

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY COMMITTEE**

December 16, 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 August 17, 2011 and November 30, 2011, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated July 8, 2011, the Department of the Corporation Counsel transmitted a copy of the First Amended Complaint and requested consideration of the following:

1. A proposed resolution entitled "INDEMNIFYING BENJAMIN M. ACOB IN MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE; CIVIL NO. CV 10-00321 LEK/KSC". The purpose of the proposed resolution is to indemnify Benjamin M. Acob, former Prosecuting Attorney, in the case.
2. A proposed resolution entitled "INDEMNIFYING TIMOTHY T. TATE IN MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE; CIVIL NO. CV 10-00321 LEK/KSC". The purpose of the proposed resolution is to indemnify Timothy T. Tate, Deputy Prosecuting Attorney, in the case.

Your Committee notes that the complaint alleges discrimination against Plaintiff Kosegarten based on her sex and sexual orientation, and unlawful employment practices in violation of the Fourteenth Amendment to the United States Constitution and Hawaii State law. The complaint further alleges breach of fiduciary duty as to Defendants County of Maui and Acob, and defamation as to Defendant Tate.

By correspondence dated July 12, 2011, the Department of the Corporation Counsel requested consideration of the possible settlement of Marie J. Kosegarten v. Department of the Prosecuting Attorney, County of Maui, Benjamin M. Acob, and Timothy T. Tate, Civil 10-00321 LEK/KSC. Attached to the request is a proposed

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resolution entitled "AUTHORIZING SETTLEMENT OF MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE; CIVIL NO. CV 10-00321 LEK/KSC". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case on behalf of Defendants County of Maui, Acob, and Tate.

A Deputy Corporation Counsel provided an overview of the case and 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. Your Committee recommended that the proposed resolution to authorize settlement of the case be revised to clarify that the settlement would be of the entire case on behalf of the three named defendants.

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 resolution to indemnify Defendant Acob, the proposed resolution to indemnify Defendant Tate, and the proposed resolution authorizing settlement of the case. Committee Chair Hokama, Vice-Chair Carroll, and members Cochran, Mateo, Victorino, and White voted "aye". Committee members Baisa, Couch, and Pontanilla were excused.

Your Committee is in receipt of a revised proposed resolution authorizing settlement of the case, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Policy Committee RECOMMENDS the following:

1. That Resolution \_\_\_\_\_, attached hereto, entitled "INDEMNIFYING BENJAMIN M. ACOB IN MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE; CIVIL NO. CV 10-00321 LEK/KSC", be ADOPTED;

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2. That Resolution \_\_\_\_\_, attached hereto, entitled "INDEMNIFYING TIMOTHY T. TATE IN MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE; CIVIL NO. CV 10-00321 LEK/KSC", be ADOPTED; and
  
3. That Resolution \_\_\_\_\_, attached hereto, entitled "AUTHORIZING SETTLEMENT OF MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE; CIVIL NO. CV 10-00321 LEK/KSC", be ADOPTED.

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

  
\_\_\_\_\_  
G. RIKI HOKAMA, Chair

# Resolution

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

INDEMNIFYING BENJAMIN M. ACOB IN  
MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING  
ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE;  
CIVIL NO. CV 10-00321 LEK/KSC

WHEREAS, Benjamin M. Acob has been named individually as a defendant in the case of Marie J. Kosegarten v. The Department of the Prosecuting Attorney, County of Maui; Benjamin M. Acob; and Timothy T. Tate, Civil No. CV 10-00321 LEK/KSC, filed in the United States District Court for the District of Hawai'i on June 4, 2010, and thereafter in a First Amended Complaint filed on June 23, 2010; and

WHEREAS, Plaintiff Marie J. Kosegarten seeks damages as a result of her employment with the County of Maui; and

WHEREAS, based upon an investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended that the Council indemnify Benjamin M. Acob for any damages that may be assessed against him in the above-referenced lawsuit; and

WHEREAS, the Complaint seeks back pay, general, special, compensatory, and punitive damages, pre-judgment interest, attorneys' fees, and costs of suit; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would

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

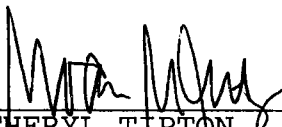
be in the best interest of the County of Maui to indemnify Benjamin M. Acob in the above-referenced lawsuit; now, therefore,

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

1. That Benjamin M. Acob is indemnified by the County of Maui for any damages, costs, interest, and/or attorneys' fees 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 Prosecuting Attorney, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
for CHERYL TIPTON  
Deputy Corporation Counsel  
County of Maui

# Resolution

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

INDEMNIFYING TIMOTHY T. TATE IN  
MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING  
ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE;  
CIVIL NO. CV 10-00321 LEK/KSC

WHEREAS, Timothy T. Tate has been named individually as a defendant in the case of Marie J. Kosegarten v. The Department of the Prosecuting Attorney, County of Maui; Benjamin M. Acob; and Timothy T. Tate, Civil No. CV 10-00321 LEK/KSC, filed in the United States District Court for the District of Hawai'i on June 4, 2010, and thereafter in a First Amended Complaint filed on June 23, 2010; and

WHEREAS, Plaintiff Marie J. Kosegarten seeks damages as a result of her employment with the County of Maui; and

WHEREAS, based upon an investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended that the Council indemnify Timothy T. Tate for any damages that may be assessed against him in the above-referenced lawsuit; and

WHEREAS, the Complaint seeks back pay, general, special, compensatory, and punitive damages, pre-judgment interest, attorneys' fees, and costs of suit; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would

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

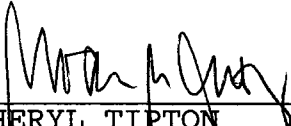
be in the best interest of the County of Maui to indemnify Timothy T. Tate in the above-referenced lawsuit; now, therefore,

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

1. That Timothy T. Tate 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 Prosecuting Attorney, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



*for* \_\_\_\_\_  
CHERYL TIPTON  
Deputy Corporation Counsel  
County of Maui

# Resolution

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

AUTHORIZING SETTLEMENT OF  
MARIE J. KOSEGARTEN V. THE DEPARTMENT OF THE PROSECUTING  
ATTORNEY, COUNTY OF MAUI; BENJAMIN M. ACOB; AND TIMOTHY T. TATE;  
CIVIL NO. CV 10-00321 LEK/KSC

WHEREAS, Plaintiff Marie J. Kosegarten (hereinafter "Plaintiff") initially filed a lawsuit in the United States District Court on June 4, 2010, Civil No. CV10-00321 LEK/KSC, against the Department of the Prosecuting Attorney, County of Maui; Benjamin M. Acob; and Timothy T. Tate, claiming general and special damages related to her employment with the County, and thereafter filed a First Amended Complaint on June 23, 2010; 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 entire case on behalf of the County of Maui, Benjamin M. Acob and Timothy T. Tate 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 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 entire case on behalf of the County of Maui, Benjamin M. Acob and Timothy T. Tate 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 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 Corporation Counsel and the Prosecuting Attorney.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
CHERYL TIPTON  
Deputy Corporation Counsel  
County of Maui