

**COUNCIL OF THE COUNTY OF MAUI**  
**COMMITTEE OF THE WHOLE**

July 17, 2009

**Committee  
Report No.** \_\_\_\_\_

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on June 25, 2009, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated May 6, 2009, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING AARON WON IN CHRISTOPHER GRINDLING V. SGT. ROY HIRAYAMA, ET AL., CIVIL NO. CV05-00694 DAE BMK". The purpose of the proposed resolution is to indemnify Aaron Won, a former police officer, in the case.

Attached to the request is a copy of the complaint filed on June 30, 2005, and a copy of correspondence dated November 19, 2008, from Doreen N. Gomes, Chair of the Police Commission, to Chief of Police Thomas M. Phillips. In her correspondence, Ms. Gomes informed Chief Phillips that at its meeting on November 19, 2008, the Police Commission voted to approve legal representation for former police officer Won.

Your Committee notes that this complaint alleges personal injury, infliction of emotional distress, and violations of Christopher Grindling's constitutional rights.

Your Committee further notes the following: (1) under general legal principles, the County may be responsible for the tortious acts of its employees; and (2) Sections 52D-8 and 52D-9, Hawaii Revised Statutes, require the counties to provide legal representation for police officers when the officers are sued for acts committed in the performance of their duties.

A Deputy Corporation Counsel explained that Sergeant Hirayama and former police officer Won are alleged to have assaulted Mr. Grindling on June 4, 2004, while he was detained in the holding cell at the Wailuku Police Station. The Deputy informed your Committee that all of Mr. Grindling's allegations were dismissed at the trial court level; however, he has appealed the case.

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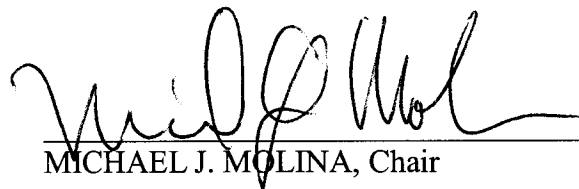
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Your Committee notes that on August 8, 2008, the Council (2007-2009 Council term) adopted Resolution No. 08-66 indemnifying Sergeant Hirayama in the lawsuit.

Based on the recommendation of the Department of the Corporation Counsel, your Committee voted 6-0 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Mateo, and members Baisa, Nishiki, Pontanilla, and Victorino voted "aye". Committee members Johnson, Kaho'ohalahala, and Medeiros were excused.

Your Committee of the Whole **RECOMMENDS** that Resolution No. \_\_\_\_\_, attached hereto, entitled "INDEMNIFYING AARON WON IN CHRISTOPHER GRINDLING V. SGT. ROY HIRAYAMA, ET AL., CIVIL NO. CV05-00694 DAE BMK" be **ADOPTED**.

This report is submitted in accordance with Rule 7 of the Rules of the Council.

  
\_\_\_\_\_  
MICHAEL J. MOLINA, Chair

# Resolution

No. \_\_\_\_\_

INDEMNIFYING AARON WON IN CHRISTOPHER GRINDLING V.  
SGT. ROY HIRAYAMA, ET AL., CIVIL NO. CV05-00694 DAE BMK

WHEREAS, Aaron Won, a former police officer and employee of the County of Maui, has been named as a defendant in his individual capacity in the case of Christopher Grindling v. Sgt. Roy Hirayama et al., filed in the Circuit Court of the Second Circuit, Civil No. 05-1-0249(3), on June 30, 2005 and received by the Department of the Corporation Counsel on October 13, 2005; and

WHEREAS, the County of Maui removed this case to the U.S. District Court for the District of Hawaii on November 1, 2005, where it was assigned Civil No. CV05-00694 DAE BMK; and

WHEREAS, the complaint alleges personal injury, emotional distress, the deprivation of Christopher Grindling's rights under the Fifth and Eighth Amendments to the U.S. Constitution and violation of his rights under 42 U.S.C. § 1983; and

WHEREAS, the Police Commission has reviewed this matter under its statutory authority and determined that Aaron Won is entitled to legal representation; and

WHEREAS, based upon an investigation into this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended to the Council that the body act to indemnify this Defendant for any

**Resolution No. \_\_\_\_\_**

damages that may be assessed against him in the above-referenced lawsuit, said damages being requested within the Complaint are: general, special and costs of suit, including attorney's fees; and

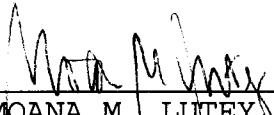
WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would be in the best interest of the County of Maui to indemnify this Defendant in the above-referenced lawsuit; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That Aaron Won is indemnified by the County of Maui for any damages that may be assessed against him in the above-referenced lawsuit; and

2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, the Chief of Police, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:

  
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MOANA M. LUTEY  
Deputy Corporation Counsel  
County of Maui

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