

REQUEST FOR LEGAL SERVICES

D a t e: November 30, 2023
F r o m: Nohelani U'u-Hodgins, Chair
Government Relations, Ethics, and Transparency Committee

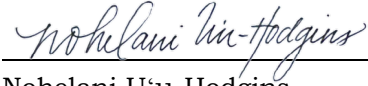
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Victoria J. Takayesu, Esq.

Subject: LITIGATION MATTERS (RESOLUTIONS 23-223 THROUGH 23-225, RELATING TO SPECIAL COUNSEL AUTHORIZATION FOR LITIGATION MATTERS ARISING FROM THE AUGUST 2023 WILDFIRES) (GREAT-11(31))

Background Data: Please see attached proposed FD1 version of Resolution 23-224, CD1. Please submit your response to great.committee@mauicounty.us with a reference to GREAT-11(31).

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

Requestor's signature  Nohelani U'u-Hodgins	Contact Person <u>Kasie Takayama or Richard E. Mitchell</u> (Telephone Extension: <u>7665 and 7662, respectively</u>)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 30, 2023
REASON: For distribution at the December 1, 2023, Council meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ [] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)
☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____
(Rev. 7/03)

great:ltr:011(31)acc02:rem

Attachment

Resolution

No. 23-224, CD1, FD1

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL
BARON & BUDD, P.C., IN LITIGATION MATTERS ARISING
FROM THE AUGUST 2023 WILDFIRES ON THE ISLAND OF MAUI

WHEREAS, in August of 2023, several large wildfires (“Wildfires”) devastated the island of Maui causing significant loss of life, immense damage to public and private property, and untold economic damage; and

WHEREAS, under Section 3-6 of the Revised Charter of the County of Maui (1983), as amended (“Charter”), the Maui County Council alone is authorized to retain, employ, or designate special counsel as legal representative for any special matter presenting a real necessity for such employment by resolution adopted with a two-thirds vote of its entire membership; and

WHEREAS, under Section 127A-13(b)(2), Hawai‘i Revised Statutes, the Mayor may suspend any County law that impedes or tends to impede, or that may be detrimental to, the expeditious and efficient execution of, or conflict with, emergency functions; and

WHEREAS, through his Third Emergency Proclamation Relating to Wildfires dated August 15, 2023, the Mayor purported to suspend Section 3-6(6) of the Charter, to eliminate the Council’s exclusive authority to retain, employ, or designate special counsel; and

WHEREAS, the Mayor, or his designee, signed a representation agreement on August 23, 2023, with Baron & Budd, P.C. (“Firm”), relating to litigation matters arising from the August 2023 wildfires on the island of Maui; and

WHEREAS, through his Fourth Emergency Proclamation Relating to Wildfires dated September 8, 2023, the Mayor lifted the purported suspension of Section 3-6(6) of the Charter, to reinstate the Council’s exclusive authority to retain, employ, or designate special counsel; and

WHEREAS, the Council wishes to ratify the Mayor’s employment of the Firm, and finds that there is a necessity and a public purpose to retain the Firm as special counsel to represent the County of Maui as the plaintiff in legal actions against Maui Electric Company, Limited, Hawaiian Electric Company, Inc., and any other potentially liable third parties for damages arising from the Wildfires because of the complexity of the litigation; and

Resolution No. 23-224, CD1, FD1

WHEREAS, the Firms' conduct in this matter must reflect the Firms' understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now therefore,

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

1. That it ratifies and authorizes, as of August 23, 2023, the retention of Baron & Budd, P.C., as special counsel, to represent the County of Maui in litigation as described in this Resolution;
2. That the total contingent-fee compensation for employment of Baron & Budd, P.C., as special counsel, must not exceed 18 percent of amounts recovered by the County;
3. That partner John Fiske, Esq., of Baron & Budd, P.C. must provide the bulk of the legal services in this matter;
4. That substantial changes to the responsibilities of Baron & Budd, P.C., or John Fiske, Esq., requires prior Council approval; and
5. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, and Baron & Budd, P.C.

APPROVED AS TO FORM AND LEGALITY:

VICTORIA J. TAKAYESU
Corporation Counsel
County of Maui

great:misc:011(31)areso04:rem