

COUNCIL OF THE COUNTY OF MAUI

**POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE**

March 25, 2014

**Committee
Report No.** _____

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

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on March 17, 2014, makes reference to County Communication 13-41, from Council Chair Gladys C. Baisa, regarding litigation matters.

By correspondence dated March 11, 2014, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL MARR JONES & WANG A LIMITED LIABILITY LAW PARTNERSHIP IN JOHN DOE V. COUNTY OF MAUI, LODGED UNDER SEAL IN CIVIL NO. CV14-00102 JMS BMK". The purpose of the proposed resolution is to authorize the employment of Marr Jones & Wang A Limited Liability Law Partnership as special counsel in the case because of a conflict of interest, for a total compensation not to exceed \$150,000. Attached to the correspondence is a copy of the resume of Richard M. Rand, a partner with the firm. He would provide the bulk of legal services in this matter.

Your Committee notes the proposed resolution explains the complaint in this matter was lodged under seal of the United States District Court for the District of Hawaii and, therefore, could not be attached as an exhibit to a public document.

By correspondence dated March 14, 2014, the Department of the Corporation Counsel advised that on March 12, 2014, plaintiff's counsel withdrew the motion to file the complaint under seal. On March 13, 2014, the Department was notified the seal had been lifted and all documents would be placed on the public docket. Therefore, the case name and complaint are now public record. The Department also transmitted a revised proposed resolution, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL MARR JONES & WANG A LIMITED LIABILITY LAW PARTNERSHIP IN NELDON MAMUAD V. COUNTY OF MAUI IN CIVIL NO. CV14-00102 JMS BMK", and a copy of the complaint.

COUNCIL OF THE COUNTY OF MAUI
POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE

Page 2

Committee
Report No. _____

Your Committee notes the complaint alleges the County violated Mr. Mamuad's civil rights and liberties, including his right to freedom of speech, arising from its investigation and finding that Mr. Mamuad had violated the County's Violence in the Workplace Action Plan in connection with his administration of a Facebook page previously known as "TAGUMAWatch" and now known as "MAUIWatch". The complaint seeks a declaratory judgment the County violated Mr. Mamuad's right to speak freely on matters of public concern and the Violence in the Workplace Action Plan is unconstitutional as applied to Mr. Mamuad. The complaint also seeks an injunction, including an order that the County expunge all records of disciplinary proceedings against Mr. Mamuad, and an award of attorneys' fees and costs, and actual and nominal damages.

Attached to the complaint is a copy of correspondence dated January 21, 2014, from the Managing Director to Mr. Mamuad, stating the County had received a written complaint on August 13, 2013, alleging Mr. Mamuad had subjected a fellow County employee to harassment and cyber-bullying through the use of an online social media website. The correspondence stated Mr. Mamuad, as an active member of the Liquor Control Commission, is held to the same standards as an employee or officer of the County of Maui. It further stated the Department of the Corporation Counsel and the Department of Personnel Services had completed their joint investigation and determined a violation of the Violence in the Workplace Action Plan had occurred.

The Corporation Counsel gave a brief overview of the request for employment of special counsel. He noted the Department believes there is a conflict of interest prohibiting it from representing the County in the lawsuit. He based this conclusion on, among other things, the Department's role in investigating the underlying harassment complaint and allegations in the pending civil case specifically referencing Corporation Counsel and a deputy.

Your Committee recommended the proposed resolution be revised by lowering the maximum amount authorized for compensation of special counsel from \$150,000 to \$50,000.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 5-1 to recommend adoption of the proposed resolution incorporating your Committee's revisions. Committee Chair

COUNCIL OF THE COUNTY OF MAUI
**POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE**

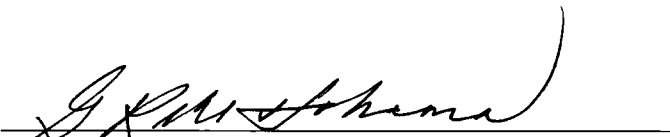
Page 3

Committee
Report No. _____

Hokama, Vice-Chair Couch, and members Cochran, Crivello, and Victorino voted “aye”. Committee member White voted “no”. Committee member Guzman abstained. Committee members Baisa and Carroll were excused.

Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled “AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL MARR JONES & WANG A LIMITED LIABILITY LAW PARTNERSHIP IN NELDON MAMUAD V. COUNTY OF MAUI IN CIVIL NO. CV14-00102 JMS BMK”, be ADOPTED.

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



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
MARR JONES & WANG A LIMITED LIABILITY LAW PARTNERSHIP
IN NELDON MAMUAD V. COUNTY OF MAUI
IN CIVIL NO. CV14-00102 JMS BMK

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 Marr Jones & Wang A Limited Liability Law Partnership ("the firm") as special counsel to represent the County of Maui in the lawsuit Neldon Mamuad v. County of Maui in Civil No. CV14-00102 JMS BMK, because of a conflict of interest; and

WHEREAS, the County of Maui has been named as a defendant in the lawsuit; 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 Marr Jones & Wang A Limited Liability Law Partnership as special counsel to represent the County of Maui in Neldon Mamuad v. County of Maui in Civil No. CV14-00102 JMS BMK; and

2. That the total compensation for the employment of the firm Marr Jones & Wang A Limited Liability Law Partnership as special counsel shall not exceed \$50,000; and

3. That partner Richard M. Rand, Esq. shall provide the bulk of the legal services in this matter; and

4. That the hourly rate for partners shall not exceed \$375; and

5. That the hourly rate for associates shall not exceed \$255; and

6. That the hourly rate for paralegal staff shall not exceed \$135; and

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

8. 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 marshal; (4) fees of the court reporter for necessary transcripts; (5) docket fees; and (6) compensation of court-appointed experts and interpreters; and

9. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4)

Resolution No. _____

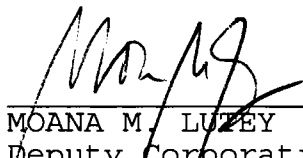
messenger charges; (5) fees for computerized legal research; (6) travel, unless justified by extraordinary or compelling circumstances; (7) investigative expenses; and (8) other costs reasonably considered part of a law firm's overhead; and

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

11. That the expenditures of additional funds or substantial changes to the responsibilities of the firm shall require Council approval; and

12. 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. LUCEY
Deputy Corporation Counsel
County of Maui