GET-1(3)

Donald S. Guzman
[redacted]
Kahului, HI 96732

David M. Raatz, Esq.
Director of Council Legal Services
Office of Council Services
200 S. High Street
Wailuku, HI 96732
david.raatz@mauicounty.us
VIA E-MAIL DELIVERY ONLY

November 3, 2020

RE: NOTICE OF OBJECTION
Mayor's Independent Investigation Report

Dear Mr. Raatz:

As Director for Council Legal Services, I am writing to inform you that I have consulted with Loretta A. Sheehan, an Employment Law Attorney in Honolulu, and she has advised me to submit the following statements and objections regarding the Mayor's Independent Investigation Report:

1) The process of my removal/termination as Prosecuting Attorney for Maui County is under the Charter and is such requires an official employment process to remove/ terminate me;

2) I have been denied my due process as an employee prior to the Mayor taking official action to remove/terminate me;

3) The Mayor did not explain or otherwise go through any of the facts or allegations made within the Mayor's Independent Investigation Report;

4) The Mayor denied my request and opportunity to read the investigation report or a redacted version of the report, and did not allow me to respond to any allegations in the report;

5) The Mayor only told me that I was in violation of the Maui County Workforce Action Plan, "Policy", and gave me two choices 1) resign or 2) Termination / Removal;

6) The only time I was given notice of the official grounds for Termination / Removal was by reading the Termination Letter after the Mayor had handed it to me in an envelope and I was escorted out of his office, wherein I read it while sitting in my parked car in front of the county building;

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7) The Termination Letter sets forth the specific named Deputy Prosecutor who filed a complaint against me under the Maui County WorkPlace Violence Action Plan ("Policy");

8) The Termination Letter sets forth the specific grounds for Termination / removal stating specific incidents and/or actions with regards to that specific Deputy Prosecutor named in the letter;

9) The Termination Letter indicates that because of these specific incidents and actions towards that specific Deputy Prosecutor, I was found to have violated the Maui County Workplace Action Plan, "Policy", and based on this violation the Mayor has TAKEN ACTION for my removal / termination;

10) Moreover, when the so called Independent Investigator hired by the Mayor's Office conducted an interview with me, the Investigator limited the line of questions to me about that specific Deputy Prosecutor that is named in the Termination Letter and the specific allegations listed in the Termination Letter;

11) The Investigator never mentioned or asked me about any other person, employee, or deputy prosecutor or any other incidents or actions involved with any other specific person or otherwise except the named Deputy Prosecutor in the Termination Letter; If there are any other allegations and/or incidents in the Investigation report, I was not given any opportunity to know of such and no opportunity to specifically respond or otherwise. To my knowledge I am unaware of any other possible allegations or incidents set forth in the Investigation Report. There was only one complaint filed by a specific Deputy Prosecutor as indicated in the Mayor's Termination Letter to me dated October 19, 2020;

12) Therefore, I set forth my OBJECTION that the Mayor or anyone representing the Mayor disclose any and all statements, allegations, incidents, actions, or circumstances made by or related to any other person in the Mayor's Independent Investigation Report. I am requesting that the scope of discussion before the County Council be limited to the situation and specific person indicated in the Termination Letter dated October 19, 2020. And I reaffirm that due process was denied me as an employee prior to the Mayor taking action to terminate/remove me.

Sincerely,

Donald S. Guzman

Cc: Loretta A. Sheehan, Esq.
Attachment: Termination Letter (redacted) dated 10-19-2020

MICHAEL P. VICTORINO
Mayor

SANDY K. BAZ
Managing Director

OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

October 19, 2020

Donald Guzman
200 S. High Street
Wailuku, HI 96793

Via hand delivery

RE: Termination of Employment

Dear Mr. Guzman:

As you are aware, a Violence in the Workplace ("VIW") complaint was made by [redacted] on September 15, 2020. The County's Violence in the Workplace Policy ("VIWP") has been provided to you and all County employees. As you are aware, the County is committed to promoting and maintaining a safe and healthy work environment for all of its employees. As such, the County takes all complaints of VIW very seriously.

To determine whether [redacted] VIW complaint against you had any merit, an independent investigator was hired. The investigator reviewed all relevant material, interviewed all witnesses and completed the investigation into [redacted] complaint.

After a thorough investigation, it has been determined that the VIW complaint was substantiated. Specifically, the investigator determined that you violated the County's Violence in the Workplace policy in response to [redacted] office-wide email related to [redacted] health and safety concerns. According to the investigation, you believed that [redacted] email was not [redacted] "issue" or "fight" and took the following actions, all of which were deemed a violation of the County's VIWP:

1. You sent an email to [redacted] on August 28, 2020 threatening [redacted] to "be careful on how [redacted] respond[s]" to you.

2. You then sent a second email to the entire department, reprimanding [redacted] for [redacted] department-wide email.

3. You met with [redacted] on September 15, 2020 and took the following actions:

   a. You threatened [redacted] job security.

   b. You threatened to begin putting your foot down on [redacted] alleged performance deficiencies.

   c. You aggressively grabbed an email out of [redacted] hand.

   d. You prevented [redacted] from speaking by continuously interrupting [redacted].

   e. You slammed your hand on the table and raised your voice when addressing [redacted].

All of the above-listed actions by you were "threats" that could result in psychological damage" or "mental harm". Your actions were "verbal threats or intimidation threats. . . of intention to inflict. . . mental harm or injury" and/or were actions that would "seriously alarm", "disturb" or "continually bother" [redacted] thereby violating the County's VIWP.

Based on your violation of the County's VIWP, we have no option but to place you on leave without pay, effective October 19, 2020, and submit a resolution to Council requesting concurrence on your removal from office pursuant to Section 8-3.2 of the Charter of the County of Maui.

Sincerely,

Michael P. Victorino

Michael P. Victorino
Mayor