

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

September 16, 2005

Committee
Report No.

05-135

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 30, 2005, makes reference to County Communication No. 05-25, from the Council Chair, regarding proposed contracts for special counsel.

Your Committee is in receipt of correspondence dated August 18, 2005, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING THE RETENTION OF SPECIAL COUNSEL TO ADVISE THE MAUI COUNTY BOARD OF ETHICS ON THE MATTER OF ADVISORY OPINION NO. 05A-4, REQUESTED BY THE DEPARTMENT OF THE CORPORATION COUNSEL REGARDING CONFLICTS OF INTEREST". The purpose of the proposed resolution is to authorize the employment of an attorney from the Office of the Corporation Counsel, County of Hawaii, as special counsel to advise the Maui County Board of Ethics on the matter of Advisory Opinion No. 05A-4, as requested by the Department of the Corporation Counsel, regarding conflicts of interest, for a total compensation of \$1,000.

Your Committee notes that this matter pertains to whether attorneys in the Department of the Corporation Counsel, County of Maui, may participate in the Court Annexed Arbitration Program (CAAP). The CAAP is a mandatory, non-binding arbitration program in which all tort cases having a probable jury award not in excess of \$150,000 are assigned to volunteer arbitrators.

At its meeting, your Committee met with the Chair of the Board of Ethics, and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided an overview of the request. He indicated that Second Circuit Court Judge and Acting Arbitration Judge Joseph E. Cardoza has requested that all attorneys in the Department of the Corporation Counsel participate as volunteer CAAP arbitrators. The Deputy Corporation Counsel indicated

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that such volunteer services are consistent with Rule 6.1, Hawaii Rules of Professional Conduct, pertaining to pro bono services. He said that the Hawaii County Board of Ethics considered a similar request, and during their discussions, he served as legal counsel to their Board. He noted that the Hawaii County Charter and the Maui County Charter are not identical; the Hawaii County Charter allows for such activity with "proper consent".

The Chair of the Board of Ethics said that she has participated as an arbitrator in the CAAP program, which is designed to assist the court in clearing its docket. She stated that approximately 60 percent of such cases are settled, and that volunteer attorneys receive compensation of \$100 for their efforts. She also indicated that the Board of Ethics is charged with reviewing potential violations of the Code of Ethics. A preliminary review of this matter indicates that CAAP arbitrations are not County business. She said that the Board of Ethics was likely to take the position that engaging in such activity during the County employees' workday and using County property would violate the Code of Ethics.

The Deputy Corporation Counsel stated that the Department of the Corporation Counsel has established rules regarding pro bono services conducted by their attorneys. He said that attorneys wishing to participate in pro bono activities must use their vacation time to do so, and must submit any honorariums to the County. He noted that pro bono work is encouraged, but not required by the Hawaii Rules of Professional Conduct.

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.

Your Committee of the Whole **RECOMMENDS** that Resolution No. _____, attached hereto, entitled "AUTHORIZING THE RETENTION OF SPECIAL COUNSEL TO ADVISE THE MAUI COUNTY BOARD OF ETHICS ON THE MATTER OF ADVISORY OPINION NO. 05A-4, REQUESTED BY THE DEPARTMENT OF THE CORPORATION COUNSEL REGARDING CONFLICTS OF INTEREST" be **ADOPTED**.

Adoption of this report is respectfully requested.

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