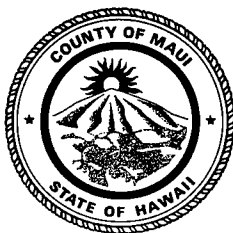


MICHAEL P. VICTORINO
Mayor

PATRICK K. WONG
Acting Corporation Counsel

EDWARD S. KUSHI
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RECEIVED

2019 JAN 18 PM 3:05

OFFICE OF THE MAYOR

DEPARTMENT OF THE CORPORATION COUNSEL
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OFFICE OF THE
COUNTY COUNCIL

2019 JAN 18 PM 3:59

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January 18, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 1/18/19

Mayor Date

For Transmittal to:

Chair Michael J. Molina
Government, Ethics, and Transparency Committee
Maui County Council
200 South High Street, 8th Floor
Wailuku, Hawaii 96793

Re: **NOMINATION AS CORPORATION COUNSEL (GET-1)**

Dear Chair Molina:

By letter dated January 10, 2019, received in my office on January 11, 2019, Council Chair Kelly T. King requested response to eight (8) questions be submitted to the Council's Government, Ethics, and Transparency Committee no later than January 18, 2019. The eight (8) questions are as follows:

1. Why did you apply to serve as the Corporation Counsel?
2. What do you perceive as the roles and responsibilities of the Corporation Counsel?
3. Given your understanding of the role and responsibilities of the Corporation Counsel, why do you believe you are qualified for the position? Please include a brief statement of your skills, expertise, experiences, or knowledge that would aid in your decision-making ability as the Corporation Counsel. Highlight three qualities you feel make you a highly qualified candidate.
4. Please identify one short- and one long-term goal you would have as the Corporation Counsel and how you would accomplish these during your term of service.

5. How do you plan to enhance the transparency of the Department of the Corporation Counsel?
6. How do you plan to ensure the Department of the Corporation Counsel exhibits appropriate fidelity to all agencies, officers, and employees it represents and advises?
7. What is your plan on helping the Council implement Sections 3-6.7 and 3.7(2), Maui County Charter, pertaining to Office of Council Services attorneys serving as legal advisors to the Council?
8. Can you foresee any possible conflicts of interests that could arise during your service in the Corporation Counsel? How would you overcome any possible conflicts of interests?

DISCUSSION

1. Why did you apply to serve as the Corporation Counsel?

I applied to serve as the Corporation Counsel to continue providing public service to Maui County within the legal field and continue to improve the functions of this office to best serve this county. The wide array of legal issues encountered within the Department of the Corporation Counsel is both academically rewarding and personally fulfilling.

Since my initial appointment in 2011, I have directly managed attorneys in the areas of litigation and counseling and drafting. I have addressed legal issues and areas of law that are both fascinating, complex and, at times, challenging. Based on the issues presented, I have had to make difficult decisions to ensure that the County's best interests were preserved. Those decisions were based on the facts of each case and the law. Our office handles a vast area of law, including, but are not limited to: land use, zoning, planning, civil rights, employment litigation, personal injury litigation, construction litigation, bond finance, contract drafting and dispute resolution, insurance coverage and risk management, clean water law, water rights, constitutional law, public utilities, real property taxation, liquor control and management, workers' compensation, and alternative dispute resolution. No other private law firm handles the diverse areas of law that we do in Corporation Counsel.

As an example of one of the changes to improve Corporation Counsel, Risk Management was moved from Finance to my office. In my view, it made more sense to have Risk Management in my office because our roles are intertwined. For example, Risk manages workers' compensation and general liability claims which each have an attorney assigned to appear at hearings, review, approve or deny resolution of these types of claims. By moving Risk to my office, the attorneys and Risk team can meet at any time to discuss pending matters, come up with solutions and seek my guidance in the more complicated matters. This better serves the County and its employees.

Overall, as an attorney in the practice of law since 1992, I have found that the experiences and exposure to the wide range of legal issues and diverse areas of law continue to fascinate and interest me. More importantly, however, my decision to apply for the position to

serve as the Corporation Counsel for another term is also driven by the personal growth I have experienced working with and alongside highly competent, smart, hardworking, and committed attorneys, law technicians, office management personnel, risk management specialists, and paralegals. In my humble opinion and experience, no other civil law firm or law practice in Maui County will provide consistent exposure to the diverse areas of law or the high level of legal competence that is provided in the Department of the Corporation Counsel.

2. What do you perceive as the roles and responsibilities of the Corporation Counsel?

As an attorney licensed to practice in the State of Hawaii, all attorneys are governed by the Hawaii Rules of Professional Conduct, and various other rules. In my view, my primary role is to provide the best guidance possible (either directly or through the deputies) to all clients within all applicable rules. To clarify what the more crucial rules are, I am providing some of those rules below.

The preamble to the Hawaii Rules of Professional Conduct, states that a lawyer's responsibilities "as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice." It further states the following in reference to government lawyers:

Under various legal provisions, including constitutional, statutory, and common law, the responsibilities of government lawyers may include the authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several governmental agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

The roles and responsibilities of the Corporation Counsel, as a government lawyer, is also defined by the Maui County Charter and the Maui County Code. Section 8-2.3, Powers, Duties, and Functions provide that:

The corporation counsel shall:

1. Appoint such deputy corporation counsel and necessary staff as shall be authorized by the council. Deputy corporation counsel shall be exempt from civil service and shall serve at the pleasure of the corporation counsel
2. Be the chief legal advisor and legal representative of the County of Maui; of the council, the mayor, all departments, and all boards and commissions; and of all officers and employees in matters relating to their official duties, except as otherwise provided in this chapter.
3. Represent the county in all legal proceedings.
4. Perform such other duties and functions as may be incident to the department or required by law.

Furthermore, the Corporation Counsel and the deputies are the proper recipient of legal process as provided in Section 8-2.4. The corporation counsel is also required to approve as to form and legality all contracts before execution. Section 9-18 Contracts. Moreover, the Maui County Code provides for additional minimum qualifications as follows:

1. As set for in the charter, the corporation counsel shall be an attorney licensed to practice and in good standing before the Hawaii supreme court.
2. As set forth in the charter, the corporation counsel shall have engaged in the practice of law for five years.
3. As part of or in addition to the five years of experience in the practice of law, three years of civil litigation experience.
4. As part of or in addition to the five years of experience in the practice of law, three years of responsible managerial and budgetary experience.
5. As part of or in addition to the five years of experience in the practice of law, three years of experience in one or more of the following functions:
 - a. Serving as chief legal advisor or legal representative of a municipality or other governmental entity, its departments, boards and commissions, or officers and employees in matters relating to their official duties.
 - b. Representing a public or private entity in legal proceedings.

As referenced above, the Charter and Code may define most of the duties and responsibilities of the Corporation Counsel. That said, we are also subject to the constitutional laws, statutes, and common law along with the Rules of Professional Responsibility that govern licensure to practice law within the State of Hawaii and within all its courts.

3. **Given your understanding of the role and responsibilities of the Corporation Counsel, why do you believe you are qualified for the position? Please include a brief statement of your skills, expertise, experiences, or knowledge that would aid in your decision-making ability as the Corporation Counsel. Highlight three qualities you feel make you a highly qualified candidate.**

The best qualification I have for the position of Corporation Counsel is that I have held that position for the last eight years. The vast area of law handled by this position makes it difficult to learn quickly. On any given day, I can address anything from a complex land issue to workers' compensation and everything in-between. This position requires a vast knowledge of the law, many different rules and codes, the ability to provide guidance to the attorneys in my office as well as advice to many different clients (i.e. Council, Mayor, all departments, all boards and commissions, etc.) on a daily basis. It is difficult, if not impossible, to adequately describe how many different matters I address on any given day either directly or through the attorneys in my office. If I could map it, it would look like the New York subway system. Fortunately, I have been able to form a very cohesive team that understands the goals of our office based on my directives.

The three qualities that make me a highly qualified candidate are: 1. I am decisive and have a firm understanding of the laws and rules applicable to this position; 2. I am a competent supervisor who has created a cohesive team; and 3. I love this job and the people I work with.

4. **Please identify one short- and one long-term goal you would have as the Corporation Counsel and how you would accomplish these during your term of service.**

As the Corporation Counsel, and with the additional recent responsibility of overseeing the campus security, a short-term goal is to implement budgeted security systems to secure access to the county building. This goal is to be facilitated in collaboration with the Department of Public Works, the Department of Management, the Office of the Mayor and the Council along with the Office of Council Services. Risk Management personnel have actively reviewed all security camera locations, reviewed and evaluated the building security needs, and will have plans to install equipment and place personnel necessary to secure the building.

A long-term goal, over the next two to three fiscal years, is to create and implement an investigative unit as an additional division within the Department of the Corporation Counsel. The need for an investigative unit exists based on the number of investigations currently and historically conducted by all departments in employment related matters and personnel disputes. In the next several fiscal years, we would need to provide the position descriptions to the Department of Personnel Services, provide budgetary requirements and projections, provide organizational structure, consult with the applicable labor bargaining units, and hire attorneys, investigators, and clerical staff to support the unit.

With these short-term and long-term goals being identified and prospectively being met, I believe Department of the Corporation Counsel will better manage risk and liability exposure while providing a safe work environment to the employees of the County of Maui.

5. **How do you plan to enhance the transparency of the Department of the Corporation Counsel?**

During my term as Corporation Counsel, transparency has been a priority to the extent allowable under the law, and within the Rules of Professional Responsibility. I strongly believe that this Department is very transparent, and does most of its work open to public scrutiny. Compliance with the sunshine law and uniform information practices are integral to the operations of the Department of the Corporation Counsel.

There are, however, exceptions and limitations that govern all attorney work product, confidentiality of client communications, legal strategies in defense of claims, and other areas that, if not followed, would compromise the interests of the County of Maui. Therefore, transparency must be viewed with an eye toward a balance between the public's right to know and the interests and defenses of the government.

6. **How do you plan to ensure the Department of the Corporation Counsel exhibits appropriate fidelity to all agencies, officers, and employees it represents and advises?**

Please understand that my response may differ based on the interpretation of or intended meaning of "appropriate fidelity" and the context within which it is used. As a general rule, every licensed attorney within the Department of the Corporation Counsel are, among other things, bound by the Rules of Professional Conduct and the oath administered to practice law before all courts in the State of Hawaii. As such, in evaluating the "appropriate fidelity" exhibited, we are guided by the roles and responsibilities defined above, along with the intrinsic core responsibilities a lawyer has to a client and more specifically, a government lawyer has to a government agency or client.

7. **What is your plan on helping the Council implement Sections 3-6.7 and 3.7(2), Maui County Charter, pertaining to Office of Council Services attorneys serving as legal advisors to the Council?**

To my knowledge, the Department of the Corporation Counsel has not previously been asked to help formulate a plan to help the Council implement Sections 3-6.7 and 3.7(2), Maui County Charter. However, I welcome the opportunity to work collaboratively with the Council and the Office of Council Services to develop and implement such a plan.

In considering the applicability and implementation of Section 3-6(7) Powers of Council, and Section 3-7(2) Office of Council Services, Revised Charter of the County of Maui (1983), as amended, we look to the Charter that provides in pertinent part that:

The council shall be the legislative body of the county. Without limitation of the foregoing grant or of other powers given it by charter, the **council shall have the power:**

...

7. **To designate** attorneys within the office of council services to serve as legal advisors. (Section 3-6(7)) (Amended 2016) (Emphasis added.)

Furthermore, the Charter provides:

The attorneys within the office of council services, in addition to the attorneys within the department of the corporation counsel, may serve as legal advisors to the council and its members. (Section 3-7(2)) (Amended 2016) (Emphasis added.)

In this regard, a plain reading of the Charter indicates that the “attorneys within the office of council services...may serve as legal advisors to the council and its members” at the discretion of the Council based on the Council’s power to designate attorneys to serve as legal advisors. Although we have not previously been asked to formulate a plan for implementation, we are willing and available to meet and confer with the Office of Council Services and the Council to develop a plan that is consistent with the provisions of the Charter and the efficient operations of all involved.

8. **Can you foresee any possible conflicts of interests that could arise during your service in the Corporation Counsel? How would you overcome any possible conflicts of interests?**

In responding to this question, we look to the Code of Ethics, Article 10 of the Charter, Code of Ethics, Section 2.56 of the Maui County Code, and to Chapter 101 of the Administrative Rules for the Maui County Board of Ethics. Based on Section 04-101-3, Definitions, “conflict of interests” means:

a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties; it also has meanings as explained in past board opinions, that involve a two-part test and require interpretation of section 10-4.1.c. of the Charter, that no officer or employee of the County shall engage in any business

transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of the officer's or which may tend to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties.

As your question specifically asks about the foreseeability of any possible "conflicts of interests" that could arise, and if one does arise how it may be overcome, we must look to the body of the Code of Ethics referenced above, inclusive of past board opinions. In doing so, however, we humbly respond that we are unable to speculate absent specific facts. Rest assured that any possible consideration of "conflicts of interests" will be immediately submitted to the Board of Ethics for its review and guidance. Also know that this office has handled various issues related to conflicts of interest in many different situations over the years of my service with this office. The variety of solutions to such conflicts is dependent on the facts, circumstances and applicable rules. We treat each matter on a case by case basis.


Additionally, the attorneys within the Department of the Corporation Counsel are bound by the Rules of Professional Conduct, are subject to the jurisdiction of the Courts in the State of Hawaii and the various federal courts that one may be licensed to practice law before along with the Office of Disciplinary Counsel. If there exists or arises a "conflict of interest" for any of the attorneys within the Department of the Corporation Counsel that may violate the Rules of Professional Conduct, please understand that the attorneys are required to employ the Rules of Professional Conduct or risk disciplinary action by the Office of Disciplinary Counsel and the Hawaii Supreme Court. There are specific rules that prohibit specific conduct and to comment on a foreseeable "conflict of interest" without specific facts is very difficult to do.

CONCLUSION

Your favorable review of my appointment to serve as the Corporation Counsel for the County of Maui is respectfully requested. I also look forward to having the opportunity to clarify any of my responses at the confirmation hearing set for 9:00 a.m. on January 23, 2019, before the Government, Ethics, and Transparency Committee of the Maui County Council.

Please advise whether you may have any questions or need additional information. Your kind attention and consideration is greatly appreciated.

Very truly yours,


PATRICK K. WONG
Acting Corporation Counsel