

**COUNCIL OF THE COUNTY OF MAUI**  
**PARKS, RECREATION, ENERGY, AND**  
**LEGAL AFFAIRS COMMITTEE**

July 28, 2017

**Committee**  
**Report No. \_\_\_\_\_**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Parks, Recreation, Energy, and Legal Affairs Committee, having met on July 5, 2017, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated June 28, 2017, the Department of the Corporation Counsel transmitted a proposed resolution, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL OTA & HARA, A LIMITED LIABILITY LAW COMPANY, IN LESLI LYN OTANI V. COUNTY OF MAUI, ET AL., CIVIL NO. 17-00281 DKW-KJM," along with a statement of qualifications for the law firm and a copy of the Complaint. The Complaint alleges violations of the First Amendment to the United States Constitution, the Constitutional right to privacy, public policy, the Constitutional right to due process, and Hawaii's Whistleblower Statute, arising from actions or omissions by the Defendants following Lesli Otani's promotion on April 1, 2016.

The purpose of the proposed resolution is to authorize the employment of Ota & Hara, A Limited Liability Law Company, as special counsel to represent the named Defendants in the case, with total compensation not to exceed \$150,000.

Your Committee notes Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Charter Section 3-6(6) further requires that any such employment specify the compensation, if any, to be paid for the services.

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A Deputy Corporation Counsel said the lawsuit arises out of an employment matter involving an employee of the Department of Public Works. Ms. Otani was working as an engineer with the Department and was placed in probationary employment as Chief Operating Supervisor for over 150 employees of the Department in March 2016. After six months, the probationary period was extended for another six months. The Department determined she would not be permanently retained in that position to which she had temporarily been assigned, and Ms. Otani was reassigned to her original position as an engineer following the probationary period.

He explained the Department of the Corporation Counsel is requesting special counsel be appointed because of ongoing allegations involving investigations with which the Department has assisted. He said there are too many potential conflicts for the Department to represent the Defendants in the lawsuit.

Because the case involves ongoing litigation, the Deputy Corporation Counsel and the Corporation Counsel requested the opportunity to convene an executive meeting.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department, your Committee voted 6-0 to recommend adoption of the proposed resolution. Committee Chair Guzman and members Atay, Carroll, Crivello, Hokama, and Sugimura voted "aye." Committee Vice-Chair King and members Cochran and White were excused.

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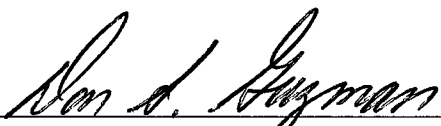
Your Parks, Recreation, Energy, and Legal Affairs Committee RECOMMENDS that Resolution \_\_\_\_\_, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL OTA & HARA, A LIMITED LIABILITY LAW COMPANY, IN LESLI LYN OTANI V. COUNTY OF MAUI, ET AL., CIVIL NO. 17-00281 DKW-KJM," be ADOPTED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
DON S. GUZMAN, Chair

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# Resolution

No. \_\_\_\_\_

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL  
OTA & HARA, A LIMITED LIABILITY LAW COMPANY, IN  
LESLI LYN OTANI V. COUNTY OF MAUI, ET AL.,  
CIVIL NO. 17-00281 DKW-KJM

WHEREAS, the Council is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote, pursuant to Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, based upon a preliminary reading of the Complaint filed in federal court on June 13, 2017, as Civil No. 17-00281 DKW-KJM, the allegations contained therein relate, in part, to multiple incidents that occurred involving both employees and facilities of the Department of Public Works, for which past investigations were assisted by multiple Deputies within the Department of the Corporation Counsel, the Council finds that, because of multiple potential conflicts of interests, and to the extent consistent with the Hawai'i Rules of Professional Conduct, a real necessity for the employment of special counsel exists; and

WHEREAS, the Department of the Corporation Counsel recommends that it would be in the best interest of the County of Maui to retain the law firm of Ota & Hara, a Limited Liability Law Company, to represent the County of Maui, the Department of Public Works, and David Goode as defendants in Lesli Lyn Otani v. County of Maui, et al., Civil No. 17-00281 DKW-KJM ("Defendants"); and

**Resolution No. \_\_\_\_\_**

WHEREAS, based upon a preliminary reading of the Complaint filed in federal court on June 13, 2017, as Civil No. 17-00281 DKW-KJM, it appears the allegations against David Goode, Director of Public Works, in his "individual" capacity are questionable; and

WHEREAS, special counsel shall take all possible steps to minimize attorneys' fees and costs; and

WHEREAS, the Department of the Corporation Counsel may provide necessary support services to special counsel and, to the extent permitted under the Hawai'i Rules of Professional Conduct, joint legal representation, along with special counsel; now, therefore,

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

1. That the Council hereby authorizes the employment of Ota & Hara, a Limited Liability Law Company, to represent the named Defendants who have been identified in Lesli Lyn Otani v. County of Maui, et al., Civil No. 17-00281 DKW-KJM; and

2. That total compensation for the employment of all special counsel employed to represent Defendants in this case, pursuant to this resolution, shall not exceed \$150,000; and

3. That partner William N. Ota, Esq. shall direct the legal services as lead counsel for the named Defendants at an hourly rate not to exceed \$200.00; and

4. That partner Leighton M. Hara, Esq. shall provide legal services at an hourly rate not to exceed \$200.00; and

**Resolution No. \_\_\_\_\_**

5. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

6. That the compensable costs shall include: (a) fees for printing and witnesses; (b) fees for copies necessarily obtained for use in the case; (c) fees of the clerk and marshal; (d) fees of the court reporter for necessary transcripts; (e) docket fees; and (f) compensation of court-appointed experts and interpreters; and

7. That the non-compensable costs shall include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) travel, unless justified by extraordinary or compelling circumstances; (g) investigative expenses; and (h) other costs reasonably considered part of a law firm's overhead; and

8. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

9. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY



DAVID A. GALAZIN  
Deputy Corporation Counsel  
County of Maui