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Transaction ID 67422310
Case No. 20-CU-06-379, 20-CE-06-940**

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

ERIN K. KUSUMOTO,

Complainant(s),

and

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO; and DEPARTMENT OF
EDUCATION, State of Hawai'i,

Respondent(s).

CASE NO(S). 20-CU-06-379
20-CE-06-940

ORDER NO. 3832

ORDER SETTING BRIEFING SCHEDULE

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The Hawai'i Labor Relations Board (Board) held a hearing on the merits (HOM) in this case on March 23, 2022. During the HOM, an employee of Respondent HAWAII GOVERNMENT EMPLOYEES ASSOCIATION, AFSCME, LOCAL 152, AFL-CIO (HGEA or Respondent) testified that, among other things, he had conversations with counsel for Complainant ERIN K. KUSUMOTO (Kusumoto), Miles Miyamoto, Esq. (Miyamoto), during the course of some of the events at issue in these proceedings. Based on this testimony, HGEA and Respondent DEPARTMENT OF EDUCATION, State of Hawai'i (DOE or Respondent and collectively with HGEA as Respondents) indicated their intention to call Miyamoto as a necessary witness in this case.

Therefore, DOE made an oral motion to disqualify Miyamoto based on Hawai'i Rules of Professional Conduct (HRPC) Rule 3.7, Lawyer as Witness. HRPC Rule 3.7 reads:

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
- (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case; or

- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9 of these Rules.

Based on the plain language of HRPC Rule 3.7, Miyamoto's conversations with the HGEA employee do not immediately disqualify him from serving as Kusumoto's attorney. The Board must consider whether Miyamoto would be a necessary witness in this case, and, if so, whether any of the three exceptions would apply.

Therefore, the Board orders the parties to submit briefs that address HRPC Rule 3.7's applicability to Miyamoto as Kusumoto's attorney. These briefs, at a minimum, must address the following issues:

1. What prejudice, if any, would DOE or HGEA suffer if Miyamoto continues to serve as counsel to Kusumoto?
2. What is the importance and probable tenor of Miyamoto's testimony? Specifically, what issues would Miyamoto be expected to testify on and why would that testimony be necessary or relevant for the Board to consider?
3. What is the likelihood that Miyamoto's testimony would conflict with that of other witnesses? and
4. What would be the effect of such disqualification on Kusumoto?

Each party must submit their brief on or before **April 11, 2022 at 4:30 p.m.** No reply briefs will be accepted, and the Board will not hold a hearing before issuing its ruling on this issue. Briefs may not exceed twenty-five pages in length, exclusive of table of contents, table of authorities, declarations, exhibits, and other attachments. Briefs longer than ten pages must include a table of contents and a table of authorities.

The Board will consider these briefs and will issue a ruling on DOE's oral motion prior to resuming the HOM. All previously scheduled HOM dates are cancelled. After issuing its ruling, the Board will discuss scheduling of future dates with the parties.

DATED: Honolulu, Hawai'i, _____ March 23, 2022 _____.

HAWAII LABOR RELATIONS BOARD
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Manu R. Oshiro

MANU R. OSHIRO, Chair

John N. Musto

JOHN N. MUSTO, Member

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KUSUMOTO v. HGEA and DOE
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