

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

December 18, 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 December 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 November 13, 2009, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL GASS WEBER MULLINS, LLC IN ELMER STEPHEN WEREB, ET AL. VS. MAUI COUNTY, ET AL., CIVIL NO. 09-00198 JMS LEK". The purpose of the proposed resolution is to authorize the employment of Gass Weber Mullins LLC (Gass Weber & Mullins) as special counsel to represent the County of Maui in the case for a total compensation of \$150,000.

A Deputy Corporation Counsel explained that the case involves the alleged wrongful death of Dennis Werek on September 28, 2008, while he was in police custody at the Lahaina holding facility. She noted that the medical examiner determined that Mr. Werek, who was 47 years old, died of natural causes.

She also noted that the amount requested is intended to cover attorneys' fees, travel costs, and other compensable fees and explained that payment will be made in gradually increasing increments, tied to the various stages of litigation. The final and largest payment is to be made the day trial begins. If the case is resolved before trial, the payments may equal an amount less than \$150,000. If so, the difference will be released to the County.

Your Committee expressed concern that Gass Weber & Mullins is located outside the State of Hawaii, and questioned whether the Department considered hiring a local law firm. The Deputy Corporation Counsel explained that the Department annually solicits letters of interest from law firms locally and nationwide to assist the Department with this type of litigation. She noted that litigation involving police action is a specialized area of law, and that only one Hawaii law firm submitted a letter of interest indicating a

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indicating a willingness to assist with this type of litigation. Unfortunately, she noted, that law firm is not available to assist with this case. Your Committee found it significant that the Department has worked successfully with Gass Weber & Mullins on similar cases in the past.

Your Committee voted 8-0 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Mateo, and members Baisa, Johnson, Medeiros, Kaho'ohalahala, Nishiki, and Victorino voted "aye". Committee member Pontanilla 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 GASS WEBER MULLINS, LLC IN ELMER STEPHEN WEREB, ET AL. VS. MAUI COUNTY, ET AL., CIVIL NO. 09-00198 JMS LEK" 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
GASS WEBER MULLINS, LLC IN ELMER STEPHEN
WEREB, ET AL. VS. MAUI COUNTY, ET AL.,
CIVIL NO. 09-00198 JMS LEK

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 GASS WEBER MULLINS, LLC (the firm), as special counsel to represent Defendant County of Maui (Defendant) in Elmer Stephen Wereb, et al. vs. Maui County, et al., Civil No. 09-00198 JMS LEK, 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 firm GASS WEBER MULLINS, LLC, as special counsel to represent Defendant in the case of Elmer Stephen Wereb, et al., vs. Maui County, et al., Civil No. 09-00198 JMS LEK; and

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2. That the total compensation for the employment of the firm GASS WEBER MULLINS, LLC as special counsel shall not exceed \$150,000; and

3. That Ric Gass of GASS WEBER MULLINS, LLC shall perform the bulk of the legal services in this matter; 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 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 must be pre-approved by the Corporation Counsel; and

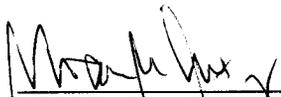
8. That the expenditures of additional funds or substantial

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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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