

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

July 26, 2007

**Committee
Report No.**

07-71

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

Chair and Members:

Your Policy Committee, having met on July 3, 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.

Your Committee is in receipt of correspondence dated June 7, 2007, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL CLARK W. WATKIN, ESQ. IN JOHN LARSON VS. COUNTY OF MAUI, CASE NO. CC2007080652RC". The purpose of the proposed resolution is to authorize the employment of Clark W. Watkin, Esq., whose law practice is in the State of Arizona, as the County's special counsel in the case. The complaint was filed in the State of Arizona and alleges that the County is liable for an "unpaid balance" for the purchase of treadmill and elliptical machines for the Department of Fire and Public Safety. The resolution authorizes total compensation of \$2,000.

At its meeting, your Committee met with a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the case. He explained that the plaintiff alleges that the County has not paid the balance due for the purchase of treadmill and elliptical machines for the Department of Fire and Public Safety. He noted that Section 103D-328(C), Hawaii Revised Statutes, requires that final payment of a contract be withheld until the receipt of tax clearances from the State Director of Taxation and the Internal Revenue Service. The plaintiff has refused several requests to obtain these clearances.

The Deputy Corporation Counsel said that the Department contacted special counsel in Arizona for assistance in filing a motion in court, because no attorney in the Department is licensed to practice law in Arizona. Due to the short timeframe for the Department to respond to the court, the Arizona attorney was asked to file the motion in

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court prior to the approval of special counsel, with no guarantee that the Council would approve the hiring of special counsel.

He noted that the case was dismissed on June 26, 2007, due to a lack of jurisdiction by the Arizona courts, and the Department is requesting authorization to compensate special counsel for his services.

He further noted that the equipment was purchased with funds from a grant from the Federal Emergency Management Agency (FEMA). Any unpaid balance from the purchase will be returned to FEMA, and cannot be used to pay for the legal defense of this case.

Your Committee voted to recommend adoption of the proposed resolution.

Your Committee notes that resolutions authorizing employment of special counsel must be adopted by a two-thirds vote of the Council, pursuant to Section 3-6.6 of the Revised Charter of the County of Maui (1983), as amended.

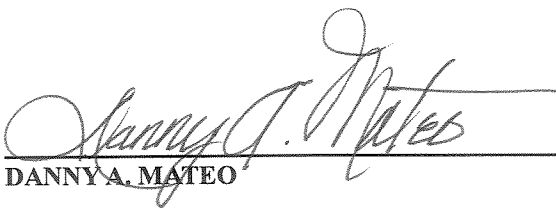
Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL CLARK W. WATKIN, ESQ. IN JOHN LARSON VS. COUNTY OF MAUI, CASE NO. CC2007080652RC" be ADOPTED.

Adoption of this report is respectfully requested.

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DANNYA, MATEO Chair

BILL KAUAKEA MEDEIROS Member

G. RIKI HOKAMA Vice-Chair

MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

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GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL
COUNSEL CLARK W. WATKIN, ESQ. IN JOHN LARSON
VS. COUNTY OF MAUI, CASE NO. CC2007080652RC

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 Clark W. Watkin, Esq. as special counsel to represent Defendant County of Maui in John Larson vs. County of Maui, Case No. CC2007080652RC because said case has been filed in the State of Arizona,

WHEREAS, Clark W. Watkin 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, Clark W. Watkins' conduct in this matter shall reflect his 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 Clark W. Watkin as special counsel to represent the County of Maui

Resolution No. _____

in the case of John Larson vs. County of Maui, Case No. CC2007080652RC; and

2. That total compensation for the employment of Clark W. Watkin shall not exceed \$2,000; and

3. That the hourly rate for Clark W. Watkin shall not exceed \$250.00; and

4. 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; (7) courier fees; and

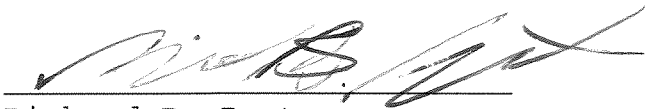
5. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) fees for computerized legal research; (5) travel, unless justified by extraordinary or compelling circumstances; (6) investigative expenses; (7) other costs reasonably considered part of a law firm's overhead; and

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

Resolution No. _____

7. 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:

A handwritten signature in black ink, appearing to read "Richard B. Rost", is written over a horizontal line.

Richard B. Rost
Deputy Corporation Counsel
County of Maui