

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

August 1, 2003

Committee  
Report No. 03-73

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 July 21, 2003, makes reference to County Communication No. 03-20, from the Council Chair, regarding proposed contracts for special counsel.

Your Committee is in receipt of correspondence dated July 14, 2003, from the Department of the Corporation Counsel, requesting consideration of the following:

1. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL LAW OFFICES OF MICHAEL JAY GREEN, FOR JAMES H. APANA, JR., FORMER MAYOR, IN COUNTY OF MAUI v. HOLLAND, CIVIL NO. 01-1-0642 (3) AND IN THE MATTER OF THOSE APPEALS BEFORE THE MAUI PLANNING COMMISSION RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII, DOCKET NO.: APPEALS 01-0001 THROUGH 01-0006".

The purpose of the proposed resolution is to authorize the employment of the Law Offices of Michael Jay Green as special counsel to represent James H. Apana, Jr., in the referenced cases, with an hourly rate not to exceed \$200 and a total compensation not to exceed \$10,000.

2. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL THE FIRM OF CROCKETT AND NAKAMURA, FORMERLY KNOWN AS CROCKETT NAKAMURA & SCHMIDT, FOR JOHN MIN, FORMER PLANNING DIRECTOR, IN COUNTY OF MAUI v. HOLLAND, CIVIL NO. 01-1-0642 (3) AND IN THE MATTER OF THOSE APPEALS BEFORE THE MAUI PLANNING COMMISSION RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII, DOCKET NO.: APPEALS 01-0001 THROUGH 01-0006".

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

August 1, 2003  
Page 2

Committee  
Report No. 03-73

The purpose of the proposed resolution is to authorize the employment of Crockett and Nakamura as special counsel to represent John Min in the referenced cases, with an hourly rate not to exceed \$200 and a total compensation not to exceed \$5,000.

Your Committee notes that these cases involve disputes arising at the Montana Beach Condominium project adjacent to Baldwin Beach Park in Paia. The Department of the Corporation Counsel has informed your Committee that accusations have been made of "criminal extortion" by former Mayor, James H. Apana, Jr., and former Planning Director, John Min, in connection with the handling of the project. Although neither individual has been named as a party to these cases, both will likely be deposed.

The Department further informed your Committee that a potential conflict of interest exists in the Department's representation of Messrs. Apana and Min in these cases. Accordingly, the Department has requested approval to retain special counsel to represent them at depositions and hearings.

At its meeting, your Committee met with the First Deputy Corporation Counsel; a Deputy Corporation Counsel; Michael Green, Esq. of the Law Offices of Michael Jay Green, who participated via teleconference; and David Nakamura, Esq. of Crockett and Nakamura. Your Committee notes that John Min was also present.

Your Committee received testimony from Christine Hemming, an appellant in Docket No. 01-0001 before the Maui Planning Commission, who questioned the costs being incurred by the County on appeal, and in particular, in hiring special counsel. Ms. Hemming testified that the County should choose special counsel and not the individuals themselves. She stated that she would support the County paying for special counsel if the former County employees stayed within the scope of their job duties; however, if they strayed, then the individuals should pay for their own representation.

There being no other testifiers, the Deputy Corporation Counsel provided a brief overview of the enforcement action filed by the County, as well as the appeals pending before the Maui Planning Commission.

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

August 1, 2003  
Page 3

Committee  
Report No. 03-73

Your Committee discussed with the proposed special counsel, the initial scope of their representation. Your Committee also noted Mr. Green's statement that he does not charge for telephone calls with clients.

Your Committee questioned the basis for having different compensation limits for special counsel, with Mr. Apana's counsel at twice the limit of Mr. Min's counsel. The Department of the Corporation Counsel informed your Committee that Mr. Min had already testified in the contested case proceeding, while the former Mayor had not testified due to his heart surgery. Accordingly, it was anticipated that more time would be spent on Mr. Apana's representation in these cases.

Your Committee was also advised that a potential conflict of interest precluded the retention of the same special counsel for all of the individuals against whom allegations of "criminal extortion" had been made.

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

Your Committee of the Whole RECOMMENDS the following:

1. That Resolution No. \_\_\_\_\_, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL LAW OFFICES OF MICHAEL JAY GREEN, FOR JAMES H. APANA, JR., FORMER MAYOR, IN COUNTY OF MAUI v. HOLLAND, CIVIL NO. 01-1-0642 (3) AND IN THE MATTER OF THOSE APPEALS BEFORE THE MAUI PLANNING COMMISSION RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII, DOCKET NO.: APPEALS 01-0001 THROUGH 01-0006" be ADOPTED; and

COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

August 1, 2003  
Page 4

Committee  
Report No. 03-73

2. That Resolution No. \_\_\_\_\_, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL THE FIRM OF CROCKETT AND NAKAMURA, FORMERLY KNOWN AS CROCKETT NAKAMURA & SCHMIDT, FOR JOHN MIN, FORMER PLANNING DIRECTOR, IN COUNTY OF MAUI v. HOLLAND, CIVIL NO. 01-1-0642 (3) AND IN THE MATTER OF THOSE APPEALS BEFORE THE MAUI PLANNING COMMISSION RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII, DOCKET NO.: APPEALS 01-0001 THROUGH 01-0006" be ADOPTED.

Adoption of this report is respectfully requested.

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COUNCIL OF THE COUNTY OF MAUI  
**COMMITTEE OF THE WHOLE**

August 1, 2003  
Page 5

Committee  
Report No. 03-73

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