful job.

Dill: Okay, one more quick question. To your knowledge, after Ms. Nae'ole took office and moved into her office, to your knowledge did any kind of campaign work go on, or any records given to you regarding the campaign take place?

Walker: No, sir, other than I know there is—in Barbara's statement, she has the fact that she still sees deposits going into our account, even though we haven't done any fundraising. I did not personally Xerox, because I wasn't sure if that was what was going to be addressed. Nothing came through their office, but what it was, was like when people wanted to donate money still to her campaign, the deposits are residual gift-bag fundraiser, which is also in our reports—residual pizza fundraiser that we did. It was just a matter of me going around to collect all these monies that were still out, so those are in this then. But they are listed as such, the pizza fundraiser, the gift-bag fundraiser. When others give—if somebody hands her cash and says here is a donation, it was like \$20, \$50 or whatever. We still listed their names and addresses. This here is probably some of those. It was for our records. That even though we didn't have to, we did. It just made it easier on me. I guess in my archaic way of keeping records, it was easier for me to say, okay. My simple thinking was if the public were to see our records and we spent \$5,000 in expenses, but yet we are only declaring \$3,500, where did that other \$1,500 come from? It could have been, you know, a thousand people giving a dollar, you know. We didn't have to declare it. In my simplistic way and Gwen agreed, my mom agreed, we all agreed as a committee that even if it was \$1, we were going to put the person's name on. It doesn't—you don't declare it in the report, but in the reports it shows up as non-itemized, but yet in our bookkeeping it will have the person's name and I think that is what a lot of this is, even though it was less than that amount.

Dill: Okay, thanks.

Walker: Did I answer your question?

Dill: Yeah.

Chair: Are there any further questions? If not, thank you very much. I need a five-minute recess and we will start again in exactly five minutes.

*A recess was called at 2:10 p.m. The Chair called the meeting back to order at 2:15 p.m.*

Chair: I would like to call the Board of Ethics back into session, please. I'm not sure if my mic is working. It doesn't sound like it is, so—is it working? The green light is on, so for some reason it isn't working, so I will just try to speak up as best I can. I'd like to call the next witness, and the next witness I'd like to call is Mr. Hunter Bishop. Mr. Bishop? I just have a few questions, and of course it comes into play that perhaps your writing stimulated some of this. And what I'd like to ask you is, who initiated the interview, the initial interview, and when was the initial interview with Councilwoman Nae'ole? You did interview her?

Bishop: I interviewed Councilwoman Nae'ole, yes.

Chair: When did that take place?

Bishop: I don't know the—I don't know the date.

Chair: What was the substance—?

Bishop: —I can find the date. I am not trying to be evasive—

Chair: What was the substance of that interview?

Bishop: As testified, rumors that her aide was trying to undercut her ability to do the job.

Chair: Did this come from Councilwoman Nae'ole, in your interview with her? Is she the one that brought up these innuendos?

Bishop: No.

Chair: So, how did it come about that a story was written about possible problems going on in the County Councilwoman's office?

Bishop: Mr. Joseph, with all due respect, I did not come prepared to testify today. I was not on the witness list, and it was my understanding that I would not be brought forward here to testify.

Chair: Well, as you know, both women claim different stories in talking with you. Ms. Hale claims that you told her that Councilwoman Nae'ole was about to fire her. Was that true?

Bishop: That's true.

Chair: And, were you—

Bishop: —Let me rephrase that about fire her, no, that she—Ms. Nae'ole told me she was considering firing her.

Chair: She did tell you that?

Bishop: Yeah.

Chair: In a previous interview?

Bishop: She told me that on the Saturday at the meeting at which the bicycles were distributed to the kids at the Boys and Girls Club.

Chair: Okay, I'm just trying to get a time frame here. Was that late April?

Bishop: I believe it was.

Lee Loy: May 5<sup>th</sup>, Exhibits 2 and 3.

Chair: Okay, I read all the documents at least four times. I just can't keep the chronological order in *[inaudible]*. So, on May 5<sup>th</sup> did you have a phone conversation or a personal conversation?

Bishop: I'll back up and start from the beginning if you'd like.

Chair: Yeah, absolutely. That would help a lot.

Bishop: I received information earlier this year, I can't remember if it was January or February, that there was a problem in Councilwoman Nae'ole's office regarding her aide, Barbara Hale. At some point after that, I asked Barbara Hale about it. It was around the time that she testified, that I called her and asked her about that information. She said it was not true. I approached Councilwoman Nae'ole with a phone call. I asked her—told her I wanted to talk with her, and came to this building and spoke with her, Ms. Kupahu, and Barbara Hale. The three of them in the conference room. I questioned them, asked them about these rumors, and they denied that anything was seriously wrong in their office. Subsequent to that, I learned that there was a loud discussion in the office just after I had been there interviewing them for that meeting.

Chair: On that same day?

Bishop: On that same day, after I had left. I heard that there was a loud discussion about that, concerning that meeting. At that point, I asked—subsequent to that there was that Saturday meeting, that we spoke about with the Boys and Girls Club, and at that point I asked Ms. Kupahu and Councilwoman Nae'ole whether—at that point I asked if she—what was going on, was there a blowup? They didn't use the word blowup, but I—there was this discussion after the meeting, and Councilwoman Nae'ole was considering firing Barbara Hale, and so the following Monday I called Barbara Hale and asked her about that.

Chair: And at that time, Barbara Hale was still actively employed and she wasn't put on paid leave?

Bishop: Correct, correct. As far as I know, yes.

Chair: And you did this interview over the telephone?

Bishop: With Barbara Hale.

Chair: With Barbara Hale.

Bishop: Yes.

Chair: And her reaction was?

Bishop: Oh, she described her reaction. She sounded surprised.

Chair: I mean was she [*inaudible*], was she livid?

Bishop: She was—she was surprised and not happy to hear that news.

Chair: And did she then tell you all these allegations? Was that during the same phone conversation when you told her that news did she then speak to you about all those problems that were occurring in the office?

Bishop: She spoke to me about a number of problems.

Chair: In that same telephone interview, in the same—

Bishop: —That is correct.

Dill: Mr. Bishop, you mentioned a previous phone call to Barbara Hale. You called her—there was another phone call prior to meeting with the three women in the conference room? Apparently to Barbara?

Bishop: That is correct.

Dill: Okay, and that was made to her at the office?

Bishop: I believe that was made to her—I don't recall.

Dill: What was the subject of the conversation?

Bishop: What I just explained. That I had heard rumors that she trying to oust her boss.

Dill: Okay. And then afterwards you held the meeting in the conference room here with the three ladies, after that?

Bishop: After that, ummm, after that, let me see. I think the Boys and Girls Club meeting came between then, right?

Dill: You said you had a call to Barbara Hale, initially, asking about whether she was trying to oust her boss, or I guess get a recount of votes, or whatnot, then afterwards you came over here and had that meeting with the three ladies—

Bishop: That's correct—

Dill: —and then after which you heard there was a blowup?

Bishop: That's correct.

Dill: Then on May 5<sup>th</sup>, or no, I'm sorry, it was the 5<sup>th</sup>—it was the Boys and Girls Club meeting that you encountered Ms. Hale and Ms. Nae'ole—

Bishop: No, Ms. Kupahu and Councilwoman Nae'ole—

Dill: —Yes, I am sorry. Thank you. Then that following Monday you called Ms. Hale and informed her of your conversation with them at the Boys and Girls—

Bishop: —That's correct.

Chair: Any further questions? That is all I had. Mr. Bishop, thank you.

Bishop: You're welcome.

Chair: I'm actually done with all my witnesses and who I wish to call. So Mr. Lee Loy or Mr. Roehrig, if you have any final witnesses to call, or we can be ready to do your submission.

Roehrig: Mr. Chairman, can I confer with Mr. Lee Loy and our client for a minute?

Chair: Sure. We stand in a three-minute recess.

*A recess was called at 2:24 p.m. The Chair called the meeting back to order at 2:27 p.m.*

Chair: All right, we'll reconvene. Mr. Lee Loy?

Lee Loy: Thank you, sir. Emily, I recall your attention to Ms. Hale's number Exhibit 14, which is the Hunter Bishop blog. Emily, look at it. I'll give you ten seconds so everybody can get to that. Emily, I'm looking at it and it doesn't really say in a quote, I am going to fire you, or anything like that. It's kind of like maybe you were going to think about it over the weekend, that kind of thing. But Emily, did you tell Hunter Bishop on May 5, 2007, at the Maku'u Market, with the prosecutor there and the two bikes and the kids and the ice and all that junk—did you tell Hunter Bishop, I'm going to fire Barbara Hale?

Nae'ole: I don't thing so, that is not how I said it. I said I will deal with it when I come back. What happened was, Hunter came up to me after the meeting, and he was all excited. See, I think he stirred things up.

Lee Loy: Let's go back. How long has Hunter been blogging you?

Nae'ole: Well, till today, it is over two months.

Lee Loy: No, I mean the recent stuff.

Nae'ole: Oh, well he used to blog me when I was running my campaign, so that is how I knew Hunter Bishop. I never read any of his blogs when I was running my campaign, because I never like let it irritate me. My children did. My children

was upset they would write, and they would get all mad. That's why none of my children, I have four children, they're not here today. They don't want to see all of this crap happening to their mother. They been hurt. So back then, that's when Hunter Bishop been blogging about me. When he came and asked me that, he said—so he was at our office on 25<sup>th</sup> of April, told me about the recall. Then he appears again on May 5<sup>th</sup> at my town meeting. Then he says, what are you going to do about it? What you going to do? So he is trying to stir things up. I told him I am going to Alaska tomorrow. I got to deal with this when I come back. And so when Barbara called me on May 7<sup>th</sup>, the morning of May 7<sup>th</sup>, and told me that Hunter said I was going to fire her, and she was yelling and screaming at me, I told her to calm down. I'll deal with it when I come back. I couldn't be doing too many things at one time.

Lee Loy: So when she was yelling and screaming at you, you were in Alaska while she was in the office yelling and screaming at you?

Nae'ole: Yes. I think Hunter Bishop called her to stir up the thing, the pot, even more. So, I don't know, I'm looking at it that brother is one of the culprits who really making it worse for us. I was trying to work on this whole thing, you know, like give the incentive to do the pay raise for both of them. I was trying. When I came back from Washington, D.C., I talked to Barbara Hale about stepping back with the aggressiveness, so I was trying to give her a chance, you know. She's a good lady, she was a good lady, but then she turned this claw on me. I cannot do nothing. But to me, I was trying, and Hunter—he the one was, came into our office, stirred up, then he came over there to May 5<sup>th</sup>, then he started riling me up, about what you going to do about it, what you going to do about it. So I said, you know, brother, when I come back from Alaska I'll deal with it. Then he calls her, then she calls me in Alaska, screaming and yelling. I said, calm down Aunty, calm down. When I come back I will deal with it. When she never respond to me—and calling Casey Jarman and doing the whole thing about the key and stuff—that showed me no respect. So how can I have somebody working for me when they no more respect for me? You know, to me it is not called for.

Lee Loy: Thank you.

Chair: Thank you. You can stay right there. I don't have any further questions, but if you would like to give me a five-minute summary before we deliberate. This is your last opportunity to speak to the Board.

Lee Loy: I leave it in my capable colleague's hands.

Chair: Capable colleague.

Roehrig: We would like to thank all of you for coming today, and especially the commission and the County Corporation Counsel and the counsel from the Corporation Counsel's office. This has not been in some ways a pleasant meeting. In some ways it's been a very path-finding kind of hearing, because this commission has set the tone for how we are going to deal with problems of a

political nature, of a very sensitive personnel nature, without trying to curry favor. I think you folks have done it with—the best word I can think of is “aplomb,” with class, and for that we thank you. We didn’t always agree with where you folks were going and how it was being done, but we all felt we got a fair shake, and we all felt that you folks were trying to do the right thing, and for that we thank you. A couple matters that we would like you to pay particular attention to—perhaps you already have. There is a check that is all torn up that was given in evidence. That check tells a big story. It says right on the check receipt that it is a personal loan. It’s a personal loan to Emily, not a campaign donation. That is Barbara Hale’s receipt, and Barbara Hale’s check which she tore in half. The check is endorsed on the back by Emily. So, perhaps the most glaring accusation that has been made is that there was a secret campaign donation that has been blogged over and over again on Hunter Bishop’s site. This \$1,000 campaign donation which was hidden—it is just like Renee Mancho. That’s what Hunter Bishop said in an article he wrote in the Hawai’i Journal. That’s what he said on Gary Safarik’s interview show on Mynah Bird. He said the same thing—this is just like Renee Mancho. It’s not like Renee Mancho. Nothing happened. It wasn’t an illegal contribution. It was a personal loan. Barbara Hale knew that, and the only reason she brought that check today is, we sent a letter to the Corporation Counsel demanding the production of that check, because we can see that it just absolutely took all the wind out of all these accusations. There is not one of them true. I remember a movie I saw that is right on point, I can’t remember the name of it. It could have been *The Client*. Anyway, it was the young lawyer who went after the insurance carrier because his client got cancer and they decided not to have chemotherapy or something, and the lawyer before the company who was cross-examining the insurance adjuster lady who got fired and she was having an affair with some guy in the office, and he says, Hell hath no fury like a woman scorned. So, there is a ring of truth to that in this whole proceeding. On the issue of what the witnesses said, you heard it. There is more than a preponderance of evidence that nothing happened. The task under the ordinance is, it has to be unwarranted utilization of your office for personal things or campaign. The task isn’t a scintilla. It has to be unwarranted. Given the wide scope of that word, I don’t think there is any question that whatever went on in Councilwoman Nae’ole’s office in the first three months of being a Councilwoman was entirely appropriate conduct. They got advice from Council Clerk Casey Jarman to guide them. They had the right honest instincts to go to her when they were having problems. Casey Jarman’s assistant investigated these same discrimination and harassment charges by Barbara Hale, and we smoked that report out, and you have that for you to read. Ken Goodenow investigated the whole thing and found there was no substance to these claims. So, based on that, we would ask you to make a finding that there was not unwarranted utilization of the office for personal matters and for campaign activities, and that given the early part of the office of Councilwoman Nae’ole, if any mistakes were made in the office, they were honest errors that were corrected after properly consulting with the County staff of Corporation Counsel and the County Clerk. Thank you very much. That is all we have.

Chair: Thank you, Mr. Roehrig. At this point the Board members will begin deliberations in public, and we will have a discussion. I would like to advise you not to

interrupt our discussion, or not take part at all in our discussion. You may sit where you are seated, and that is perfectly fine, but the discussion will now focus upon the two major questions before us, which is, did Councilmember Emily Nae'ole utilize her staff to do her personal work from her Council office, thereby violating the Code of Ethics? Did Councilmember Emily Nae'ole utilize her official position to solicit campaign donations from her office, there by violating the Code of Ethics? I would also like to advise the Board members to look in Section 2-83, under Fair Treatment, letter b, where it states: All persons shall be treated in a courteous fair and impartial manner—my mistake, it says: No officer or employee shall use or attempt to use the officer's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following. Then if you look at Section 3: Using County time, equipment or other facilities for private business or campaign purposes. And if you look under Section 5 you see: Using County property or personnel for other than a public activity or purpose. At this time, we would like to start a dialog on the deliberations.

Dill: Mr. Chairman, if I can speak, I think our goal here—and I am speaking for all of us, so correct me if I am wrong—is to try and clarify all that we went through today. What really went on, number one. Number one, see if there is any violation of these codes that you just referenced. Also, if we've seen enough evidence and witness testimony to come to that conclusion. So that is what we need to focus on and try to discuss it among ourselves. Would anyone like to offer an opinion?

Lum: Well, I would like to take them one at a time.

Dill: Okay.

Chair: That's a good idea.

Lum: So we would start with the staff doing personal work in the office. I think that we have received very little evidence that untoward personal—it sounds like there is a little bit of convenience that happens, that we actually have guidelines in our new ethics guide about that, that occasional—like a doctor's appointment or picking up somebody from school on your way home—is acceptable as long as it is not overdone. I don't—I didn't feel that—I felt there was very much of that going on in the office.

Sharpless: I agree, and I don't see the need for looking for any more, or trying to find any more material to support that claim. I don't feel that the errands, or the duty, or the activities Ms. Hale alleges that Ms. Gwen did were untoward in any way.

Dill: I also agree that the errors that were wrong were based on convenience rather than deliberately done on County time. Mr. Chairman, your opinion?

Chair: Well, it is very difficult for me. I am a constituent of District 5, and it's very unfortunate that this whole incident should occur to begin with. It is good that we

aired these grievances before us today and listened to all the facts. I cannot find anything, from what we have heard today, to warrant any possible reason why we should find any of these allegations to be true. But, I must say, as a constituent, as a voter, as a member of District 5, we need to establish more confidence in our district, and this really hurt the confidence of District 5. There are, in my opinion, some gray areas. A gray area to me is when you give a \$5,000 discretionary fund to someone, you probably shouldn't ask them to donate food to one of your events. As a Councilwoman for the district, you are held to a much higher standard and you always have to take the high road to not put any suspicion or doubts as to what you are doing to the voters. It's a very, very, very difficult role that you play for us. But, what is before us today, I can see no possible violations, and I would recommend to the Board to make a motion that there were no violations in those two questions before us today.

Sharpless: So moved.

Lum: I would like to say something.

Chair: Sure.

Lum: In my mind, this is personal, I feel that somebody coming in to such a big office is kind of allowed a little learning time. I think we must have good County education as far as Ethics Code, as far as campaign, your campaign donation and all these things. It seems to me that there was an attempt in the office to meet these requirements to try to learn in a crash course all these things that you have to learn and so if there were things that maybe weren't, I don't think they were serious things that maybe weren't quite right. I haven't seen any evidence of that. I haven't seen any evidence about the campaign donations. All these other things don't seem to be that at all. We had a lot of things stirring around here. I think that when there has been a difficult time in your office, in your district, it is not my district, I would guess that if everybody pulled together, everybody will have learned a lot. I hope that is so and that it all hasn't been just negative. I don't see any violations and I think we should go ahead with a vote.

Chair: First of all, we need a formal motion, Kendall. Kendall, in your motion, what you would—you need to do—is formalize the motion by stating that there is no violation of Section 2-83, Section b, and that we could find no reason for violation in— Councilmember Emily Nae'ole did not utilize her staff to do her personal work in her office and she did not utilize her official position to solicit campaign donations from her office which means that there are no Code of Ethics violations made. Now if you want to say so moved now, I think we have an adequate motion.

Sharpless: So moved.

Lum: I second.

Chair: With a motion and a second, we are now open for a discussion.

Dill: Yeah, I just wanted to add to both what you and Ann talked about. There is a gray area, and Ms. Nae'ole, this is unfortunate, not only for you and the parties involved, but more importantly for your constituents. I feel that this has taken away from the job that they elected you to do. Ann mentioned the learning curve and being unsure of this whole new world you are getting into and I think this is a learning experience and I just hope that you can go back and learn from this and understand that your statement of where your heart is at is right and that you can do the best job you can in representing your constituents and their best interests. So, if there is anything positive that comes out of this, I hope that is what it is. Go ahead, Mr. Chair.

Chair: Kendall?

Sharpless: I am a former state employee and I think in terms of some of the positives, or a positive that might come out of this is not directed just to a council member, or in this case Ms. Nae'ole. Any employee or civil servant, whether they are exempt or not has a duty to be productive and I think this three months, or however long it went on, was a very nonproductive time and a very—anyway it was nonproductive and it took away from the work of the people. It took away from the ability of the district to function and I think that if these things ever happen again I would hope that there is a very swift intervention that has some guidelines and that the people who are involved realize that they don't work for one person, they work for a district, for the citizens and their position is a special one. They were given this job. They are accountable to a union rule, or civil service rules and therefore they do have, in my opinion, some kind of a code or standard that they need to uphold. That's all.

Chair: With that said, do we have a call for a vote?

Dill: I would like to say one more thing Mr. Chairman. Ms. Nae'ole, it is difficult for me to give an elder advice, but from an outside perspective, just to be careful who you surround yourself with. Obviously, there is some pilikia, like you said, between each other [*clapping*]. Your job comes with a lot of responsibility and a lot of answering to your constituents. I'm sure that you have learned this here, but I think it should go on record. Whether this litigation continues with your lawyers or not, try and minimize it as a distraction and surround yourself with people that build yourself up, rather than bring you down.

Nae'ole: Thank you.

Chair: With that said, all in favor of the motion vote signify by saying aye.

Lum: Aye.

Sharpless: Aye.

Dill: Aye.

Chair: Chair votes aye. Mr. Corporation Counsel, could you write an informal advisory opinion writing the Board's desires? And we would like to thank you for coming in and answering these questions. We are going to take a ten-minute recess.

*A recess was called at 2:52 p.m. Chair called the meeting back to order at 3:01 p.m.*

**c. Further review and discussion of draft *Ethics Guide for Hawai'i County Officers and Employees* booklet.**

The following corrections were offered by Ms. Lum:

Page 2: The *Applicability* section. Mr. Ashida is to check on the status of a letter that was submitted to the County Council regarding the definition of an officer and whether an ordinance would be required to change that definition.

Page 4: In the last paragraph, change the double hyphen to an em dash.

Page 8: In the last paragraph, add the word "confidential" so that the heading reads: **Boards and Commissions Required to File Confidential Disclosures.**

Page 9: In the first paragraph, add the word "confidential" so that the heading reads: **Regulatory Employees Required to File Confidential Disclosures.** In addition, the order of the boards and commissions should be alphabetized.

Page 13: Under **County Resources**, change "private business purposes" to "non-County related purposes" and delete the last sentence, "The term 'business' includes non-profit organizations."

**d. Further review and discussion of the *Confidential Financial Disclosure Form*.**

**e. Further review and discussion on the *Rules of Practice and Procedure of the Board of Ethics*.**

**Motion and Vote:** Mr. Dill moved to have items c, d, and e continued to the August agenda, under Unfinished Business. Ms. Lum seconded the motion. There was no discussion. All members voted aye. Motion carried.

## **7. EXECUTIVE SESSION**

**Motion and Vote:** Ms. Lum moved to enter into Executive Session, Ms. Sharpless seconded the motion, and all members present voted aye.

*Executive Session was entered into at 3:15 p.m. Minutes are separate.*

*Regular Session was re-entered at 3:20 p.m.*

The Chair said they had reviewed the financial disclosure forms of Patricia Provalenko, Benjamin Watai, Sr., and Margaret B. Tokunaga.

**Motion and Vote:** Ms. Sharpless moved to accept and file the financial disclosure forms for Patricia Provalenko, Benjamin Watai, Sr., and Margaret B. Tokunaga. Ms. Lum seconded the motion, and all members present voted aye.

## **8. ANNOUNCEMENT**

The Chair announced that the next regular monthly meeting of the Board of Ethics is scheduled for Wednesday, August 8, 2007, at the Ben Franklin Building at 333 Kilauea Avenue, Second Floor, Hilo, Hawai'i.

## **9. ADJOURNMENT**

**Motion and Vote:** Mr. Dill moved to adjourn the meeting, Ms. Sharpless seconded the motion, and all members present voted aye.

*The meeting adjourned at 3:30 p.m.*

Respectfully submitted:

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Karen Delimont, Secretary