

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

November 20, 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 November 3, 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 September 21, 2009, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ORTIZ & KATANO, A LAW CORPORATION, IN MICHAEL MAGLIATO, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF KEONE ANTHONY MAGLIATO VS. FORREST TANIGUCHI A/K/A FOREST TANIGUCHI, ET AL., CIVIL NO. 09-1-0043(3)". The purpose of the proposed resolution is to authorize the employment of Ortiz & Katano, A Law Corporation (Ortiz & Katano), as special counsel in the case, for a total compensation of \$130,000.

Your Committee notes that the complaint alleges the wrongful death of Keone Anthony Magliato, a minor, resulting from injuries suffered in a vehicle collision on October 27, 2008. The Plaintiffs contend that the shrubbery maintained by the County along the shoulder of the road restricted the sight distance of motorists, and contributed to the collision.

The Deputy Corporation Counsel explained that the law firm of Ortiz & Katano, located on Oahu, has agreed to a flat fee arrangement that includes \$125,000 for compensation, and \$5,000 for travel costs. She noted that the flat fee will be paid in increments tied to the stages of litigation. If the case settles, then the firm will be paid only for the costs incurred up to the point of settlement. The flat fee will cover costs through a trial in the case.

The Deputy Corporation Counsel stated that her Department has worked effectively with Ortiz & Katano on other cases. She noted that the firm has the necessary experience and capability to handle this type of case. Moreover, Ortiz & Katano has

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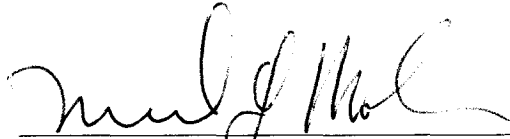
agreed to a flat fee arrangement, rather than an hourly rate, providing a financial benefit to the County. The Deputy Corporation Counsel assured your Committee that the assistance of special counsel is necessary in this case.

Your Committee voted 8-0 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Mateo, and members Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, and Pontanilla voted "aye". Committee member Victorino was excused.

Your Committee notes that resolutions authorizing employment of special counsel must be adopted by a two-thirds vote of the Council, pursuant to Section 3-6.6 of the Revised Charter of the County of Maui (1983), as amended.

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ORTIZ & KATANO, A LAW CORPORATION, IN MICHAEL MAGLIATO, INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE OF KEONE ANTHONY MAGLIATO VS. FORREST TANIGUCHI A/K/A FOREST TANIGUCHI, ET AL., CIVIL NO. 09-1-0043(3)" be ADOPTED.

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



MICHAEL J. MOLINA, Chair

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
ORTIZ & KATANO, A LAW CORPORATION, IN MICHAEL MAGLIATO,
INDIVIDUALLY AND AS SPECIAL ADMINISTRATOR OF THE ESTATE
OF KEONE ANTHONY MAGLIATO VS. FORREST TANIGUCHI
A/K/A FOREST TANIGUCHI, ET AL., CIVIL NO. 09-1-0043(3)

WHEREAS, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

WHEREAS, the Council finds that there is a real necessity to retain the firm of ORTIZ & KATANO, A LAW CORPORATION (the firm), as special counsel to represent Defendant County of Maui (Defendant) in Michael Magliato, Individually and as Special Administrator of the Estate of Keone Anthony Magliato vs. Forrest Taniguchi a/k/a Forest Taniguchi, et al., Civil No. 09-1-0043(3), because of the complexity of litigation issues; and

WHEREAS, the firm and the Department of the Corporation Counsel shall work as a team in this matter and take all possible steps to minimize the level of attorneys' fees and costs; and

WHEREAS, the firm's conduct in this matter shall reflect the firm's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now, therefore,

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

1. That the Council hereby authorizes the employment of the

Resolution No. _____

firm ORTIZ & KATANO, A LAW CORPORATION, as special counsel to represent Defendant in the case of Michael Magliato, Individually and as Special Administrator of the Estate of Keone Anthony Magliato vs. Forrest Taniguchi a/k/a Forest Taniguchi, et al., Civil No. 09-1-0043(3); and

2. That the total compensation for the employment of the firm ORTIZ & KATANO, A LAW CORPORATION as special counsel shall not exceed \$130,000; and

3. That Jonathan L. Ortiz of ORTIZ & KATANO, A LAW CORPORATION shall perform all duties required in the defense of this case; and

4. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

5. That the compensable costs shall include: (1) fees for printing and witnesses; (2) fees for copies necessarily obtained for use in the case; (3) fees of the clerk and marshall; (4) fees of the court reporter for necessary transcripts; (5) docket fees; and (6) compensation of court-appointed experts and interpreters; and

6. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) messenger charges; (5) fees for computerized legal research; (6) travel, unless justified by extraordinary or compelling

Resolution No. _____

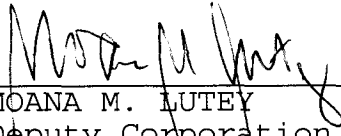
circumstances; (7) investigative expenses; (8) other costs reasonably considered part of a law firm's overhead; and

7. That in instances of travel, both inter-island and out-of-state travel includes travel on regular coach economy fare and must be pre-approved by the Corporation Counsel; and

8. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

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

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui

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