

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

December 5, 2008

Committee
Report No. 08-151

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

Chair and Members:

Your Policy Committee, having met on November 18, 2008, 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 28, 2008, 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 SHERI GAIL DURHAM, INDIVIDUALLY AND AS NEXT FRIEND OF JESSICA HALEY DURHAM AND MARISA UMA LAMA DURHAM, BOTH MINORS, AND AS THE ADMINISTRATOR OF THE ESTATE OF MARK ALLEN DURHAM, DECEASED VS. COUNTY OF MAUI, ET AL., CIVIL NO. 08-00342 JMS LEK". The purpose of the proposed resolution is to authorize the employment of Robbins & Associates, Attorneys at Law, a Law Corporation, as special counsel in the case for a total compensation of \$150,000.

Your Committee notes that the complaint alleges the County is liable for the defective design, structure, and maintenance of the intersection at Hansen Road and Pulehu Road.

At its meeting, your Committee met with the Director of Public Works and two Deputy Corporation Counsel.

There was no public testimony.

A Deputy Corporation Counsel provided a brief overview of the case. She stated that on July 26, 2006, Mark Allen Durham was driving a rental vehicle with his daughters as passengers. As Mr. Durham proceeded through the intersection located at Pulehu Road and Hansen Road, his vehicle collided with another vehicle. The Deputy Corporation Counsel explained that Mr. Durham suffered fatal injuries as a result of the collision, and his daughters also suffered injuries ranging from minor to severe.

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The Deputy Corporation Counsel further explained that the County is one of multiple defendants in the case. The Plaintiff is seeking damages for the wrongful death of Mr. Durham and for the injuries suffered by his two daughters.

The Deputy Corporation Counsel noted that a claim for wrongful death can be complex. Therefore, the Department is recommending that Kenneth Robbins of Robbins & Associates, Attorneys at Law, A Law Corporation, be hired as special counsel for the County. The Deputy Corporation Counsel informed your Committee that the County has hired Kenneth Robbins for other cases, and he has been successful in obtaining positive results.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend the adoption of the 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.

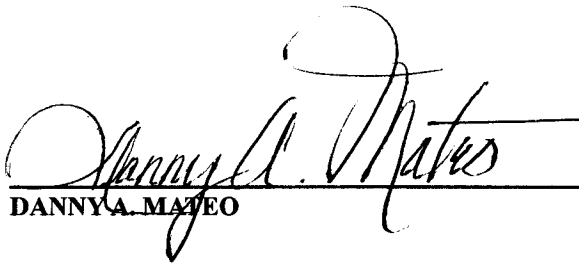
Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION, IN SHERI GAIL DURHAM, INDIVIDUALLY AND AS NEXT FRIEND OF JESSICA HALEY DURHAM AND MARISA UMA LAMA DURHAM, BOTH MINORS, AND AS THE ADMINISTRATOR OF THE ESTATE OF MARK ALLEN DURHAM, DECEASED VS. COUNTY OF MAUI, ET AL., CIVIL NO. 08-00342 JMS LEK" be ADOPTED.

Adoption of this report is respectfully requested.

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DANNY A. MATEO Chair

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MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

GLADYS C. BAISA Member

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JO ANNE JOHNSON Member

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
ROBBINS & ASSOCIATES, ATTORNEYS AT LAW, A LAW CORPORATION,
IN SHERI GAIL DURHAM, INDIVIDUALLY AND AS NEXT FRIEND OF
JESSICA HALEY DURHAM AND MARISA UMA LAMA DURHAM,
BOTH MINORS, AND AS THE ADMINISTRATOR OF THE
ESTATE OF MARK ALLEN DURHAM, DECEASED VS. COUNTY OF MAUI,
ET AL., CIVIL NO. 08-00342 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 Defendant County of Maui (Defendant) in Sheri Gail Durham, Individually and as Next Friend of Jessica Haley Durham and Marisa Uma Lama Durham, Both Minors, and as the Administrator of the Estate of Mark Allen Durham, Deceased, vs. County of Maui, et al., Civil No. 08-00342 JMS LEK, because of the complexity of litigation issues; 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,

Resolution No. _____

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 Defendant in the case of Sheri Gail Durham, Individually and as Next Friend of Jessica Haley Durham and Marisa Uma Lama Durham, Both Minors, and as the Administrator of the Estate of Mark Allen Durham, Deceased vs. County of Maui, et al., Civil No. 08-00342 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 on regular coach economy 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:



LAUREEN L. MARTIN
Deputy Corporation Counsel
County of Maui

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PROPOSAL FOR PROVIDING LEGAL SERVICES
TO THE COUNTY OF MAUI IN SHERI GAIL DURHAM, ET AL.,
VS. COUNTY OF MAUI, ET. AL., CIVIL NO. 08-00342 JMS LEK

I. Proposal

The County of Maui would pay Robbins & Associates a flat fee of \$150,000 for work in Sheri Gail Durham, et. al. vs. County of Maui, et. al., Civil No. 08-00342 JMS LEK 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, exhibits lists, etc.;
3. Providing Robbins & 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;
6. Requests for, and production of, written discovery;
7. Taking of oral depositions;
8. Retention of expert witnesses;

9. All post trial matters;
10. Assistance during trial; and
11. Preparing all documents related to any appeal.

B. Robbins & 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; and
8. Oral argument for any appeal.

II. Structure of the Fee

Robbins & Associates would undertake the above-listed responsibilities for a flat fee rate of \$150,000 and payment 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 each of the seven months immediately preceding the date of trial. 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; and
4. A non-refundable trial fee of \$55,000 payable on or before the day the case is called for trial.