

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

September 5, 2003

Committee
Report No. 03-91

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 August 13, 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 August 7, 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 HOLLAND, ET AL. v. APANA, ET AL., CV03-00296 DAE/KSC".

The purpose of the proposed resolution is to authorize the employment of special counsel Law Offices of Michael Jay Green to represent former Mayor James H. Apana, Jr., in Holland, et al. v. 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), with an hourly rate not to exceed \$200 and 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 RALPH NAGAMINE, LANCE TAGUCHI, CHARLES JENCKS, CLAYTON YOSHIDA, AND JOHN MIN, CURRENT AND FORMER EMPLOYEES OF THE COUNTY OF MAUI, IN CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII".

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The purposes of the proposed resolution are: (1) to authorize the employment of special counsel Crockett and Nakamura to represent nonparty witnesses Ralph Nagamine, Lance Taguchi, Charles Jencks, and Clayton Yoshida in County of Maui v. Holland, Civil No. 01-1-0642 (3), Circuit Court of the Second Circuit, State of Hawaii (State Case); 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 (Appeals); and the Federal Case, with an hourly rate not to exceed \$200 and total compensation not to exceed \$15,000; and (2) to amend Resolution No. 03-111 to authorize Crockett and Nakamura to also represent John Min in the Federal Case.

3. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL HISAKA STONE GOTO YOSHIDA COSGROVE & CHING, FOR HOWARD FUKUSHIMA, DAVID GOODE, KARLYNN KAWAHARA AND MICHELE YOSHIMURA, CURRENT AND FORMER EMPLOYEES OF THE COUNTY OF MAUI, IN CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII".

The purpose of the proposed resolution is to authorize the employment of special counsel Hisaka Stone Goto Yoshida Cosgrove & Ching to represent nonparty witnesses Howard Fukushima, David Goode, Karlynn Kawahara, and Michele Yoshimura in the State Case, the Appeals, and the Federal Case (collectively, the proceedings), with an hourly rate not to exceed \$200 and total compensation not to exceed \$15,000.

4. Other supporting documents, including the resume of Gale L.F. Ching, Esq., and correspondence dated July 9, 2003 and July 23, 2003 from the attorney for Dianne and Dennis Holland (Hollands' attorney), indicating his intent to depose various nonparty witnesses.

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By correspondence dated August 8, 2003, the Chair of your Committee transmitted resumes of Michael Jay Green, Esq. and David H. Nakamura, Esq., the complaints in the State Case and the Federal Case, and Appellee Michael W. Foley's prehearing brief in the Appeals.

Your Committee notes that the proceedings involve disputes arising at the Montana Beach Condominium project adjacent to Baldwin Beach Park in Paia. Your Committee further notes that the Department of the Corporation Counsel has advised that a potential conflict of interests prevents County attorneys from representing some of the individuals in the proceedings.

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

With respect to the State Case, the Department of the Corporation Counsel has informed your Committee that the Hollands' attorney intends to depose a number of current and former County employees to determine whether they "play[ed] such a significant role that their actions would constitute a criminal act". The Department also seeks representation for these individuals in the Federal Case and the Appeals, as well as representation for John Min in the Federal Case.

Your Committee further notes that, by Resolution No. 03-110, the Council has authorized the hiring of special counsel Law Offices of Michael Jay Green to represent Mr. Apana in connection with allegations of "criminal extortion" in the State Case and the Appeals, with total compensation not to exceed \$10,000. In addition, by Resolution No. 03-111, the Council has authorized the hiring of special counsel Crockett and Nakamura to represent Mr. Min in connection with similar allegations in the State Case and the Appeals, with total compensation not to exceed \$5,000.

At its meeting, your Committee met with the First Deputy Corporation Counsel; a Deputy Corporation Counsel; David H. Nakamura, Esq. of Crockett and Nakamura; and Gale L.F. Ching, Esq. of Hisaka Stone Goto Yoshida Cosgrove & Ching. Your Committee notes that Charles Jencks and Clayton Yoshida were also present.

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Your Committee received testimony from Christina Hemming, an appellant in Docket No. 01-0001 before the Maui Planning Commission, who supported funding of special counsel for former Mayor Apana, but voiced concerns over proposed special counsel David Nakamura based on his representation of development interests seeking County approvals.

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

The Chair of your Committee distributed a revised proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL LAW OFFICES OF MICHAEL JAY GREEN, FOR JAMES H. APANA, JR., FORMER MAYOR, IN HOLLAND, ET AL. v. APANA, ET AL., CV03-00296 DAE/KSC", which corrects minor technical errors in the earlier copy. In addition, your Committee received correspondence dated August 12, 2003, from the Chair of your Committee, informing your Committee that the revised proposed resolution would be considered at the August 19, 2003 Council meeting.

The Deputy Corporation Counsel informed your Committee that proposed special counsel could provide the necessary representation consistent with applicable ethical guidelines.

Your Committee expressed the view that the Montana Beach proceedings present serious issues, and that it was apparent that the individuals seeking representation were entitled to have that representation provided by the County.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee deferred action on the revised proposed resolution authorizing the Law Offices of Michael Jay Green to represent former Mayor Apana in the Federal Case. Your Committee notes that the revised proposed resolution was adopted as Resolution No. 03-129 on August 19, 2003.

Your Committee voted to recommend adoption of the proposed resolution authorizing Crockett and Nakamura to represent various nonparty witnesses in the proceedings and to represent nonparty witness John Min in the Federal Case.

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Your Committee also voted to recommend adoption of the proposed resolution authorizing Hisaka Stone Goto Yoshida Cosgrove & Ching to represent various additional nonparty witnesses in the proceedings.

Your Committee of the Whole RECOMMENDS the following:

1. 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 RALPH NAGAMINE, LANCE TAGUCHI, CHARLES JENCKS, CLAYTON YOSHIDA, AND JOHN MIN, CURRENT AND FORMER EMPLOYEES OF THE COUNTY OF MAUI, IN CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII", be ADOPTED; and
2. That Resolution No. _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL HISAKA STONE GOTO YOSHIDA COSGROVE & CHING, FOR HOWARD FUKUSHIMA, DAVID GOODE, KARLYNN KAWAHARA AND MICHELE YOSHIMURA, CURRENT AND FORMER EMPLOYEES OF THE COUNTY OF MAUI, IN CASES RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII", be ADOPTED.

Adoption of this report is respectfully requested.

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ROBERT CARROLL **Chair**

MICHAEL J. MOLINA **Member**

DAIN P. KANE **Vice-Chair**

WAYNE K. NISHIKI **Member**

G. RIKI HOKAMA **Member**

JOSEPH PONTANILLA **Member**

JO ANNE JOHNSON **Member**

CHARMAINE TAVARES **Member**

DANNY A. MATEO **Member**