

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 23, 2016

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 August 5, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated July 19, 2016, the Department of the Corporation Counsel transmitted a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN HARRY DONENFELD v. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 16-00381-DKW-KJM." The purpose of the proposed resolution is to authorize the employment of Kobayashi Sugita & Goda, LLP as special counsel for Alan Arakawa, who has been identified as a Defendant in his individual capacity, in Harry Donenfeld v. County of Maui, et al., Civil 16-00381 DKW-KJM, for a total compensation not to exceed \$75,000.

Your Committee notes the Complaint alleges Harry Donenfeld was terminated as the Maui County Film Commissioner in violation of his due process rights under the United States and Hawaii Constitutions, breach of contract, defamation, and violations of statutory privacy interests, among other things. Mr. Donenfeld seeks damages including punitive damages.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed resolution, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI SUGITA & GODA, LLP IN HARRY DONENFELD v. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 16-00381 DKW-KJM," approved as to form and legality, incorporating nonsubstantive revisions.

Your Committee notes Section 3-6(6), Revised Charter of the County of Maui (1983), as amended, authorizes the Council to retain or employ,

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by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Charter Section 3-6(6) also requires that the compensation, if any, to be paid for the services be specified.

A Deputy Corporation Counsel said the Department would represent the County and the Mayor in his official capacity. He said special counsel is proposed to represent the Mayor in his individual capacity.

Because the case involves ongoing litigation, the Deputy requested the opportunity to convene an executive meeting.

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; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 5-0 to recommend adoption of the revised proposed resolution. Committee Chair Guzman, Vice-Chair Crivello, and members Carroll, Cochran, and White voted "aye." Committee members Baisa, Couch, Hokama, and Victorino were excused.

Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL KOBAYASHI SUGITA & GODA, LLP IN HARRY DONENFELD v. COUNTY OF MAUI, ET AL., USDC CIVIL NO. 16-00381 DKW-KJM," be ADOPTED.

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



DON S. GUZMAN, Chair

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Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
KOBAYASHI SUGITA & GODA, LLP IN
HARRY DONENFELD v. COUNTY OF MAUI, ET AL.,
USDC CIVIL NO. 16-00381 DKW-KJM

WHEREAS, the Council is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote, pursuant to Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, the Council finds that, because of the potential for a conflict of interest, and to the extent consistent with the Hawaii Rules of Professional Conduct, there is a real necessity to retain the law firm of Kobayashi Sugita & Goda, LLP to represent Alan Arakawa, to the extent he has been identified "in his personal capacity" as a Defendant in Harry Donenfeld v. County of Maui, et al., Civil No. 16-00381 DKW-KJM; and

WHEREAS, based on a preliminary reading of the Complaint filed in Federal Court as Civil No. 16-00381 DKW-KJM on July 8, 2016, it appears the allegations against the Honorable Mayor Alan Arakawa, as a Defendant named "in his personal capacity," are questionable; and

WHEREAS, in the opinion of the Department of the Corporation Counsel, Charter Section 8-2.3 and Rule 1.7 of the Hawaii Rules of Professional Conduct may require special counsel to represent Alan Arakawa to the extent he is a Defendant named "in his personal capacity" in this case; and

WHEREAS, to the extent consistent with the Hawaii Rules of Professional Conduct it appears at this time there is a real necessity and it would be in the best interest of the County of Maui to authorize the employment of special counsel to represent Alan Arakawa to the extent he is a Defendant named "in his personal capacity"; and

WHEREAS, special counsel shall take all possible steps to minimize attorneys' fees and costs; and

WHEREAS, the Department of the Corporation Counsel may provide necessary support services to special counsel and, if consistent with the Hawaii Rules of Professional Conduct, joint legal representation, along with special counsel; now, therefore,

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

1. That the Council hereby authorizes the employment of Kobayashi Sugita & Goda, LLP to represent Alan Arakawa to the extent he is a Defendant who has been identified "in his personal capacity" in Harry Donenfeld v. County of Maui, et al., Civil No. 16-00381 DKW-KJM; and

2. That total compensation for the employment of special counsel employed to represent Defendant Alan Arakawa in this case, pursuant to this resolution, shall not exceed \$75,000; and

3. That partner David M. Louie, Esq. shall direct the legal services as lead counsel for the personally named Defendant at an hourly rate not to exceed \$360.00; and

4. That associate Aaron Mun, Esq. shall provide services at an hourly rate not to exceed \$170.00; and

5. That associate Nicholas R. Monlux, Esq. shall provide services at an hourly rate not to exceed \$210.00; and

6. That paralegal Travis R. Yokoyama shall provide services at an hourly rate not to exceed \$100.00; 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: (a) fees for printing and witnesses; (b) fees for copies necessarily obtained for use in the case; (c) fees of the clerk and marshal; (d) fees of the court reporter for necessary transcripts; (e) docket fees; and (f) compensation of court-appointed experts and interpreters; and

9. That the non-compensable costs shall include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) travel, unless justified by extraordinary or compelling circumstances; (g) investigative expenses; and (h) other costs reasonably considered part of a law firm's overhead; and

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

11. 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



Brian A. Bilberry
Deputy Corporation Counsel, County of Maui

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