

Resolution

No. 20-97

AUTHORIZING THE EMPLOYMENT OF SPECIAL
COUNSEL TO FILE LEGAL CLAIMS AGAINST
BANK OF AMERICA AND OTHER MORTGAGE
LENDERS FOR FAILURE TO FULFILL LOAN
COMMITMENTS, FRAUDULENT
FORECLOSURES, AND SIMILAR UNLAWFUL
CONDUCT

WHEREAS, the Council's Governance, Ethics, and Transparency Committee has reviewed a report, in response to Resolution 19-171, analyzing potential legal claims against Bank of America and other mortgage lenders for failure to fulfill loan commitments to native Hawaiians, Filipinos, and others, fraudulent foreclosures, and similar unlawful conduct; and

WHEREAS, the Council would like to retain special counsel with relevant expertise and experience to represent the County, in State or Federal court, to initiate and pursue legal claims against the mortgage lenders for failure to fulfill loan commitments, fraudulent foreclosures, and similar unlawful conduct; and

WHEREAS, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

WHEREAS the Council finds there is a real necessity to retain special counsel to file the potential legal claims described above; and

WHEREAS, the Council recognizes the procurement of contracts on the County's behalf, including for special counsel, is usually a function of the executive branch; and

WHEREAS, because the County's proposed legal action is a Council-initiated action, it is appropriate for the Council Chair, as the legislative branch's chief procurement officer, to execute the contract with special counsel; now, therefore,

Resolution No. 20-97

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council authorizes the employment of special counsel to represent the County in the initiation and pursuit of legal claims against Bank of America and other mortgage lenders failure to fulfill loan commitments, fraudulent foreclosures, and similar unlawful conduct;
2. That the Council Chair is authorized to execute a contract with special counsel that may include a contingency-fee agreement, hourly rates for attorneys' fees, or a combination of attorneys' fees and hourly based attorneys' fees, with total compensation arising from hourly based attorneys' fees not to exceed \$200,000;
3. That compensable costs include fees for printing and witnesses; fees for copies necessarily obtained for use in the case, fees of the clerk and marshal, fees of the court reporter for necessary transcripts, docket fees, compensation of court-appointed experts and interpreters, and pre-approved travel;
4. That non-compensable costs include telephone calls, facsimile charges, postal charges, messenger charges, fees for computerized legal research, investigative expenses, and other costs reasonably considered part of a law firm's overhead;
5. That the Corporation Counsel is requested to cooperate with the special counsel in representation of the County;
6. That expenditures of additional funds or substantial changes to the responsibilities require prior Council approval by a resolution approved by a two-thirds vote; and
7. That certified copies of this resolution be transmitted to the Council Chair, the Mayor, the Corporation Counsel, the Director of Council Services, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY



Digitally signed by Gary Murai
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Department of the Corporation Counsel
County of Maui

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COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 20-97 was adopted by the Council of the County of Maui, State of Hawaii, on the 10th day of July, 2020, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Excused	Aye	Aye	Aye	Aye	Aye	No



COUNTY CLERK