

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

November 4, 2011

Committee
Report No. _____

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

Chair and Members:

Your Policy Committee, having met on October 19, 2011, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated October 4, 2011, the Department of the Corporation Counsel requested consideration of the possible settlement of Leonor Rafael v. County of Maui, et al., Civil 09-1-0009(1). Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF LEONOR RAFAEL V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0009(1)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case on behalf of the County and Police Officer Kyle Badayos.

Your Committee notes that the complaint alleges damages as a result of a collision between the vehicle being driven by Ms. Rafael and the vehicle being driven by Officer Badayos at the intersection of Kaimana Street and Molokai Akau Street in Kahului, Maui, Hawaii, on July 12, 2008.

A Deputy Corporation Counsel provided a brief overview of the case. He noted that Officer Badayos was on duty at the time of the accident. The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting, closed to the public.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes ("HRS"); and to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential under a State or Federal law, or a court order, pursuant to Section 92-5(a)(8), HRS.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 6-0 to recommend adoption of the proposed

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resolution to authorize the settlement of the matter under the terms proposed in the executive meeting. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Couch, Pontanilla, and White voted "aye". Committee members Cochran, Mateo, and Victorino were excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating a nonsubstantive revision.

Your Policy Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF LEONOR RAFAEL V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0009(1)", be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF LEONOR RAFAEL V.
COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0009(1)

WHEREAS, Plaintiff Leonor Rafael filed a lawsuit against Kyle Badayos and the County of Maui in the Circuit Court of the Second Circuit on January 7, 2009, Civil No. 09-1-0009(1), claiming damages for her injuries as a result of a collision between her vehicle and the motor vehicle driven by Kyle Badayos at the intersection of Kaimana Street and Molokai Akau Street on July 12, 2008; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Policy Committee; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer

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of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

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

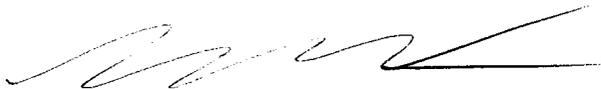
1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Policy Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County of Maui and Kyle Badayos in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

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

APPROVED AS TO FORM AND LEGALITY:



RICHARD B. ROST
Deputy Corporation Counsel
County of Maui