

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

July 10, 2020

Committee
Report No. _____

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

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on June 2, 2020, and June 16, 2020, makes reference to the following:

1. County Communication 19-107, from Councilmember Michael J. Molina, relating to the United States Federal Reserve System's order requiring Bank of America ("BoA") to provide mortgages on Hawaiian Home Lands.
2. County Communication 19-108, from Presiding Officer Pro Tempore Tasha Kama, relating to BoA's \$150,000,000 loan commitment for native Hawaiians on Hawaiian Home Lands.
3. County Communication 19-337, from Presiding Officer Pro Tempore Tasha Kama, transmitting a proposed resolution to authorize the employment of special counsel to investigate and litigate actionable claims against BoA and the banking and mortgage industry.
4. County Communication 19-338, from Council Chair Kelly T. King, attaching copies of County Communication 19-107 from Councilmember Michael J. Molina, and County Communication 19-108 from Presiding Officer Pro Tempore Tasha Kama.

Your Committee notes it previously reported on this matter by Committee Report 19-117, which recommended adoption of the proposed resolution authorizing the employment of special counsel to investigate and litigate actionable claims against BoA and the banking and mortgage industry. At its meeting of October 4, 2019, the Council adopted the recommendations in Committee Report 19-117 (Resolution 19-171).

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On June 2, 2020, your Committee noted that the law firm Bronster Fujichaku Robbins was subsequently retained as special counsel and submitted a confidential report to your Committee in accordance with Resolution 19-171.

By correspondence dated June 10, 2020, the Department of the Corporation Counsel transmitted a proposed resolution entitled "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."

The purpose of the proposed resolution is to authorize the employment of special counsel to file legal claims against BoA and other mortgage lenders for failure to fulfill loan commitments, fraudulent foreclosures, and similar unlawful conduct.

At its meeting of June 16, 2020, your Committee met with Margery Bronster, Esq., founding partner of Bronster Fujichaku Robbins. Ms. Bronster provided a brief overview in regular session and requested an executive meeting to review the confidential report.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel in accordance with Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session.

Your Committee decided to recommend adoption of the proposed resolution submitted by correspondence dated June 10, 2020, authorizing the Council Chair to retain special counsel to represent the County in the legal claims against mortgage lenders for unlawful conduct.

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Your Committee voted 9-0 to recommend adoption of the revised proposed resolution. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Hokama, Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye."

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.


Your Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled "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," be ADOPTED.

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



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

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. _____

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.

Resolution No. _____

APPROVED AS TO FORM AND LEGALITY



Digitally signed by Gary Murai
DN: cn=Gary Murai,
o=Corp.Counsel, ou=C & D,
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s, c=US
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Department of the Corporation Counsel
County of Maui

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