

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

August 19, 2003

Committee  
Report No.

03-79

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 30, 2003, 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 July 22, 2003, from the Department of the Corporation Counsel, requesting consideration of the following:

1. A proposed resolution entitled "INDEMNIFYING FORMER MAYOR, JAMES H. APANA, JR., AND FORMER CORPORATION COUNSEL, JAMES TAKAYESU, IN CASE NO. CV03-00296 DAE/KSC, DENNIS P. HOLLAND, ET AL., VS. JAMES H. APANA, ET AL.".

The purpose of the proposed resolution is to indemnify each of the individuals named as defendants in Dennis P. Holland, et al. v. James H. Apana, et al., CV03-00296 DAE/KSC, filed in the United States District Court for the District of Hawaii on June 13, 2003 (Federal Case).

2. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL AYABE CHONG NISHIMOTO SIA & NAKAMURA, FOR JAMES B. TAKAYESU, FORMER CORPORATION COUNSEL, 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 Ayabe Chong Nishimoto Sia & Nakamura as special

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counsel to represent James B. Takayesu in County of Maui v. Holland, Civil No. 01-1-0642 (3) (State Case), and in the referenced appeals, with an hourly rate not to exceed \$150 and total compensation not to exceed \$10,000.

3. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ROECA LOUIE & HIRAOKA, FOR RICHARD K. MINATOYA, A FORMER DEPUTY CORPORATION COUNSEL, 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 Roeca Louie & Hiraoka as special counsel to represent Richard K. Minatoya in the State Case and in the referenced appeals, with an hourly rate not to exceed \$175 and total compensation not to exceed \$10,000.

Your Committee notes that these proceedings involve disputes arising at the Montana Beach Condominium project adjacent to Baldwin Beach Park in Paia.

With respect to the Federal Case, the complaint alleges extortion of property rights and other constitutional violations by former Mayor Apana, former Corporation Counsel Takayesu, and the County.

With respect to the State Case and the referenced appeals, the Department of the Corporation Counsel has informed your Committee that accusations have been made of "criminal extortion" by former Corporation Counsel Takayesu and former Deputy Corporation Counsel Minatoya in connection with the handling of the project. Although neither individual has been named as a party to either the State Case or the referenced appeals, both will likely be deposed in these proceedings.

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Your Committee further notes that the Council has authorized the hiring of special counsel to represent Mr. Apana in connection with similar allegations in the State Case and the referenced appeals by Resolution No. 03-110.

At its meeting, your Committee met with the First Deputy Corporation Counsel; a Deputy Corporation Counsel; Richard Nakamura, Esq. of Ayabe Chong Nishimoto Sia & Nakamura, who participated via teleconference; and Keith Hiraoka, Esq. of Roeca Louie & Hiraoka, who also participated via teleconference.

Your Committee received testimony from Christina Hemming, an appellant in Docket No. 01-0001 before the Maui Planning Commission, who also provided a written timeline relating to the Montana Beach Condominium project. Ms. Hemming testified that she would support limited funding for defendants in the Federal Case, which she believes lacks merit.

There being no other testifiers, the Deputy Corporation Counsel provided a brief overview of the Federal Case.

In addition, the Deputy Corporation Counsel provided a revised proposed resolution originally entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL AYABE CHONG NISHIMOTO SIA & NAKAMURA, FOR JAMES B. TAKAYESU, FORMER CORPORATION COUNSEL, 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 revised proposed resolution, re-titled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL AYABE CHONG NISHIMOTO SIA & NAKAMURA, FOR JAMES B. TAKAYESU, FORMER CORPORATION COUNSEL, IN (1) COUNTY OF MAUI v. HOLLAND, CIVIL NO. 01-1-0642 (3); (2) 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; AND (3) HOLLAND, ET AL. v. APANA, ET AL., CV03-00296 DAE/KSC", extends the scope of the special counsel's representation of Mr. Takayesu to include the Federal Case and increases the total compensation limit to \$20,000.

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Richard Nakamura, Esq. of Ayabe Chong Nishimoto Sia & Nakamura advised your Committee that his past experience as a prosecuting attorney, coupled with his work representing other counties in Hawaii on civil rights matters, qualified him to represent Mr. Takayesu in these proceedings.

Keith Hiraoka, Esq. of Roeca Louie & Hiraoka informed your Committee that his current practice areas involve insurance-related issues and legal-malpractice defense.

The Deputy Corporation Counsel further informed your Committee that the proposed special counsel are on the County's procurement list of eligible lawyers and law firms. In addition, the Deputy Corporation Counsel noted that selection of the respective special counsel was consistent with the preferences of the represented individuals. Both special counsel have confirmed that they could provide the necessary representation without ethical conflicts.

Regarding the request for indemnification, the Deputy Corporation Counsel informed your Committee that, according to the Department's assessment, both individual defendants were acting within the scope of employment with respect to the conduct at issue in the Federal Case. The Department therefore recommended that the Council indemnify these individuals, in keeping with the policy that County employees not be exposed to individual liability for acts done within the scope of County employment.

The Department recommended special counsel for former Corporation Counsel Takayesu and former Deputy Corporation Counsel Minatoya because allegations that they had engaged in criminal extortion precluded the Department from jointly representing the individuals and the County.

The Deputy Corporation Counsel further informed your Committee that authorizing the employment of special counsel and providing indemnification for the same individual are not mutually exclusive actions.

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 indemnifying the individual defendants in the Federal Case.

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Your Committee of the Whole RECOMMENDS the following:

1. That Resolution No. \_\_\_\_\_, attached hereto, entitled "INDEMNIFYING FORMER MAYOR, JAMES H. APANA, JR., AND FORMER CORPORATION COUNSEL, JAMES TAKAYESU, IN CASE NO. CV03-00296 DAE/KSC, DENNIS P. HOLLAND, ET AL., VS. JAMES H. APANA, ET AL.", be ADOPTED;
2. That Resolution No. \_\_\_\_\_, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL AYABE CHONG NISHIMOTO SIA & NAKAMURA, FOR JAMES B. TAKAYESU, FORMER CORPORATION COUNSEL, IN (1) COUNTY OF MAUI v. HOLLAND, CIVIL NO. 01-1-0642 (3); (2) 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; AND (3) HOLLAND, ET AL. v. APANA, ET AL., CV03-00296 DAE/KSC", be ADOPTED; and
3. That Resolution No. \_\_\_\_\_, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL ROECA LOUIE & HIRAOKA, FOR RICHARD K. MINATOYA, A FORMER DEPUTY CORPORATION COUNSEL, 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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**ROBERT CARROLL** **Chair**

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**MICHAEL J. MOLINA** **Member**

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**DAIN P. KANE** **Vice-Chair**

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**WAYNE K. NISHIKI** **Member**

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**G. RIKI HOKAMA** **Member**

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**JOSEPH PONTANILLA** **Member**

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**JO ANNE JOHNSON** **Member**

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**CHARMAINE TAVARES** **Member**

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**DANNY A. MATEO** **Member**