

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

November 2, 2007

**Committee
Report No.**

07-127

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

Chair and Members:

Your Policy Committee, having met on October 16, 2007, makes reference to County Communication No. 07-12, from the Council Chair, regarding requests for authorization of special counsel submitted by the Department of the Corporation Counsel.

By correspondence dated October 4, 2007, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION, IN MICHAEL DAVID OGDEN, ET AL., VS. COUNTY OF MAUI, ET AL., CIVIL NO. 06-00113 JMS LEK". The purpose of the proposed resolution is to authorize the employment of Robbins & Associates, as the County's special counsel to represent Defendants County of Maui and Police Officer Clifford Pacheco in Michael David Ogden et al., v. County of Maui, et al., Civil No. 06-00113 JMS LEK, for a total compensation not to exceed \$150,000.

Your Committee notes that this case alleges wrongful death and various violations of Charles Benson Ogden's constitutional and civil rights.

At its meeting, your Committee met with the Deputy Chief, Department of Police and two Deputy Corporation Counsel.

There was no public testimony.

A Deputy Corporation Counsel provided a brief overview of the case. She explained that the Department of Police received a call that an individual had exposed himself inappropriately. When the Police Officer responded to the call, Charles Benson Ogden, the suspect, sprayed bear repellent into the Police Officer's face. While the Police Officer's vision was blurred, Mr. Ogden repeatedly lunged toward the Police Officer and failed to respond to an order to stop. The Police Officer fired five shots at Mr. Ogden, resulting in his death.

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Your Committee discussed the flat fee of \$150,000. A Deputy Corporation Counsel explained that flat fees were difficult to negotiate and law firms generally preferred to bill by the hour. She noted that a flat rate is beneficial to the County in this type of case.

Your Committee noted that the law office of Ken Robbins and Associates, Attorneys at Law, A Law Corporation, and the Department of the Corporation Counsel will act as a team through the litigation of the case.

Your Committee voted to recommend adoption of the proposed resolution.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION, IN MICHAEL DAVID OGDEN, ET AL., VS. COUNTY OF MAUI, ET AL., CIVIL NO. 06-00113 JMS LEK" be ADOPTED.

Adoption of this report is respectfully requested.

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Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION,
IN MICHAEL DAVID OGDEN, ET AL., VS. COUNTY OF MAUI, ET AL.,
CIVIL NO. 06-00113 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 ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION (the firm) as special counsel to represent Defendants County of Maui and Clifford Pacheco (Defendants) in Michael David Odgen as Special Administrator of the Estate of Charles Benson Ogden vs. County of Maui, et al., Civil No. 06-00113 JMS LEK, because of the complexity of litigation issues; and

WHEREAS, by Resolution No. 06-55, adopted on June 23, 2006, Defendant Clifford Pacheco was indemnified by the County of Maui for any damages that may be assessed against him in this case; 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,

Resolution No. _____

therefore,

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

1. That the Council hereby authorizes the employment of the firm ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION as special counsel to represent Defendants in the case of Michael David Ogden as Special Administrator of the Estate of Charles Benson Ogden vs. County of Maui, et al., Civil No. 06-00113 JMS LEK; and

2. That the total compensation for the employment of the firm ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION as special counsel shall not exceed a flat fee of \$150,000; and

3. That Kenneth S. Robbins of ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION shall perform those duties outlined in Exhibit "A", attached hereto; 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 payment of all costs shall be as outlined in Exhibit "A"; and

6. That in instances of travel, both inter-island and out-of-state travel includes travel in business class fare and must be pre-approved by the Corporation Counsel; and

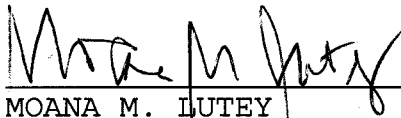
7. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior

Resolution No. _____

Council approval; and

8. 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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**PROPOSAL FOR PROVIDING LEGAL SERVICES TO THE COUNTY OF MAUI
IN MICHAEL DAVID OGDEN, ET AL. v. COUNTY OF MAUI, ET AL.**

I. Proposal

The County of Maui would pay Ken Robbins & Associates a flat fee of \$150,000.00 for work in Michael David Ogden, et al. v. County of Maui, et al. within the parameters contained herein.

A. County of Maui would be responsible for:

1. Complying with all scheduling orders;
2. Preparation and production of exhibits, exhibit lists, etc.;
3. Providing Robbins and Associates with summaries of all documents produced in discovery and all answers to written discovery;
4. Preparation of all motions, including motions in limine and dispositive motions;
5. Preparation of responses to any motions filed by Plaintiffs, including motions in limine and dispositive motions;
5. Requests for, and production of, written discovery;
6. Taking of oral depositions;
7. Retention of expert witnesses;
8. All post trial matters; and
9. Assistance during trial.

B. Robbins and Associates would be responsible for:

1. All court appearances;
2. Communication with Plaintiffs' counsel when requested by County;
3. Setting the overall case strategy;
4. Reviewing and adjustment of strategy depending on developments reported by the County attorney assigned to this matter;
5. No more than 3 depositions, if requested by County;
6. Arguing all motions before the Court;
7. Trial of this matter.

EXHIBIT "A"

II. Structure of the Fee

Ken Robbins and Associates would undertake the above-listed responsibilities for a flat fee rate of \$150,000.00 premised on the a combination of the following parameters:

1. The number of depositions not to exceed three;
2. All court appearances;
2. The likely number of experts not to exceed four;
3. Argument of all motions;
4. Communication with Plaintiffs' counsel, when requested;
5. The likely number of trial, witnesses not to exceed 20;
6. The likely trial schedule and amount of trial time not to exceed 12 days over a three-week time period.

Payment of the fee would be structured in the following form:

1. A non-refundable retainer of \$15,000 payable at the time of retention;
2. A non-refundable retainer of \$35,000 payable monthly in the amount of \$5,000 per month on the first of the month for the six months in advance of the trial date. Said retainer would be terminated at the end of any month in which the case settles or is dismissed;
3. A non-refundable trial preparation retainer of \$45,000 payable one month in advance of the trial date;
4. A non-refundable trial fee of \$55,000 payable on or before the day the case is called for trial.

Ken Robbins and Associates would have no responsibility for any appeals involved with this case. The responsibility for all appellate work being that of the County unless a separate fee agreement is reached with Robbins and Associates for such work.

EXHIBIT "A"