

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

December 14, 2004

Committee
Report No. 04-218

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 December 1, 2004, makes reference to County Communication No. 03-20, from the Council Chair, regarding proposed contracts for special counsel and/or indemnification.

Your Committee is in receipt of correspondence dated November 19, 2004, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "INDEMNIFYING NELSON JOHNSON AND ALLEN DE LARA IN CIVIL NO. 04-00608 DAE LEK, MEGAN KAINA, ET AL. V. COUNTY OF MAUI, ET AL.". Attached to the request is a copy of the proposed Second Amended Complaint. The purpose of the proposed resolution is to indemnify Nelson Johnson and Allen De Lara, employees of the Department of Police, in the referenced lawsuit.

Your Committee notes that this case involves allegations of wrongful death, assault and battery, use of excessive and deadly force, infliction of emotional distress, and violation of the rights and civil liberties of the deceased, Lisa Kehaulani Tomita Kaina.

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

There was no public testimony.

The Deputy Corporation Counsel provided an overview of the case, stating that it arises out of the death of Lisa Kaina on January 23, 2004 in Paia. The Department has determined that a good-faith basis for indemnification of these police officers exists, based on its investigation of the events leading up to Ms. Kaina's death.

According to the Deputy Corporation Counsel, on the day of her death, Ms. Kaina stole a car from a rental-car agency (agency) while the agency's employees were shuttling vehicles to another location. Ms. Kaina got into a car

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by using keys left in the door and accelerated toward the agency's employee, who was forced to jump out of the way of the vehicle to avoid being struck. The agency's employee then called to report a stolen vehicle and the attempted vehicular assault, and the Department of Police issued an all-points bulletin.

The Deputy Corporation Counsel further informed your Committee that Ms. Kaina was driving toward Paia when she was first seen by Officer Johnson, who began following her. The area was busy with pedestrians and heavy traffic. Ms. Kaina's vehicle was traveling at a high rate of speed, then made a sudden left-hand turn, nearly striking someone in the area. Her car struck a tree. Officer Johnson pulled his police car behind her. Another officer arrived, then a third. Ms. Kaina crashed her vehicle into three police vehicles as she tried to leave the area. Following warnings, two shots were fired. One of the bullets entered Ms. Kaina's head, killing her.

The Deputy Corporation Counsel informed your Committee that, at the time, there was an outstanding warrant on Ms. Kaina for a parole violation. Crystal methamphetamine was found in the vehicle, and it was determined by autopsy that Ms. Kaina had certain drugs in her system at the time of her death.

The Deputy Corporation Counsel also informed your Committee that the Police Commission has voted to permit the Department of the Corporation Counsel to represent and defend Officers Johnson and De Lara in this lawsuit, pursuant to Section 52D-8 of the Hawaii Revised Statutes. The statute provides that a police officer who is acting in the performance of his or her duties shall be represented by the corporation counsel of the county in which the police officer is serving.

Your Committee notes that, unless the Council indemnifies the officers, ethical considerations would likely preclude the Department of the Corporation Counsel's joint representation of the officers and the County.

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

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Your Committee is in receipt of a revised proposed resolution approved as to form and legality, deleting the reference in the second paragraph to Lisa Kehaulani Tomita Kaina, the deceased, as a plaintiff.

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING NELSON JOHNSON AND ALLEN DE LARA IN CIVIL NO. 04-00608 DAE LEK, MEGAN KAINA, ET AL. V. COUNTY OF MAUI, ET AL." be ADOPTED.

Adoption of this report is respectfully requested.

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