

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

## **M I N U T E S**

**Council Chamber**

**March 15, 2019**

**RECONVENE: 9:00 a.m.**

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair  
Councilmember Riki Hokama (arrived at 9:02 a.m./left at 10:18 a.m.)  
Councilmember Tasha Kama  
Councilmember Kelly T. King  
Councilmember Alice L. Lee  
Councilmember Tamara Paltin  
Councilmember Shane M. Sinenci  
Councilmember Yuki Lei K. Sugimura

**STAFF:** Shelly Espeleta, Legislative Analyst  
Alison Stewart, Legislative Analyst  
Christy Chung, Legislative Analyst  
Pauline Martins, Committee Secretary

Don Atay, Executive Assistant to Councilmember Sinenci

**ADMIN.:** Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department  
of the Corporation Counsel  
Deidre Tegarden, Chief of Staff, Office of the Mayor  
Sananda Baz, Managing Director, Department of Management  
Donald S. Guzman, Acting Prosecuting Attorney, Department of  
the Prosecuting Attorney

**OTHERS:** Bill Medeiros  
Norma Barroga Cronkite  
Zandra Amaral  
Artemio Baxa  
Mercedes Neri  
Plus (9) other people

**PRESS:** *Akaku Maui Community Television, Inc.*  
*Susan Halas, Maui Time*

---

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

**GET-1(3) APPOINTMENT AND REMOVAL OF ADMINISTRATIVE HEADS OF  
DEPARTMENTS (DEPARTMENT OF PROSECUTING ATTORNEY) (CC 19-1)**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed meeting of March 12, 2019 of the Governance, Ethics, and Transparency Committee meeting will now be called to order. Today is Friday, March 15<sup>th</sup> 9:00 a.m. and for the record we have eight members in attendance, Councilmember Hokama will be on his way soon. Chair would like to thank all of you for making yourselves available this morning. The Chair does realize you have other commitments with your constituents, so I certainly appreciate you making time in your schedule to have this recessed meeting to address our final item for the March 12, 2019 agenda. And just for the record public testimony was taken on March 12<sup>th</sup> and closed on that day so today our focus will be on just the one item which is GET item 1(3) which is the nomination consideration of the Mayor for Prosecuting Attorney, Mr. Don Guzman. Now, prior to getting into opening remarks from Mr. Guzman, Chair again would like to emphasize to you 12 o'clock, Chair's not going to take this past 12 noon today 'cause I do realize that you have other commitments, Chair was informed, and certainly would like as full a body of Committee members to vote on Mr. Guzman's consideration so that is the Chair's intention for today. So, with that being said, Chair would like to recognize Staff here today, Shelly Espeleta as well as, Pauline Martins and we have a new member from Counsel Services joining us today, Ms. Alison Stewart, thank you for joining us. And from Corporation Counsel's office we have, Mr. Ed Kushi and the Managing Director, Mr. Sandy Baz joining us as well. And the Chair recognizes Member Hokama to our proceedings this morning. So, let's get right into it, Members. We will like to first of all recognize Mr. Guzman, and thank you for making yourself available --

MR. GUZMAN: Thank you, Chair.

CHAIR MOLINA: --to put yourselves under questioning from the Committee and of course you've sat in this seat where we're sitting right now so you totally understand what we must do to vet and ask you the questions as it relates to this position. And, Members, just as a friendly reminder again please again keep your questions confined to Mr. Guzman's nomination. If there is a, if there was a particular County-related issue that Mr. Guzman was involved with please try not to stray off and talk about the pros and cons of the issue itself, please keep your focus on Mr. Guzman and his involvement with that so we don't get in trouble with the Sunshine law police if you know what I'm talking about. Okay, Members, and you have been doing a good job in our other hearings with the nominees, so I commend all of you for doing your best to stay within those parameters. With that being said maybe what I'd like to do is maybe ask Mr. Baz who's representing the Mayor's Office to give us opening remarks regarding, Mr. Guzman. Mr. Baz?

MR. BAZ: Thank you, Mr. Chair and Members, good morning. So, it gives me pleasure to come this morning before you in representing Mayor Victorino in his nomination of our Acting Prosecutor, Mr. Don Guzman. We did provide to this Committee a

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

transmittal dated March 11<sup>th</sup> with the job description for the Prosecuting Attorney, Ordinance No. 4848, Bill No. 44 (2018) which is the additional qualifications required as a part of the Charter amendment and the work that this Council did in the previous term. We provided you with his resume and we provided you with the Hawaii State Bar Association listing that shows he is an attorney. He has been, Mr. Guzman has been an attorney in the State of Hawaii for, admitted into the Bar since year 2000 so it's 18 years going on 19 years of being an attorney. So, he does meet the minimum qualifications of that period as well as having criminal prosecution experience in the Department of Prosecuting Attorney from the year 2000 to 2005 where he worked in District Court cases, the juvenile cases as well as Family Court and domestic violence cases. He was a supervisor and did manage staff in the Prosecutor's Office during that time as well. He also has supervisory experience and budgetary experience in managing his own office, he ran a private office for a number of years. He also has managed staff within his responsibility as a Councilmember in managing the staff within his office as well as being a committee chair and managing the staff, the authorizations and appropriations of that requirement as well as managing, you know, the workload and different things like that. So, we're comfortable in his management experience, he does meet the minimum qualifications. He has quite a bit of experience in the actual criminal aspect of it having worked in the Prosecutor's Office and done a variety of tasks in there. Some of, you see some of his former peers in the Prosecutor's Office have shared their support in that efforts as well. So, just, Mr. Chair, I'll be here to assist Committee should they need any further questions related to the appointment of Mr. Guzman, and we just appreciate the work of this Committee, the diligence that you do on a regular basis to make sure that you're vetting our appointments properly and that you have really confidence in moving forward with our nominations. So, thank you, Mr. Chair.

CHAIR MOLINA: Thank you very much, Mr. Baz. Okay, Mr. Guzman, you have the floor so if you could please provide the Committee a brief summary of your intentions and objectives and so forth. You have the floor, sir.

MR. GUZMAN: Thank you, Chair. Good morning, Members. It's nice to be back on the floor in this perspective on the other side of the aisle, I haven't seen the room or at least the Chambers in this particular seat so it's nice to be here to present and have the opportunity to answer any of your questions. First and foremost, let me clarify on some of the qualifications that were briefly mentioned by Mr. Baz. Just to clarify when I was a Deputy Prosecutor, that was my first job, my first real job as an attorney and that experience alone basically laid the foundation for everything that I did or became in the community. My first boss was, Rick Bissen who later on became a judge and the way he ran the office and the way that he set up the team leadership was the same method that I used throughout all of my committees here as a Councilmember; hands-on, making sure that each of my committees that I ran had input and that we ran it like a team. And so, I'm a leader that comes in with a perspective of team work and never really using the power of the unilateral decisions before making a major vote or decisive decision on the floor or within my administration when I was working

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

as vice-chair of this, of the previous Council as well as several other committees as chair. Mr. Baz did mention supervisorial positions in the Prosecuting Office, that needs to be corrected, I believe when he asked me whether I supervised any employees in the office I said in the affirmative and did go on to explain that when I was the only Juvenile Prosecutor I was, it was a different system back then when we were assigned to clerical and secretarial staff under a division and so we had direct communication with our paralegals as well as our secretarial and clerical staff if you were the lead in that division. Now, it is currently set up wherein the deputy prosecutors now directly communicate with the Administration for their concerns and then it goes down the chain. So, in terms of specifying or clarifying I was the only Juvenile Prosecutor and was in charge of my secretarial and clerical staff and again it has changed, the structure has changed. My experience in the Prosecutor's Office, I first started as a line deputy which is basically taking all the traffic cases and DUI cases and assault cases, any petty misdemeanors all the way to misdemeanor, taking them to full screening all the way to a trial. So, numerous amount of trials, probably about 200 to 300 trials. It's that, it's like a MASH unit you're in and out of the court room. I did move on to become the only Juvenile Prosecutor prosecuting all of the juvenile cases throughout Lanai, Molokai and Maui. During that time period we did all of the felony cases for juveniles. So, my experience does range in prosecuting felony cases all the way, except for murder, homicides, and sexual abuse. I then was transferred on to the Domestic Violence Unit which I, there was two prosecutors at that time, so we handled voluminous amount of cases during that period. It was a, very much so a growth and learning experience for me dealing with a lot of the victims and the circle of violence. Wherein when an incident would occur, it took us about, you know, we have a time schedule, a Rule 48 where you have to take the case to trial within six months and a lot of times when the incident would occur the case would get to court four or five months later and then at that point, the victim is recanting and is back with the assailant. And so now you're in court trying to get factual, to sustain the factual circumstances and the witness is recanting and denying everything so in the end you end up looking like the bad guy by sending the person to jail or rehab. So, it was a tough situation during that time. I never thought I would become a career prosecutor and so, at some point in time my wife had finished her residency program during the fifth year of me being in the Prosecutor's Office, she moved back to Maui and she was working at Maui Medical Group and we had made a family decision to move forward and I then went into private practice. While I was in private practice I continued to do criminal cases on the defense side. At one point there was, I guess negotiation issues with the Public Defender's Office with their deputies in pay and things like that so there was an issue where the Public Defender's Office was not taking on cases for a little under a year. I volunteered to take on as a court-appointed attorney all the Public Defender cases for less than, I think a little under a year. So, as a private practice attorney I was also continuing on with defense work in the criminal aspect as well as private sector where I did landlord tenant, divorces, immigration, contracts, you name it, personal injury, I was a general practitioner and from that experience was able to become more, enhanced my depth and knowledge within the legal field. And then eventually when there was a call from the community to run for office I did

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

run for office and most of you know my work here on the Council for the last six years. I think that moving forward you may be asking why I want to have this job, I ran for Mayor, I served on this Council, well the truth of the matter is, is that I pray a lot and when I lost that election for Mayor I really believed that I still had it in me to serve the community. I had four more years left, I could have been on the Council, but I truly believe that when you take this job in public service there's something in you that will never dwindle, there's that heart and passion that you still want to serve in any capacity. And so, when my predecessor was not confirmed I did put in for, I put in my resume knowing the fact that I would be qualified for this position. And knowing some of the details and back stories that's going on I felt that my leadership would be very effective in this office meaning that my team approach would definitely be an advantage and to move this office to the 21<sup>st</sup> Century. One of the other issues that I believe that needs to be addressed is some of the overtime that I did speak with some of the Councilmembers about, I had made my first initial step was to contact the Budget Director and to focus on which areas in which divisions were causing the overtime. I then put in for a Clerk position III so that our budget proposal would be amended. As well as reviewing the overtime directive and that needs to be a little bit tweaked and amended and somewhat reinforced. I did have a division head meeting to get the structure and to find out what are the, basically to brainstorm what our long-term goals and short-term goals would be. It was surprising to me that they hadn't had a meeting for quite some time. I plan to continue to have these team meetings and as the office is set up, we have divisions, we have this, the District Court division which is District Court attorneys and their clerical staff and paralegals. We also have the Family Court Division which has their attorneys, clerical staff and that's a division, as well as we have the, the Family Court is domestic violence as well as the juvenile section so, you also have attorneys in the juvenile section with their clerical staff and paralegals. You move on to the screening, Felony Screening Division and you also have attorneys there screening cases that are transferred over from MPD and then referred on to the various other divisions and they also have their clerical staff and paralegals. We have a Felony Abuse Sex Assault Division as well that has their attorneys and their clerical staff. And we also have an Appellate Division which when cases are contested we have attorneys that, that go on and write the briefs and the motions to counteract or defend some of our cases that we've already tried and so that also has a division. We have an Investigation Division with investigators that would help follow up with the cases. And we have a Victim Witness Division...Counseling Division we are approximately I think six victim witness counselors, I believe three of the positions need to be filled and so that's one of the areas that I want to be focusing on is our Victim Witness Counseling Division. I know that we need to become more strong and have better resources. One of the advantages, that well I wouldn't say advantages, but I would say one of the most opportunities that we were given in that Department was the new building from this last budget. I believe Mr. Hokama was there and was also very instrumental in passing the ability to purchase the Wells Building and we are going to rename that building the Maui County Children's Peace Center. So, on the bottom of that building we will have a, basically in so many words a one-stop shop where we would bring in our Children's Justice Center, our Friends of

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

the Justice Center, the Maui Police Department Sexual Assault Team, Child and Family Services as well as have a medical forensics service there for our sexual assaults. So, this would be an area where, wherein instead of our victims going to different agencies throughout the County they can go to one location. And on the top floor we have already moved our victim witness counselors as well as our assault, our assault attorneys that do abuse cases in the upper floor. Currently it's at...we're in negotiations in getting these other entities in and working on the lease agreements for those. So, I thank the previous Council for having the foresight and this will be the first of its kind in the entire State. Three of the objectives that I have presented to the Mayor after my first meeting with my division heads as a team, the top three strategies that we were, that I had presented to the Mayor was number one, our Maui County's Children's Peace Center I think that is a high priority in our office and should be followed through efficiently and quickly. Number two is proactive recruitment for qualified deputy prosecutors. Currently we have four vacancies and we have one pending that may be leaving us. So, definitely we are undermanned and short of qualified attorneys. As you can see in the budget every year, MPD as well as Fire continuously come to this Council for new E/Ps and new positions and higher salaries. You can see in the record that the Prosecutor's Office has not come forward with any new hires for the Deputy Prosecutors. So, in the increase of criminals, criminal cases as presented by MPD, on the other side of that spectrum is the prosecution bringing all of those cases to court. So, if MPD is asking for more officers because there's an increase of crime we also on our side need more deputies to complete those cases. So, the vacancies alone is a hindrance. So, we need to have a proactive recruitment policy where we're going to the colleges, we're going to the different law schools, we're advertising, we got to get more people interested in this line of work. And the deputies that we currently have, and the staff and clerical are excellent, they're outstanding, gifted individuals; however, these people are committed and strike the however, they are committed. You don't do a lifetime of this type of work without having the inner strength and passion to deal with this type of work. So, all that they need is a resurgence of new deputies that can align themselves in that type of training and commitment. And of course, you know, you have that revolving door, not all want to be career prosecutors, but I want to find those career prosecutors that would be committed to doing this as a lifetime career. Number three, our Statewide Witness Advocacy Academy, that's number three on our top long-term goals. Currently, the Attorney General's Office has appointed our office out of the entire State to lead and spearhead an advocacy academy. This is for counseling victims and we haven't set it up completely, we're still in negotiations and we're still trying to set up the format. But this would be a Statewide where other agencies throughout the State would come here to Maui and train to be victim counselors. So, we have to be on top of our game and considering the fact that we're down, we have vacancies in our own victim witness counselors, I need to be able to build that up to have that leverage to continue negotiations with the Attorney General's Office to say yes, we are the County that can spearhead this academy. So, I'm going to be coming to you for some funding later on, but it's good funding, because if we are the lead in victim counseling we will be definitely a shining example of what the other jurisdictions need to follow. We need

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

to be number one, Maui has always continuously led the entire State in all of our innovative processes and issues and this is no exception this area of criminal law is no exception.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Yeah, yeah.

CHAIR MOLINA: I apologize

MR. GUZMAN: Oh, I'm so sorry.

CHAIR MOLINA: No, no, no, no problem.

MR. GUZMAN: I feel like I'm still on the floor...

CHAIR MOLINA: No, you, you're...

MR. GUZMAN: Can I yield my time, Chair?

CHAIR MOLINA: Filibustering right now.

MR. GUZMAN: Oh, okay. Okay.

CHAIR MOLINA: You've certainly given us a very extensive overview with your qualifications and objectives and I'm, my Committee, fellow Committee Members have that have that enthusiasm, they do want to ask you questions.

MR. GUZMAN: Okay. Oh, I apologize.

CHAIR MOLINA: We're operating under some time constraints, and that's the major reason, but I certainly appreciate what you've shared with the Committee and I do know I am aware that one member that needs to leave within the next half hour so, I'd like to give that person an opportunity --

MR. GUZMAN: Okay.

CHAIR MOLINA: --to respond. Let me just start off first with one, Members, this is how I'd like to operate with this opening round, two questions each and then we'll see how it goes, yeah. So, because Prosecutor's Office comes under the oversight of this Committee I'll start off with the first two questions. The first one is a general one, briefly your experience with managing other lawyers, can you share with us briefly how many years, as far as supervising other lawyers which certainly you will be doing should you be confirmed as Prosecutor Attorney?

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

MR. GUZMAN: Okay. Managerial-wise my first job prior to going to law school I served as the senior paralegal at Dinsmore & Shohl in Ohio. I was working specifically with the associate attorneys. At the time I had a biology degree so I was hired on to be the team leader for our breast implant multi-district litigation team. And so, when it came to the associate attorneys that were on the team I definitely wasn't in a supervisory position to dictate to them, but I was in a position to give them input as well as them giving me input. Moving on I then moved on to a legislative position with Representative Tom Okamura, I did serve briefly on the judiciary committee as a research assistant working with various other attorneys that had legislation, and this office and currently as we speak is tracking three or four of the major legislation that's going on. So, I've gone on top of that and have, Keoni Enriques is one of our deputies who was working for me in this office tracking those and writing our positions. Moving on to the Prosecutor's Office, again the highest level that I got there was the juvenile section, I worked with all of the attorneys, the Appellate Division, speaking with them, understanding the culture of how to deal with attorneys. We all have our egos, we all have our strength and weaknesses and I think my experience as a Councilmember in dealing with various constituents and also working with our legislative attorneys I was able to gain their confidence and I would definitely say that I supervised a lot of the legislative attorneys. When I then moved on to the Chair of the legal affairs...Committee of the Whole, I took a different approach as prior chairs, I definitely met with each of the deputy, Corporation Counsel's deputies for every case prior to presentation. When the special counsel appointments were before us I went down and looked at the billables and actually come back to the Committee and say look we, the billables are outrageous, they're not sufficient. So, in working with the Corporation Counsel deputies as well as in my private practice dealing with attorneys on the private sector I believe that I've done a good job in making sure that integrity is upheld.

CHAIR MOLINA: Okay. Thank you.

MR. GUZMAN: Yes. Thank you.

CHAIR MOLINA: Thank you, that's a very good response. And my last question for now, now this may be a bit uncomfortable and all of our nominees have been subjected to some uncomfortable questions. So, it's more of an opportunity for you to respond to something that was said in testimony. There was an allegation of a potential altercation between you and a former Council candidate several years ago near the Lahaina Civic Center. Again, just briefly can you provide the Committee with a response to this allegation?

MR. GUZMAN: Thank you for the question. There was a situation at the Lahaina Civic Center and it was covered by *The Maui News* if you...that's why it was never brought up or brought forth in the most recent article. And there was allegations that myself and Mr. Alan Fukuyama got into an altercation, well, that was, the testifier was also the campaign manager of Mr. Fukuyama and so I would say that if this process needs



**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

to go forward maybe we should be having sworn statements. So, in terms of subject to perjury because anybody can say anything, the facts surrounding that situation is I believe and that was back in 2012, I believe that one of the campaign volunteers of Mr. Fukuyama, who is my aunt, who is one of my aunties by blood relation was in line and I said hello, how are you aunty, she, I can't remember the exchange, but then at some point I think I walked over to Mr. Fukuyama and I said please, please make sure that you control your volunteers. And then there was a verbal back and forth, but there was no like oh, we're gonna throw it down and we're gonna fight, you know, but as things are they, you know, got verbal, but it ended very peacefully and there was no like, oh I'm gonna throw it down and let's fight. No --

CHAIR MOLINA: Okay.

MR. GUZMAN: --it wasn't like that at all.

CHAIR MOLINA: Thank you, Mr. Guzman, that's sufficient.

MR. GUZMAN: In fact, Mr. Fukuyama is upstairs. Oh, I'm sorry. I apologize.

CHAIR MOLINA: Mr. Guzman, yeah, no, no problem, thank you, that's sufficient. It was more like if it ever escalated into something physical so, it was purely verbal.

MR. GUZMAN: Yeah, yeah, yeah.

CHAIR MOLINA: Okay, thank you. Alright, Members, Mr. Hokama has informed us that he has to leave for an appointment so, I'm gonna give Mr. Hokama the first privilege, opportunity to ask two questions. Go ahead, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you for the courtesy. Mr. Guzman, we appreciate, one, your willingness to go through this process. And I'm sure you're observing how the others went through this process. So, you're a veteran past Councilmember, you understand our responsibilities that we're doing this morning. So, I just wanted to start off by saying that. My first question and again it's about how we've structured the Council's responsibility of review and confirmation. And so, for this County it's something a little different, we've always confirmed prosecutor in the past as well as Corp. Counsel. But with the new additions of the Code, the one area that I'm, would ask my first question on is on Section 2.14.110 that we have put forth in our Code and this is under the section of five where we state that you need five years of experience in the practice of law, three years of experience in one or more of the following four functions: A, B, C, D. I would ask, Mr. Guzman, if you could give us some comment about what of the four components you feel you have complied with that allows your nomination to go forward this morning?

CHAIR MOLINA: Mr. Guzman?

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

MR. GUZMAN: Thank you, Chair. Thank you, Mr. Hokama, for the question. So, in that Section 2.14.110, Section 5, it says in addition to five years of the practice of law, three years of those you need to qualify for at least one of the following functions. So, "A"...I believe that I qualify for all of them and I will go through it as to why I believe I qualify for all sections. Regardless that I only need to meet one of the criteria. But, "A" attending and appearing in courts of a competent jurisdiction and prosecute criminal offenses on behalf of the municipality or other government entities or defending against such proceedings. So, out of my five years as a Deputy Prosecutor I did do that, I did take cases, screening, vertical prosecution in the District Court as well as Juvenile Court and the domestic violence court family abuse, and when I was in private practice continued on with the defense of clients and constituents throughout my eight years in private practice. So, that was part of my general practice was taking on criminal cases so I...on the other side of that fence. So, "B" the other criteria, instituting proceedings or directing the Chief of Police or municipality or other government entities to institute proceedings before a judge of court of competent jurisdiction for the arrest of persons charged with or reasonable suspected of crime...criminal offense. Again, I believe that my five years as a Prosecutor and my additional eight years in private practice complete and fulfill that requirement. I had appeared before Judge Shigezawa, Judge Reinette Cooper, Judge Ige, Judge Kawano, Judge Apo, Judge Romanchak, Judge Tanaka, Judge August, Judge Cardoza, Judge Valdriz, Judge Raffetto, Judge Loo, Judge Pollack, Judge DesJardin, Judge Cahill, Judge Kobayashi, and Judge Heely. I have had definitely appearances before them and argued motions and trials before them so those can also be verified with the Judiciary. "B" I mean sorry I believe number "C" moving on, drawing and presenting indictments...oh I'm sorry I skipped "B," wait did I? I did "B", oh sorry. "C" drawing and presenting indictments to the grand jury for consideration. Well, this is the nexus with the grand jury, when I was in private practice as you can see in my resume I was hired by the Judiciary Court in 2<sup>nd</sup> Circuit to be the attorney, the grand jury counsel for the grand jury. So, the grand jury has an attorney of their own so I was hired by the Judiciary for one year to be their attorney and if they had questions I would answer them and also assert their rights as well as defend any of the situations that may arise. But I was at all of the grand jury proceedings so, I believe the nexus of "C" I qualify for, and note, please note that I only need to qualify for one of these provisions. And I believe "D" is prosecuting administration violations in liquor laws. Well, administration and liquor laws I did do DUIs, I did do open containers, I did do DLNR cases with liquor violations, I did work with some of the liquor inspectors when it came to undercover, we call them decoys and we would bring in minors to various different establishments to double check whether or not they are legal or presenting the process of asking whether they're minors. So, not too much extensive work in that area but there is a nexus to it, and again I only need to qualify for one of the four. So, thank you.

CHAIR MOLINA: Okay. Mr. Hokama, your follow-up question?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER HOKAMA: Thank you, Chairman. So, I appreciate those comments, Mr. Guzman. So, you know, in this society of ours we cheer for the winners, we like success so what would you say your averages of how many cases have you taken to court, tried, and won? Whether it be in District, Circuit, Federal, Appeals.

MR. GUZMAN: Thank you for the question.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you for the question, Councilmember Hokama. Well, over the years when I was a Prosecutor I cannot remember how many cases I have done, but I could estimate...

COUNCILMEMBER HOKAMA: I would say tried and again I apologize, let me just make that you've tried, not --

MR. GUZMAN: Oh.

COUNCILMEMBER HOKAMA: --settled, but you've tried in court and had a court ruling in your favor.

MR. GUZMAN: Okay. Again, getting back to my original statement is that I cannot recall how many cases I've done when I was a Prosecutor, but it was voluminous amount. I would estimate trial alone in District Court maybe more than a hundred plus, maybe almost I would say 25 years, maybe 200 or 150 around that, that I've taken to trial. And so, my success rate I really, I felt that I was a good attorney and I never had any issues with the judges and whether I lost or won it was about the presentation and the respect to the judge and to the opposing party and to seek justice. And I know back in the day we were all, we used to receive accommodations for how many wins we get and sometimes along the way you realize it's not about the win, it's about helping the victims and seeking justice. But there were times where yeah it was all about the win and I would say my training was good, I felt that I've done enough bench trials to say that I'm a fairly decent litigator. I used that moving forward in my private practice. In terms of...

COUNCILMEMBER HOKAMA: We're more concerned with the Circuit level.

MR. GUZMAN: Alright.

COUNCILMEMBER HOKAMA: Because again yeah that's --

MR. GUZMAN: Yeah.

COUNCILMEMBER HOKAMA: --the complexities and seriousness of the violation or crime or alleged crime is greater, and that's why you move up --

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

MR. GUZMAN: Right, right absolutely.

COUNCILMEMBER HOKAMA: --in the structure to the Circuit, so how about at the Circuit level?

MR. GUZMAN: At the Circuit level like I said my highest level was Juvenile Court which we did do bench trial felonies and so I do know how to work up the case, but in terms of the real serious felony crimes and being at the Circuit, real Circuit Court level while I was at the Prosecutor's Office, yeah some of the strengths that I will be relying on is my first Deputy who is Robert Rivera and also you've witnessed some of the other deputies that have more experience. But, what I bring to the table is more of the administration and the ability to bring this office forward in reaching out to the community and understanding their concerns and bringing that into the Prosecutor's Office and utilizing all our skilled attorneys that we currently have and moving forward with it. I understand your concern and that's why when you're a leader you be, leadership always is inclusive and to get that inclusiveness you need to do it with a purpose and method of doing it.

CHAIR MOLINA: Okay.

COUNCILMEMBER HOKAMA: Chairman, you know, I...he didn't answer my question. Okay I understand about moving forward and I have no problem with that, but for me to move forward the understanding of the past because my question was about how then decisions are made and what cases he chose to move forward to take to Court and which cases that he chose recommend settlement. Now, if that was the final decision of then head prosecutor I can appreciate that. But I'm trying to understand his philosophy of how he chooses what to take to court because he believes of the percentages that the County will prevail on its position, okay. And for me part of Prosecuting Department is going to court and litigating. Okay and so I need to have a good understanding of the ability at trial for this County to be successful on those type of cases that will impact the health and safety of our community members, Chairman. So, that was my key to my questions and I appreciate my opportunity at this time, Chairman. Thank you.

CHAIR MOLINA: Thank you very much, Mr. Hokama.

MR. GUZMAN: Chair?

CHAIR MOLINA: Sorry, Mr. Guzman, I'm gonna go ahead...

MR. GUZMAN: I'd like to...

CHAIR MOLINA: Along the way we'll give you an opportunity to respond to Mr. Hokama's inquiry. But thank you, and my apologies. I'd like to, the Members have been waiting

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

patiently so I'd like to give them the privilege of continuing on with the line of questioning. We'll go out to, Mr. Sinenci from Hana, you have the floor.

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Chair. Thank you, Mr. Guzman, for being here this morning. So, in your opening remarks you did talk about some of your top priorities including victim counseling and filling some of the vacancies and being proactive with recruitment practices. Just can you add to your list your next top two priorities in the Prosecutor's Office?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you for the question. The next two priorities would be internal and the next one would be addressing some of our overtime that we've continuously had questions on from previous past budgets as well as moving forward to this next budget. And also, some of the protocols that we have in place and somewhat restructuring the teams not in terms of firing anybody but making sure that we have a functional office as in terms of communication, lines of communication and addressing some of the short-term goals and long-term goals that we would create. I have yet to have another meeting on that and so that's my next position is to really organize the office.

CHAIR MOLINA: Mr. Sinenci, a follow-up question?

COUNCILMEMBER SINENCI: Thank you for that. And I believe, my second question I believe it was Mr. Martin that may have testified at the last meeting and he spoke about I guess you've been in the capacity as the interim. So, what were...and he mentioned a little bit about what were your first duties in the Prosecutor's Office.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Councilmember Sinenci a little bit of clarification on the, my first duties in my...

COUNCILMEMBER SINENCI: Since you've been in the office --

MR. GUZMAN: Oh, since I've been in...

COUNCILMEMBER SINENCI: --as the interim, you know, what were some of the first things that you did while in the office.

MR. GUZMAN: The first thing that I did was meet with the First Deputy and get a overall background of what's transpired since the proceedings and so just to get a feel or the temperature of how people feel in the office. I then proceeded to make sure that I meet with each and every one of the deputies and clerical staff, investigators. Thereafter I held a division head meeting to get a synopsis of what's transpired and what are their

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

immediate issues. And I did address some of the concerns that I would, that I have and moving forward a mini plan of approach. And then I asked for the budget documents, the proposed budget that was submitted to the Mayor and the previous year's budgets and to review those and see exactly where we are economically and budgetarily wise. And I did see that there is some concerns and I did request for some of the data that is needed. I did request and review the pending cases, we currently have about 527 pending cases in drug and abuse cases. And that was, I think that there's a rise in that due to the fact that there is more children that are now reporting. A previous Council did appropriate \$25,000 for Molokai for education to the elementary schools on sex abuse so there is a correlation, a systemic result from that, that now we're having more reports of those types of cases. So, just reading through the data and having the, you know, the experience from being a Councilmember I can correlate what areas we need to focus on, but that was another area just by looking at the data. And then moving forward there was some other structural issues that I needed to take care of, but in my first week I believe I was very productive, you know, there's a lot there's a big task ahead of me, but I definitely look forward to the opportunity.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Chairman King?

COUNCILMEMBER KING: Thank you, Chair. Okay, my first question is, you know, kind of a follow-up to what Mr. Martin's testimony. I just kind of want to get your thoughts on your efforts so far to change the culture of the Prosecuting Attorney's Office as far as, you know, what needs to be changed and your approach to changing that?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you. Thank you for the question, Chair King. I think anytime that you're dealing with a change in culture in an office or a department it all starts with leadership that the top person is supposed to be the example and to be inclusive and moving that paradigm shift forward and finding those people that would share the same type of commitment to changing that type of culture whether it's negative or it's positive. If it's a negative culture then we need to bring in more positive influences and maybe it needs to be re-training, going through the process again. But it's a matter of building that trust and then bringing that trust forward together and moving as a team. Right now, currently we do have the people that are the head of various divisions and I plan to keep them there until I believe they're not doing a good job. Everybody deserves an opportunity to shine and all of them are talented there. There may have been weaknesses in leadership or not, I don't know that, but I do have a different style of leadership and so everybody starts with a clean slate with me until they prove otherwise. So, thank you.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER KING: Okay. Okay, thank you. And then one more question, Chair. I wanted to follow up on the vacancies because that's been one of the, the vacancies and the overtime because obviously vacancies lead to overtime and so, you mentioned you have four vacancies, I'm hoping that we're gonna see those filled before there's a request for additional personnel and see how the office works with, you know, a full slate because the vacancies have been ongoing at least through my time on the Council. And then I also wanted to...this is kind of a tricky question, but I wanted to find out if you are intending to hire or have been pressured to hire our previous director in your office as a prosecuting attorney?

CHAIR MOLINA: Mr. Guzman?

COUNCILMEMBER KING: Because it goes back to the disapproval, the reasons for the disapproval and some of the, you know, little bit of tug of war we've been having about who gets appointed to interim, but I just wanted to find out if there was any pressure to bring him back into your office?

CHAIR MOLINA: Mr. Guzman, a two-part response.

MR. GUZMAN: Thank you, Chair. Thank you, Chair King, for the question. First of all, in terms of the vacancies I agree with you if...in terms of having a full complement we will then determine whether or not we do need additional staff. But I believe in looking at the documentation or the data in terms of the overtime, the overtime is coming specifically from clerical and some of the, that portion of the Department so, and administration. Basically, my office so I did assert myself and did request efficient, expedient response from the Budget Director for an additional personnel in that, in the administration capacity. You have to understand that the Judiciary did require the Prosecutor's Office to now do scanning of our documents. And so, scanning is as well as Council Services knows is voluminous and it's a very hard task and I believe we've outsourced it over here, but we've been doing it internally all the scanning of all the cases. We're backlogged since 2013 so we need to get up to speed and get all the other documents scanned in. And so, I've noticed that the scanning process is actually being done by our administrative team, which you know the overtime for that amount is not appropriate, we should be either outsourcing it or hiring a clerical staff or doing a temporary assignment, you know, a TA or, you know, there's other ways to handle, you know, those types of functions, but definitely I'm on it and I'm looking into it and I did put in a request for a clerical.

COUNCILMEMBER KING: Okay. And then the second part of the question.

MR. GUZMAN: Oh and...

CHAIR MOLINA: Yes, the second part of Chairman King's question.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

MR. GUZMAN: The second part of the question, oh my God I got winded. The, whether I was pressured or asked to bring in Mr. Kim. It was asked of me by the Mayor and he...I didn't have a response for him, but it was fortunate that Mr. Kim decided to retire. And again, according to the Charter the Prosecutor has the full discretion to hire or fire all of the deputies including the First Deputy. So, as I reiterate again I need to come in on a good foundation and see whether or not the team that's in place is functional and I will make corrective measures if in fact there isn't. But I'm not coming in head hunting, you know, I've got to take this very precise and very reasonable and balanced approach to it. Thank you.

COUNCILMEMBER KING: Right, no I understand. Thank you for your answers. Thank you, Chair.

CHAIR MOLINA: Thank you, Chairman. Councilmember Lee?

COUNCILMEMBER LEE: Thank you, Chair. Morning, Don.

MR. GUZMAN: Good morning, Councilmember.

COUNCILMEMBER LEE: Okay, Don, one of the reasons why I actually ran for Council is because I, many people perceive the previous Council, not all the members, but some to be dysfunctional. And would you say that maybe on occasion that you lost self-control in the proceedings in the Council from time to time, did you?

MR. GUZMAN: Yes.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you for the question. Thank you for the question, Councilmember Lee. Yeah, I would admit that and as Mr. Hokama would know and Ms. Sugimura would know that when I get passionate about arguing a position yeah, I tend to be very animated and very vocal and again that is my style in on the floor and I apologize if it offended any of the Councilmembers. But off the floor everything that I had said on the floor to defend a position or be passionate about or in your words maybe lost self-control was on the floor and leaving the floor I believe that my relationships with the Councilmembers and the Staff was very professional. We do have one of my previous secretarial staff here, Pauline Martin and she can attest that every time that I left this floor it was very, very professional and I most definitely treated all of the subordinates with utmost respect and admiration and I worked as a team. And she's here too and she could testify if she...

COUNCILMEMBER LEE: No. Thank you.

MR. GUZMAN: Okay.



**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER LEE: Thank you for your answer. You talked about the notion of leadership. Do you consider a good leader to exhibit those kinds of traits where, you know, you fly off the handle when something happens that you don't agree with? Do you as a leader believe that you have that kind of liberty to just totally lose it, lose your composure when you are responsible for an entire department and law enforcement, you're gonna be like the top law enforcement person for the County, is that a good trait to have?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Well, thank you for the question. I don't believe it's a good trait to have if you're constantly, you know, going off the handle as you're assuming, but in terms of being effective on the floor or in court sometimes you get overly aggressive or sometimes you certainly get emotional when you're arguing positions. But when you're in, when you're standing in the shoes of an administrator and you stand in the shoes of a supervisor those type of traits are not appropriate in terms of delegation. I mean I don't believe that I've ever truly like done my antics or been aggressive as an administrator as opposed to being a Councilmember on the floor. I think the positions are two distinct and of course you have special interest groups that, and other constituencies that want you to be the advocate for their position and sometimes you get so involved in it that passion comes out of you and that's...to answer your question, I don't condone it, but as a Councilmember that's how I operated on the floor and you won't see that from me on this side of the aisle, I will always be very much so respectful to the Council and to all of the colleagues.

COUNCILMEMBER LEE: One quick follow-up, you mean to say if you're on this side of the aisle you would continue that behavior?

MR. GUZMAN: No. I'm just saying, Councilmember Lee, that at times that there were moments in time that you do get so involved in a particular issue that you do show a little bit more aggression or emotion on certain issues and topics. And I do again apologize, I, if I made any of my colleagues in the past feel uncomfortable on the floor. But if you can have the opportunity to just speak to some of my colleagues in the past. All of the things that I may or may have not done on the floor was not continued outside of the floor. But I understand where you're coming from and I definitely will make changes in my life to --

COUNCILMEMBER LEE: Thank you. I just want to say finally --

MR. GUZMAN: --correct that.

COUNCILMEMBER LEE: --that I'm not inventing these, you know, --

MR. GUZMAN: No, I...

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER LEE: --comments on your behavior, I've received complaints from colleagues and subordinates about your behavior so, but I thank you for your answers. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Member Lee. Committee Vice-Chair Rawlins-Fernandez, you have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Guzman. You answered a lot of my questions in your opening statement. But I wanted to follow up on questions of overtime. In your response to Chair King's question about overtime you said that you plan to organize the office differently so that you can get a better handle on that. Do you have any plans to establish safeguards for overtime abuse by streamlining the approval process to restrict and regulate it? And if so how will you monitor the hours of employees within the Department to ensure that overtime is not being taken advantage of?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you for the question, Councilmember Fernandez. On the issue of overtime, I did review what we call the overtime directive dated April 12, 2018. Basically, a method of checks and balances that was in place or in response to the previous Mayor's letter requesting the Department to look into the overtime dated July 27, 2017. I believe that they do have what we call a request for overtime form, I reviewed that. There are certain aspects to that, that needs to be changed. Definitely did ask for an audit in terms of where the overtime is coming from and they have yet to compile that information for me so currently I do have a little bit of information of where the overtime is coming from and so I immediately took action on that specific position or that area of the Department that needed to have additional clerical staff. Moving forward I plan on having a data, a database that basically after the form...there's a form of request for overtime that is submitted from the clerical staff. Just to note Deputy Prosecutors do not receive overtime, it's clerical and the paralegals. And so, they submit a form, they fill it out requesting beforehand the justification for the overtime, it is then sent forward to their supervisor, it is approved by the supervisor and then sent on to the head prosecutor for review. I have reviewed the overtime sheets that have come in so far, it seems legitimate; however, there needs to be more a tracking system like after I sign off on the overtime it needs to be placed into a database to actually track all of the overtime and specifically where the, each department that is utilizing the overtime and individual employees so that I can see the spikes. And if the spikes match up for heavy-load cases like for instances we have a spikes going on with our abuse cases, sexual abuse cases because of the more reporting of that through the, our juveniles and our children through the education so we're getting spikes on the, those types of cases so there are more overtime that needs to be addressed in that certain Department or section. So, if I can correlate the spikes with some of the things that are going on then it makes sense, but if it's purely the same consistent overtime by the same consistent employees then I need to go look and

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

investigate what exactly is going on, I just don't have the data right now. So, I have these forms, but I need to plug them into some type of tracking system. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Just a clarification on your response. So, overtime would have to be preapproved and if it's not preapproved then overtime would not be given?

MR. GUZMAN: Correct.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MR. GUZMAN: It's my understanding how this system is and granted I've only been there for a week and a half is that what I have reviewed so far is the form and the employee asking for the overtime, the justification, an approval by their supervisor and then the last but not least is the head prosecutor signing off on it. And so, to track all that it needs to be more organized 'cause I don't know who's doing what on overtime until I actually see a tracking or stats. Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Right. So, one of the causes of overtime, if you receive the report of an attorney that's been taking extremely long lunch breaks and drinking alcohol during those breaks then returning to work how would you as a new director handle the situation especially if you were not given support by your Deputy Director?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Thank you for the question. Well, first and foremost if I'm very shocked that, that would be a scenario, but if in fact it's a hypothetical...

VICE-CHAIR RAWLINS-FERNANDEZ: It's not a hypothetical it was --

MR. GUZMAN: Oh okay.

VICE-CHAIR RAWLINS-FERNANDEZ: --reports that my offices, my office received.

MR. GUZMAN: Okay. Okay. I definitely would like to know who the deputies are that are drinking while on office hours regardless if they're taking four hours or two hours away from the office. The fact that they're drinking alcohol while they're supposed to be on duty is very concerning to me. I will definitely put forth an investigation and ask the deputy why they're doing that, advise them not to...I don't know what the rules were prior to my being in there, but definitely there will be no drinking while on office time and even if they're taking four hours off for lunch or something like that. Definitely that's very concerning to me and if they're entering court after those drinks then that's really, that'd be almost like an ethical violation at some point. Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Guzman. Mahalo, Chair.

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

CHAIR MOLINA: Thank you, Ms. Rawlins-Fernandez. Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Guzman, for going through this process and meeting with me in advance. So, my question is that in this role as the Prosecuting Attorney you will also be overseeing not only at-will attorneys but civil service employees and if you have done that in the past?

MR. GUZMAN: Thank you for the question. Councilmember Paltin, I haven't dealt with civil service employees in my private practice and I know that as part of the bargaining unit there are provisions in there to deal with discipline, the seven tests of just cause. And so, as part of my private practice I did represent at least two employees that had to assert claims regarding mistreatment and the ability not to get due process while reviewing a disciplinary action and that's what the seven steps, seven tasks of just cause are for and were created within the bargaining unit contracts to make sure that the employees go through proper due process. You know reasonableness, factual, the facts, and the discipline needs to be fair and not retaliatory. The other steps I don't have it off the top of my head, but I do plan and I did make an appointment after my first meeting with divisions heads and I have it in my minutes is that I made an appointment with David, Mr. Underwood with Personnel Services, HR Human Personnel...Personnel. Well, anyways I made an appointment with him as well as, Michele Mitra from HGEA so I do have that scheduled so that I can actually have a working relationship with them and get more briefing on having a set plan in place as to what happens when these situations arise, and we would be having more open communication dialogue with HGEA as well as the Personnel Department.

COUNCILMEMBER PALTIN: Thank you. I'm glad you have awareness of the seven steps, and I'm also thankful for my previous colleague's questions about the overtime, I think you addressed that sufficiently. Just wondering, the 527 case number that you answered for Mr. Sinenci, is that the full backlog of cases?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Yes, thank you, Chair. I do have the full backlog of cases and when I, when we say backlog it really needs to be further defined because at some point when cases get transferred to the Prosecutor's Office from the Police Department some of them are not fully worked up. When I mean worked up some of the investigation components are not complete so we do have an Investigation Division and we do have our prosecutors that further on identify some of the missing components and evidence. And that's through our Screening Division as well as each division screens their own cases so there is further work up. So, when I say pending it's either the cases are complete and they're already at court versus cases that have already been transferred to our office but still need work up, so there's two categories of pending. But in the overall gist of things I can give you a breakdown of what we have so far in terms of cases that we have in our office. So, currently in our Family Court Division we have approximately 236 cases, the count is 133 of that is pending. In our Felony Division

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

we have 2,111 cases, 679 are pending. Our juvenile section we have 293 cases and 182 are pending. Our misdemeanor cases we have 523 cases and 319 pending. And in addition to that conflict cases six and additional Traffic Division's are approximately less than a hundred, 69-70. I have further breakdowns on those categories, but I think it would get a little bit more long winded to specifically identify each of the breakdowns. But I can explain that but I don't think Chair would like that.

CHAIR MOLINA: Yeah, Mr. Guzman, I think your answer has been quite sufficient for Member Paltin.

COUNCILMEMBER PALTIN: Yes, thank you, I appreciate the answers.

CHAIR MOLINA: Thank you, Member Paltin, for those questions. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Good morning.

MR. GUZMAN: Good morning.

COUNCILMEMBER SUGIMURA: Nice to see you here and I just wanted to open up with some obvious. I think you said that you ran for Mayor, and so my question is would you be able to work with the Mayor Victorino considering you ran against him? I just want some thoughts about that about I want to hear what you have to say.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you very much for the question, Councilmember Sugimura. Let me preface this by saying that when I did run for Mayor I ran on a platform that was, could be on both sides of the spectrum, you know, I believed in the environment and making sure that we take care of our oceans and our sea level rises and our open space and I have a passion for agriculture, and at the same breath on the other spectrum economic development as well as smart growth. I don't want to be sounding like I'm restating my platform, but after the primary I had decided not to endorse any one of the candidates because the positions were just, they weren't mine, you know, they, I was more in the middle more of the moderate candidate. And so, moving forward I did apply for a position in the Victorino Administration when Mr. Victorino or the sorry, Mayor put out a public notice to send in resumes and so I did apply and admittedly I submitted for Corporation Counsel, you know, I believe that my background led into that arena. I received an e-mail back saying that they were gonna transfer my resume to the Special Selection Committee. I thereafter didn't receive any notice so I just waited, you know, patiently thinking that I was gonna start my practice up. I then put in an application for your open position for Director of Counsel Services, did not hear back from that and then so when I was watching the proceedings I noticed that Mr. Wong and Mr. Kim didn't make it through the Committee on first passage and then it was transferred to the full Council. At that point I did not submit my resumes yet thinking that it was still premature, the final

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

vote hasn't come down, Mr. Wong did not make it through. I then did submit my resume after seeing that Mr. Kim didn't make it through. In my conversations with the Mayor during my interview yeah, I believe that he has the confidence in me to do the right thing regardless of whether or not I supported his candidacy, and that takes a true leader to bring the other side into your administration or someone that wasn't completely loyal to you. And Abraham Lincoln did the same thing when he became President, he brought in his opposing candidates and parties into his administration. So, that's the type of leadership that I admire, and he's given me an opportunity to fulfill my inner strength to continue to work for the community, but this is just in a smaller scope and more focused on one department. But yeah, I understand the lines in the Charter the Prosecuting Department is its own entity, it's on the law enforcement side as well as the Judiciary side, so clearly the lines are drawn that I'm not taking direct orders to the Mayor, he knows. We are a separate entity just like the three branches of government, you know. Thank you.

COUNCILMEMBER SUGIMURA: Appreciate you answer.

MR. GUZMAN: Thank you.

COUNCILMEMBER SUGIMURA: And thank you for meeting with me before today and I'm gonna ask you the same question because it is part of the qualifications and it is part of something that I think is very important for all directors which is be able to manage your budgets.

MR. GUZMAN: Yes.

COUNCILMEMBER SUGIMURA: So, right now I'm gonna listen with two ears okay 'cause we're right now gonna be stepping into our Budget Session, and you already mentioned that you're looking for one clerical person as well as I wanted to know about number one, managing the budget that you're gonna be responsible for with this new position. And number two is the clerical position which you asked for one, but you're also talking about that we're behind on scanning our documents and I know what a big job that is.

MR. GUZMAN: Yes.

COUNCILMEMBER SUGIMURA: So, are you also asking for something with professional services just to take up some of that so we can get up to speed with what we need to, where we need to be with our documentation? So, two questions.

MR. GUZMAN: Thank you.

CHAIR MOLINA: Mr. Guzman, sorry prior to your response to Member Sugimura's question. Just as a FYI for the Members we did receive a document from Mr. Guzman or the

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

Mayor's Office responses as to his pre-budget presentation which is set to come up next week so just as an FYI.

COUNCILMEMBER SUGIMURA: Oh.

CHAIR MOLINA: My apologies. Please continue, Mr. Guzman.

COUNCILMEMBER SUGIMURA: Don't ask?

MR. GUZMAN: Yeah. Thank you, Chair. Yeah.

COUNCILMEMBER SUGIMURA: I guess we have a live voice before us if you don't mind.

Mr. GUZMAN: Thank you, Chair.

COUNCILMEMBER SUGIMURA: Thank you.

MR. GUZMAN: Thank you very much for the question, Councilmember Sugimura. As the Chair did mention I did submit to the Mayor our vision and our proposed goals for the budget. Currently, in addressing the budget your first question, we have salaries and wages of approximately \$608,000 for our budget, previously, our previous budget, yeah. I'm not at liberty to disclose our...

COUNCILMEMBER SUGIMURA: Twenty?

MR. GUZMAN: Yeah.

COUNCILMEMBER SUGIMURA: Twenty-twenty.

MR. GUZMAN: I've received information from the Mayor not to disclose our proposed budget, but in our previous budget as of 2019 we have salary and wages of \$608,000, our operations budget is \$307,000, our equipment is \$6,500, as part of our professional services is less than \$10,000 which in retrospect if I had been in the position I'm in I would have increased that as professional services and went out and got some quotes in terms of third-party scanning. But it is what it is now, our total operating budget is 922,975. Approximately we have 85 to 87 employees, E/Ps and attorneys inclusive of that is 33, down vacancies four attorneys and less than ten on the clerical staff and paralegals. In terms of the clerical position that may supplement some of that overtime in the scanning, again I did mention on the floor that I immediately took action and requested a Clerk III position from the Budget Director and gave the justification for it. And I believe that would dramatically reduce our overtime in that particular division or area. I believe that I think we were at 83,000 is that correct? Eighty-three thousand in overtime and so we definitely need to start tracking that. Thank you.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER SUGIMURA: Thank you, and I will do my homework, I didn't realize that came through. Thank you. So, one last question is in my community I got a text message yesterday of a child being taken away from a family. I don't know what the circumstances are, but I wonder in your experience with, your past experience and can you direct me, you know, where this family should go or what they should do? There must be all kinds of circumstances surrounding it, but just your professional experience.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Not knowing the surrounding facts or the details of the situation, on its face I'd have to determine why the child was, which agency took the child, was it the protective service agency under the State or was it Child Services, Family Services, was it an abuse that happened on or reported to the State or was it a case generated through the Police Department. In any event you could have that person, or your constituent call my office and we definitely will do our best to accommodate. And that's why one of the visions for this office is to build up our Victim Witness Counseling Division. So, as I said we will be working on being the spearhead for the Attorney General's Office to create the academy and the first of its kind in the State and we would have these types of trainings there. So, in reference to your particular instance please have them call our office and we will direct them to the appropriate actions to be taken.

COUNCILMEMBER SUGIMURA: Okay. Thank you.

MR. GUZMAN: Thank you.

COUNCILMEMBER SUGIMURA: Thank you very much.

CHAIR MOLINA: Thank you, Ms. Sugimura. And finally, Ms. Kama, you have the floor.

COUNCILMEMBER KAMA: Thank you, and I just want to thank my esteemed colleagues for asking all those questions that I have on my pages and so I have to, had to come up with a different question. So, these two questions are very short, simple to answer, but does have to do with your job. So, you know, the Prosecuting Attorney's Office has actually set itself at odds with some members of our Hawaiian community in terms of not being allowed to do our court proceedings in olelo Hawaii which is our official State language and my question is, does your office have the capacity to do that?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you for the question, Councilmember Kama. Currently we do have I believe one personnel that may have the capability to communicate in Hawaiian. However, that person hasn't been certified as an interpreter and the suggestion of, and



**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

that's what I'm implying, the suggestion of having someone who is skilled in Hawaiian is a great recommendation. And the fact that this incident had occurred I think there's a lot of healing that needs to be done and one of the, you know, and I can't get into the details, but we are going to be making attempts to bridge that gap, and I believe I contacted your office to --

COUNCILMEMBER KAMA: Yeah.

MR. GUZMAN: --assist us in that and I also would ask Ms. Fernandez and Mr. Sinenci to help this office bridge that gap and find the proper channels to go through when these situations arise. Even when a sit down or protest happens to have that communication prior hand and have that understanding of what are the parameters of a sit out, sit down protest. They may, you know, people may not know that it is legal to protest, but there's certain parameters that when you go beyond those parameters it becomes illegal. And so, maybe a sit down with some of our groups out there to understand the parameters of what is a legal protest versus crossing the line --

COUNCILMEMBER KAMA: Yes.

MR. GUZMAN: --and basically healing and moving forward as a community. I think that's the best way of approaching what had happened and moving forward and changing how we react or we approach that similar type of situation in the future.

COUNCILMEMBER KAMA: Thank you.

MR. GUZMAN: Thank you.

COUNCILMEMBER KAMA: My second question is if the potential to do so was, could happen would you be willing to prosecute the Bank of America for their unfulfilled \$150 million commitment to the native Hawaiian community?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you for the question. I'm not purview to the complete details of that situation or that issue, but if it does involve the violation of the HRS and it is classified as a white-collar crime we will definitely go into it and do our thorough investigation and determine whether or not we need to pursue a charge of prosecution on it. I just at this point don't know the surrounding facts that led into the withholding or the denial of those monies to be appropriated.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you very much for those lines of questions, Ms. Kama, and I know that at the times it may be perceived as a disadvantage to be last but at times it can be an advantage as well --

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER KAMA: Yes, it is. Thank you.

CHAIR MOLINA: --because it forces you to become creative in your line of questioning. So, Members, you've worked very hard this far, we've concluded this first round of questions. Chair would like to call for a morning recess, let's return here at 10:40. Okay, Members, the recessed meeting of, GET recessed meeting of March 12, 2019 stands in recess until 10:40 a.m. . . . *(gavel)* . . .

**RECESS: 10:26 a.m.**

**RECONVENE: 10:43 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of March 12, 2019 is now back in session. Members, today is Friday, March 15<sup>th</sup> 10:43 a.m. We've completed our first round of questioning for Mr. Guzman whose seeking confirmation for the Prosecuting Attorney's Office and I want to thank all of the Members for your participation thus far and of course Mr. Guzman as well. And the Chair would like to recognize Ms. Deidra Tegarden who's now I guess filling and representing Mayor Victorino at our proceedings this morning. Thank you for attending. Alright we shall continue the line of questioning now. I guess I'll start off with myself. I...and thank you, Members, you've asked a lot of questions that I had in mind and so but I do have one and, Mr. Guzman, again this may something, another one of those tough questions that has been brought to my attention. I believe, Member Lee had alluded to your past service on the Council, for me this is the issue of attendance, and I've noticed that during your last term that you were not available for roughly 35 percent of the agenda meetings in 2017 and about 25 percent in 2018. And with regards to a committee meeting that you were a part of the Planning Committee meetings you had missed several of those meetings. And let me just before I ask you for your response it is normal, you know, Councilmembers are human we do get sick, we sometimes have family emergencies or commitments that we must attend, but certainly in the position that you're seeking and of course the workload question which was asked by you from Member Paltin it's very imperative that you as the lead prosecutor need to be around the office to address many, many issues that could occur. So, I'd like give you an opportunity to assure us that you will be there for a good majority of the time to deal with these matters and if you'd like to explain as to why you were not available for some Council and committee meetings a couple of years ago I'd like to give you that opportunity, Mr. Guzman. Go ahead.

MR. GUZMAN: Thank you for the question, Chair. As all of you know that this position, I mean your position that you sit in is part time and I, during that 2017 it's technically as part time but it's a full time, you know, when you sit on the Council you're pulling in 60 hours weeks if not more. And so, if you miss a committee meeting here or there you definitely make up for it in terms of the hours put in. So, in 2017 the reason why there is somewhat of a absence issue is it was basically honestly was a family priority to me during that summer. My daughter was applying for college and she also was in

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

line for a golf scholarship so I had taken two months off to bring her to the mainland to actually get qualified for various amount of coaches that were scouting her. I believe that I did come back...when you miss one week of Council you miss nine meetings, I mean you miss eight meetings on your absence. So, if you miss two weeks that's already 18 or 16 meetings you miss on your absences. So, that particular year in 2017 I made a commitment to my daughter but in the work that I've done as a Councilmember I believe I've made up for it. If you could check the record on my reso that was passed when I, you know, left office I had almost about 60 pieces of legislation that I had passed or introduced. That's ten legislation pieces per year and as you know it's like to even pass one piece of measure it takes a lot of work with the community and your staff and your committee. So, I apologize for missing some meetings in 2017. In terms of this role that I'm in right now my daughter is off to college this fall and she's not my priority. I do have small children but that shouldn't interfere with the work that needs to be done in the office. I definitely will be there and assure you that absence for my family won't take that much of a priority in terms my daughter's process as it was in 2017. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Guzman. And just for the record, your children right now, your younger children are of what ages?

MR. GUZMAN: My children, I have my youngest boy who's, Andrew is 11; my middle child is 13, Nealon.

CHAIR MOLINA: Okay. Thank you and I just asked that only 'cause so it'll be a number of years before they start going to college.

MR. GUZMAN: Right, right, right.

CHAIR MOLINA: So, okay.

MR. GUZMAN: Yeah, yeah.

CHAIR MOLINA: I just wanted to get that straight.

MR. GUZMAN: And they're not searching for athletic scholarships.

CHAIR MOLINA: Okay. At this point anyway. Alright thank you for answering that question.

MR. GUZMAN: Thank you.

CHAIR MOLINA: Chair would like to now recognize Mr. Sinenci from Hana for the second round. Again, Members, same process two questions and we'll go down the line. Mr. Sinenci?

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER SINENCI: Thank you, Chair. Yeah, so I just wanted to, you know, Member Kama asked some of the questions I was going to ask about accommodating olelo Hawaii and I understand that you're inheriting kind of some of the past issues of the office and I am a proponent to moving forward from here on out. However, like you mentioned earlier about just healing some of the, you know, the past issues and moving forward. Do you have any and, you know, listening to the testimony of the last round of, for the previous director, you know, there seemed that there was a lot of families with a lot of, you know, hurt, carrying a lot of hurt and issues from years of...and we received, all of us received a lot of those testimonies. So, is...do you have any plans to, you know, make closure to some of these really high, high-level cases?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you. Thank you, Councilmember Sinenci, for the question. I completely agree with you in terms of moving forward and addressing some of the misunderstandings that may have happened in the past. As you know when you're in your seat you get familiar with all the districts and all the constituencies and all the groups out there and you learn that a full line of communication is very important. And so that's one of my strengths coming in is that for those families or victims that have felt that they haven't been accommodated or addressed will be a priority for my administration in that office. As in terms of building the Victim Witness Counseling Division that is a priority and to reach out to those families or individuals that felt they didn't receive the support that they were needed it hurts me, it hurts my heart. So, I definitely need to get in front of that, and with your help as I mentioned earlier, your help along with, Ms. Fernandez and Ms. Kama I have a plan, I definitely have a plan. I haven't disclosed that to you or not, but I'm just waiting until after this confirmation to have a conversation with you on that specifically to the Hawaiian community.

COUNCILMEMBER SINENCI: Thank you. My second question is my office have received, you know, even though a majority of support for your confirmation there still had, we also received some, you know, criticisms and, you know, it's something that in your past experience you might have gone through. So, is there also any attempts to address some of those issues that maybe you personally have gone through --

CHAIR MOLINA: Mr. Guzman?

COUNCILMEMBER SINENCI: --and putting those things aside?

MR. GUZMAN: I did have an opportunity to go through Granicus and review the, I think four letters that were submitted in. I believe two of them or three of them were anonymous and I did do some research and discovered that the anonymous is basically coming from one particular person and I've taken action on that. That person is no longer in the office so...not from me doing anything about it, but yeah, he's no longer in the office. And so, I've definitely have taken action and some of our employees have been,

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

you know, I wouldn't say of concern that there's like an intimidation thing going on. So, I did report it to EEOC. So, in terms of addressing some of those criticisms this process is very difficult for directors coming into it and I know you're an open book and you stand there in the face of all criticism and as well as support. But the criticism if you're gonna criticize somebody they should put their name on it because at that point it's just heresy and reading some of those critic letters it's almost like, not almost it is defamatory and slander and very untrue. So, I, to put any kind of credence or creditability to those letters I don't know what to say about that, but all I can say is I'm gonna do my very best. I did read some of the critics and I and that's all part of learning it's a learning process yeah you learn from every other administration and you try to do your very best to improve it and not adopt things that people accuse you of or you realize you need to change. So, in moving forward I can assure you, Member Sinenci, that I will do my absolute best and if not, you definitely have the, the Mayor has the prerogative to terminate me. Unlike when I was sat on the Council it would be very difficult to remove a Councilmember. If I ever step out of line you definitely have every right to file a resolution demanding my resignation for unfit possibilities or reasons.

COUNCILMEMBER SINENCI: Alright. Thank you. I mean I'm just asking 'cause I too have received some of the criticism and I too have critics but, you know, I tend to want to address them, I'll give them a call, I'll, you know, make sure that we can find some kind of common ground, just to address some of, you know, if they have issues with me I'm always open to, you know, to talk about things. So, that's why my line of questioning. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Chairman King?

COUNCILMEMBER KING: Thank you, Chair. You have critics? It's only starting. Actually, Chair, just to comment on the previous questions, that was a good question, but I think we should actually...I would like to get an opinion from Corp. Counsel on whether we should be posting anonymous testimonies. Because I got them for the previous person in this position that we disapproved and, you know, I discount the anonymous testimony in that case and I discount the anonymous testimony in this case as well. And so, I think we need to get some kind of opinion on whether that should even go on Granicus if someone's not putting their name on it.

CHAIR MOLINA: Okay, Mr. Kushi, are you able to respond to that or --

COUNCILMEMBER KING: It doesn't have to be right now --

CHAIR MOLINA: --Chairman we can just submit a question to Corp. Counsel.

COUNCILMEMBER KING: --yeah, I just asking a question if you would.

CHAIR MOLINA: Yeah. We'll go ahead and do that with Mr. Kushi.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER KING: So, my first question was on the authority that you're under in the hierarchy of the Mayor's Office and, you know, not that I don't appreciate seeing my friend Deidre Tegarden sitting next to you, but my understanding is that the Managing Director manages the department heads. And so, I just was I don't know if, Sandy Baz had to leave because he had to go somewhere, but I just wanted to hear from you and because you have also have previous knowledge as a Councilmember what you, I mean do you see yourself as reporting to the Managing Director or the Chief of Staff or directly to the Mayor? You know what is the process?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Thank you for that question, Chair King. In terms of the Charter how it, how I view the Prosecutor's Office I view it just like the three branches of our government. You have the Executive, you have the Legislative and you have the Judiciary. So, in our Charter it does have the Prosecuting Attorney listed as the head of the Prosecutor's Office and has the discretion. For all of the authority that is given on to the head prosecutor is then delegated to the deputies. In terms of who I report to, in the other jurisdictions they're all elected positions the head prosecutor is elected so there isn't really anyone to really report to. But in, the way our system is set up is we're the only jurisdiction that the head prosecutor is appointed by the Mayor and confirmed by the Council. That is the extent of the authority to the head prosecutor is purely the appointment.

COUNCILMEMBER KING: Okay.

MR. GUZMAN: I don't...it's void as to whether the Mayor has any reaching power and in my discussion with the Mayor I did reiterate that we are our separate entity and we are officers of the court. And so, he knows that and we have an understanding and that has always been past practice that the Prosecutor's Office is a separate entity.

COUNCILMEMBER KING: Okay. You know, I brought that up because it's supposed to be the same for Corp. Counsel, but because the Mayor has the removal authority as, you know, it doesn't always appear that way and so I guess my...what I'm leading up to is my question of would you support the Prosecuting Attorney being an elected position in the County of Maui? Since we're the only, you know, County that doesn't have that.

CHAIR MOLINA: Mr. Guzman, that is an interesting question. Proceed.

MR. GUZMAN: Yes. Thank you.

COUNCILMEMBER KING: And it's a pretty heavy question so if you're not prepared to answer it...

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

MR. GUZMAN: No, no I have thought about that as well. We're the only stand out in the entire State that still appoints the head prosecutor. There's some pros and cons to it. I believe...

COUNCILMEMBER KING: I understand that, but just to cut to the chase --

MR. GUZMAN: Oh, okay sorry. I was going to give you the background.

COUNCILMEMBER KING: --would you support it or not. 'Cause I think about all those same pros and cons, but I just...

MR. GUZMAN: I would be open to it, I would support it. I know that I believe on the Federal level they've actually seen an increase of more prosecutorial cases when they're elected because there's a, there's almost like a, yeah, not almost, there is public pressure for the head prosecutor to get the numbers that he needs in order to show that they're doing convictions versus --

COUNCILMEMBER KING: Okay.

MR. GUZMAN: --if you're appointed, you know, it's a smaller audience that you need to convince that you stay in your job versus being an elected. And you know as well as I do --

COUNCILMEMBER KING: Yeah. It becomes political --

MR. GUZMAN: --how hard it is to get elected.

COUNCILMEMBER KING: --and it goes back to Mr. Hokama's question about asking how many cases you've won. So yeah, I understand that I just wanted to get your thoughts on that because it's I think it's an interesting thing that we might want to explore in the future. And then I just wanted to go back to something Chair Molina said about part-time versus full-time because I look at this job as a full-time, but I understand that it's not, there's no job description for a Councilmember, there's no hours determined so every Councilmember determines whether they're full-time or part-time and how many hours they work. I mean I get up at 4:00 in the morning because I can't stop thinking about things and so I feel like I'm working from 4:00 a.m. till 10 o'clock at night. But you're in a position now where you have a full-time, you know, job description and so I just wanted to get from you just that commitment to, you know, understanding that the obligation it is written in stone for your position now and that you do consider yourself probably full-time plus when you're a director.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Yes. You do have my commitment with absolute certainty. That as you know, as well as I do your position as a Councilmember it fluctuates and the various

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

duties that you have, you may have to attend an evening meeting with a community group and then wake up the next morning and go on up until three or four o'clock in the morning on budget. You know, so this is more set on to a 7:45 to 4:30. It gives...on a personal level it honestly, it's a relief because now I have a set time that you actually, you know, parameters to go through. Regardless of the on call, calls that I would be receiving, it's more stable in terms of the set hours given. And again, that doesn't mean that I'm not on call because the head prosecutor is part of the emergency team, on the emergency team list so anytime there is a tsunami or any type of emergency I'm one of the responders and I've been given a separate phone for that as well.

COUNCILMEMBER KING: Alright. Thank you, Mr. Guzman, appreciate that. Thank you, Chair.

CHAIR MOLINA: Thank you, Chairman King. Certainly some very good questions, I'm especially envious of that question about the electing the prosecuting attorneys, quite timely these days. Councilmember Lee?

COUNCILMEMBER LEE: Thank you. Don, when you were on the Council did you vote to support the Prosecuting Attorney's Office in terms of additional staff or resources or did you...well I was going to say did you support or not support --

CHAIR MOLINA: Mr. Guzman?

COUNCILMEMBER LEE: --additional request for staff and resources?

MR. GUZMAN: Thank you for the question, Councilmember Lee. I believe that every time the Department came up for their budget I did support their budget and did ask questions to clarify because of my background knowledge on some of the issues that the Members at that time may not have understood how the office worked. In particular when the, when Mr. Rivera and Mr. Martin had the idea of purchasing the Wells Building they came to me to help shepherd that through and the idea of creating a Maui County Children's Peace...

COUNCILMEMBER LEE: No, I'm only talking about when you were a Councilmember.

MR. GUZMAN: Oh. Yes, when I was a Councilmember and...yeah. So, when I was a Councilmember they came to me to and presented this idea and so I put that particular project in my committee for presentation and so when the idea of creating this Peace, Children's Peace Center, it wasn't named that back then we just wanted they just needed to buy the building. So, in my committee we had presentations of what we'd use the building for and so I was very supportive of that and so when it came, when it was transferred to Mr. Hokama's committee in Budget I definitely was there to elaborate more so on the project to help them get that particular building purchased.



# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER LEE: Okay. Thank you. Now, oftentimes men and women who are convicted of drug-related crimes serve their time, attend and go through or complete drug programs and then they're released, yeah? But oftentimes shortly thereafter they're rearrested, now why does this happen? Because there seems to be a lack of coordination between the Police and Prosecuting Attorney's Office and perhaps even the Judiciary when people go through this, all this traumatic experience and they think they're done and they get arrested again. Now, surely all of the pertinent agencies must understand that this kind of actions actually contribute to recidivism. So, what would you do about this?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Thank you for the question, Councilmember Lee, which is an awesome question and it comes from a place where you ask this in a holistic, systemic way that one action has correlation to the other action. I completely agree with where you're going, and I want to do something about that. Back in the day when I was a line deputy we didn't have Drug Court and it was just in its inception with Judge Raffetto and in order...and as it continued it had a lot of good success. And at one point when I left in private practice I was on the Friends of the Drug Court board. And in order to get into Drug Court you've had to commit a felony-type drug offense. And in that drug court program instead of going to jail they offer you an opportunity to go through the program and rehabilitate and go through treatment. And that is an excellent process, but for those situations that you're referring to those may have been people who had the lesser offenses on the drug charges or may not even been caught with drug possession but have a drug problem and they're not being charged with the drug. So, how do we now get them into the program for rehabilitation when it was the result of their drug addiction but they weren't charged with drug addiction? Having been on this Council for the last six years the depth of networking that you acquire is amazing so when you're trying to figure out issues to solve you can think about Aloha House, you can think about rebuilding housing, the Housing First Program from Federal government where we can actually...if the County puts in money to build housing the Feds will give you the full 100 percent, full amount of funding and the wraparound services that go around it. So, basically getting those who are homeless and who have issues with drugs can have services. I mean in cooperation with the Prosecutor's Office, so by networking all of this we can try to come up with a master plan in dealing with some of these heavy-duty issues and figure out where the pukas are. But I agree with you that it definitely needs to be analyzed and a master plan of approach taken. I agree, thank you.

CHAIR MOLINA: Thank you, Member Lee. Councilmember Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to, before I start my questions I wanted to make a clarifying point. You stated that Councilmembers are only part-time but when I asked you this in our one-on-one meeting you said that you didn't know of any documentation that confirms this. So, I'd like us to stop

# GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

March 15, 2019

---

perpetuating this if there's no supporting evidence to say that it's true. Okay, my question, in 2018 the State conducted an audit of the AGs, the Attorney General's asset forfeiture program and the Institute of Justice came out with a report Policing for Profit that gave Hawaii a D- for its civil forfeiture laws of which gives 25 percent of the proceeds to prosecuting, the County's Prosecuting Offices. There have been efforts made at the State Legislature to reform this law to change the standard of proof that the State must meet in order to, for a property to be forfeited from a preponderance of the evidence to beyond a reasonable doubt or prohibit and prohibits civil assets, asset forfeiture unless the covered offense is a felony for which the property owner has been convicted. The Attorney General's Office submitted written testimony raising questions about the responsibilities of the bill, if it's passed into law and asked it to be held. All four county prosecutors opposed this measure and that was reported in the *Hawaii Tribune-Herald* on March 12, 2019. So, my question is would you support this much-needed reform?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you. In my first week in this acting position there was a lot of things I had to deal with and address and one of them was the State Leg measures and there was I believe three of them that were up for committee after the cross over. That particular item I believe was in the House? In the House there was a companion bill to that, but it didn't survive. But they're working...so that particular bill came from the House and now is sitting in Senate Committee. I did review it, I had one of my Deputy Prosecutors review it who is Keoni Enriquez who use to be in my office over here and I assigned him to the legislation measures. What we did was we analyzed it taking it in terms of the constitutionality of it first and there were some issues as to whether or not there was the proper due process in there in comparison to the preponderance of the evidence versus beyond a reasonable doubt since it's a civil forfeiture. Right so, we're using the standard of beyond a reasonable doubt, that's criminal, it's a criminal case, but we're dealing here with civil. So, do we now apply criminal standard to a civil forfeiture which is wow that's a big question in itself, so that's number one. I would support the preponderance of the evidence standard, but that's not what the bill is asking for, it's asking to go beyond that. The other issue that I have is the percentage of the forfeitures. Okay so we all know that our Maui Police Department is being funded by RPT, our real property taxes from the County. They are purely funded by County monies and, you know, that our Prosecutor's Office is purely funded by the County so when you get arrested and you get sentenced or you pay a fine all that money goes to the Judiciary, to the State General Fund. We don't see a single cent of that so where do we at some point at the Prosecutor's Office get some type of funding? So, if we're working with the Police...

COUNCILMEMBER RAWLINS-FERNANDEZ: The report says that our prosecutors, prosecuting offices get 25 percent of it.

MR. GUZMAN: Yes, yes, yes. And that's where I'm getting at

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh. Okay.

MR. GUZMAN: I'm just giving you kind of the background information. So, in terms of our revenue that we generate from the Prosecutor's Office, the only revenue we really see are the civil forfeitures and the criminal forfeitures. So, the 25 percent I think is reasonable because of the fact that when the Police make the arrest and make the charge it's the County Prosecutors at that point that move the case forward into the Judiciary and prove the case, prove that case and as well as the forfeiture provisions on that. So, that's a lot of time and effort for the County, so 25 percent of the forfeiture that was actually granted by the judge I feel is appropriate to at least go to the County because nothing else goes to the County. So, when our MPD guys pick people up and the prosecutors prosecute a case we don't get any of that sentencing money or fines, it all goes to the State, so 25 percent to the County, the Prosecutor's Office is reasonable. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. So, I understand that for years your First Deputy Prosecutor, Robert Rivera and his wife, Leanne who also is employed within the Department have been illegally driving a truck as a family vehicle that was acquired through asset forfeiture. The vehicle log indicates that it has been removed from your office log completely and here's a photo of the truck parked in Mr. Rivera's employee stall as recent as three days ago. My office has confirmed that the current license plate and the previous license plate and vin number matches. In light of the myriad of illegal activity within the Department, do you support a detailed audit of your Department? How can you personally investigate these serious matters? And will you terminate First Deputy Prosecutor when he is found guilty of this?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Thank you, Councilmember Fernandez. This is the first I've heard of I guess the demonstrative pictures that you're showing and the information that you're sharing with me. I definitely did not know about any of those I guess information and I will look into it and if it comes to having a performance audit or financial audit our Department welcomes it and I believe that I did put in for such a performance audit and financial audit I think in 2015, but it, the reso never passed. But I still would welcome a performance and financial audit. It would improve our, you know, a lot of the times the departments fear those but in reality, it's a tool to help the departments to figure out what are the weakness and 'cause there's always is a recommendation to improve. But I will definitely look into that and if I could get copies of --

COUNCILMEMBER RAWLINS-FERNANDEZ: Absolutely.

MR. GUZMAN: --that information that you have. Okay.

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER RAWLINS-FERNANDEZ: I will provide you these copies and so after looking into it, will you take swift action if he is found guilty?

MR. GUZMAN: I definitely will look into it and follow the proper protocol. Even if you're at-will you still need to abide by the EEOC procedures that are the Countywide investigation process and there is one that was submitted, a memorandum in two thousand--I believe--sixteen, from Arakawa, and I believe that this Mayor, Mayor Victorino would have to reinstate that memo of procedure and when it comes to the EEOC standards of investigation and it would refer to the seven steps of just cause but applied to -will. Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Guzman.

MR. GUZMAN. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Councilmember Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Can you briefly share with us your most significant legal case that you handled?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: In as a Councilmember as Chair of the Committee of the Whole with dealing with Corp. Counsel or as a private attorney or as a Deputy Prosecutor?

COUNCILMEMBER PALTIN: Either private attorney or Deputy Prosecutor.

MR. GUZMAN: Oh, private or deputy okay. I would say that the range when I was a general practitioner is very diverse. And so, I did a contract negotiation for the purchase of a medical clinic that was heated. But I believe the, some of the most heart-wrenching, difficult cases were the divorce cases as well as the some of the child custody cases that I had done in the past. Because the estate planning and the contracts and the business and the criminal defense it seemed in my mind was very emotionally not as draining as when I was dealing with family issues. And so, when I had divorce cases at a time and place when our economy was really bad and there was a high rate of divorces and the courts...I mean they're surges in all types of cases, but when economy goes down there was this bubble that burst a few years back and everybody was losing their jobs and that was the cause of a lot of divorces. So, it was very, you know, advantage economically to as a business to take on more and more of these cases 'cause they were rising. Those were the most difficult because the dynamics of the family are very intricate. And so, carrying that experience moving forward I still, to apply that experience in the Prosecutor's Office we need as a prosecutor not only go after the convictions but also take that step further and assure that the victims and

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

their families are well equipped with support. You know, there were times when I was domestic violence unit, Deputy Prosecutor and I would take the extra step to make sure that the family is receiving the additional services. It wasn't all about prosecution for me as an individual but applying that same ideology and method of prosecution I would like to bring forward into this new administration and be more of a holistic approach, not only the conviction of crime and justice but also the welfare of the victims and the community. And what do we look like as a Department, the perception in the community, are we doing the job that we were sworn to do? Thank you.

COUNCILMEMBER PALTIN: Thank you. I think with that answer you answered my prepared second question.

MR. GUZMAN: Oh.

COUNCILMEMBER PALTIN: But I have another one.

CHAIR MOLINA: Proceed, Ms. Paltin.

COUNCILMEMBER PALTIN: So, I'm asking you because you mentioned that you had also originally applied for the Corporation Counsel position and I want to know in light of what is currently occurring do you feel that the Prosecuting Attorney is the correct, right fit for you above and beyond what the Corporation Counsel --

CHAIR MOLINA: Mr. Guzman?

COUNCILMEMBER PALTIN: --position that you had applied for originally?

MR. GUZMAN: Thank you for the question. Thank you, Chair. Thank you for the question, Councilmember Paltin. That's quite a personal question, but I'm free to answer it and be forthright and disclose my feelings on the matter. Yeah, I did initially apply for Corporation Counsel position, that's public knowledge. And whether or not I feel I'm the right person for the prosecutor, the Head Prosecutor I have, like I've said, and I know, Councilmember Sugimura knows that I pray a lot, you know, and if God wanted me to be the Mayor he would have granted that to happen. And so, when, if, when I applied for Corp. Counsel, if it was my destiny through His will then I would have been there. And I'm faced with coming back to where I began and maybe this is the right place where I needed to be and the right time and place. And so, I'm in full acceptance and totally committed to making that Department the best it can be. If...in addressing Mr. Wong I did take appropriate actions immediately when I heard from MPD. I immediately called the Attorney General's Office to take over the case to make sure that the evidence and statements and the victims and anyone who's involved are protected. And so, we didn't even see the case file it was sealed and sent over to the Attorney General's Office. If asked to maybe go through the process again and fill that

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

position, that's a road that has not yet been encountered or crossed yet and that's something that if given that offer, I'd really have to think about it.

COUNCILMEMBER PALTIN: Thank you. I apologize for getting personal.

MR. GUZMAN: It's not a problem.

COUNCILMEMBER PALTIN: I just wanted to know

MR. GUZMAN: No problem.

CHAIR MOLINA: Thank you, Ms. Paltin. You know no apologies needed or so to speak and I know Mr. Guzman, knows where you're coming from as well. Thank you. Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Just two. So, one quick question, have you tried a jury trial?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Excuse me, a jury trial?

COUNCILMEMBER SUGIMURA: Yeah.

MR. GUZMAN: I co-sat a jury trial. Like I said my, the extent of my litigation experience was District Court, all bench trials in front of the judge and it was also in Family Court, all bench trials and also in Juvenile Court they were all bench trials in front of the judge. And I co-sat with Mark Simmons who is the lead on the case that the jury trial that I was on and yeah. So, that's the extent of the jury trial, but we have very, very talented, like I said we have very, very talented attorneys that are supervising the Felony Division as well as the Sex Assault Division and the Appellate Divisions and these supervisors are experts in their field and I mean it's difficult to say in any department that the head runs the entire like knows everything about everything. So, you're gonna have specific specialists in each of the divisions and that's what I'm hoping and will be very much so bringing together in collaboration and to have meetings every two weeks and to get that team really talking to one another to make wise decisions together and not have unilateral decisions because sometimes in unilateral decision making without consultation from the team it most often doesn't turn out very good. So, thank you.

COUNCILMEMBER SUGIMURA: And one last question. So, you're kind of talking about it, but what are the three or major challenges in our community and that you see and with this position you can help in terms of providing some resolution or making our community better?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Oh, thank you for the question, and thank you, Chair. Councilmember Sugimura, I believe currently in my mind when I'm looking at the stats, the statistics that are coming in and it changes over a period of time, but currently as I'm looking at the stats we have a rise in sexual abuse and drug cases. So, that's just based off the statistics that are coming in. And which makes sense because if you look at the Federal legislation that came in and it was addressed during our time on the Council together was the opioid funding from the Federal government and they were offering us an opportunity to avail of that. And so, that kind of correlates to what this rise in drugs and that with crystal meth, right. So, you've got this opioid issue that's going on Federally nationwide and the Federal government is stepping in saying look if you need help you definitely need to start these actions to avail of those fundings. And, number two the rise in abuse and sexual abuse cases. So, to address that we only have two deputy prosecutors that handle the sexual abuse cases as well the adult and the juvenile sexual abuses. So, I definitely need to look at additional funding from the, from this Council to add in another E/P position and a deputy to absorb a lot of these cases that are coming in and again beefing up our Victim Witness Counseling Division. And the third part of that is moving forward with the Maui County Children's Peace Center.

COUNCILMEMBER SUGIMURA: Thank you.

MR. GUZMAN: Thank you.

CHAIR MOLINA: Thank you, Councilmember Sugimura. Councilmember Kama?

COUNCILMEMBER KAMA: Thank you, Chair. So, one of the things that was mentioned in our discussion in these Chambers is that the recidivism that continues to go on and on and on and in my head part of that is while we can prosecute them, we can put them in jail, they can do their time, but at some point in time they'll be back. But where's that or who is that and how can that occur? But you also mentioned about using housing first dollars to be able to create some kind of a facility, we don't have treatment that's effective here in Maui so is that something your office could probably institute or collaborate or partner or do something? Because we're not gonna ever address recidivism if we can't treat our youngsters with whatever it is addictions that they may have. Comment please?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Thank you, Councilmember Kama, for the question which is a very holistic approach to dealing with one department. And my response to that is if we're looking at collaboration I totally agree. I agree that my Department, or excuse me shouldn't be my, is the Prosecutor's Department should be going out and making these efforts to collaborate with other entities. I believe in our budget, that's been in

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

the budget for years there's a \$25,000 appropriations for the services for inmates that have been released to get them a job and to get them housing. I forget what it's called, I know Ms. Sugimura is remembering it. Yeah, but it's that specific entity that we always appropriate money to and the Prosecutor's Office should interface with that program because there's, it's up, it's been up and running for quiet, for many years and I'm not quite sure if, who's the director of that program at this point, but I know that for the last six years it's been in the budget every year. So, combining our office efforts and just collaborating with that specific service and then the housing in your committee with housing first we definitely can try to start approaching our issues together in a more holistic plan. And so, this network of communication and working together is what I'm all about. I definitely agree with you these are big issues but need to be handled specifically in detail at the, at networking first and then creating the plan.

COUNCILMEMBER KAMA: Yes, thank you. And my last question is in our Charter the Article 6 the Executive Branch that talks about in Section 2-2 items 4 and 5 it talks about the appointments but it doesn't kind of, it's not clear to us at least not to me that once an appointment is made and then once the appointments are denied it says that the Mayor shall make a new appointment within 60 days of the Council's denial and the Council shall confirm or deny. And again so when does that...how do we stop that from continuing on and on and on and on? Confirm, deny interim then give it a new title, I mean how do, what do we need to do to correct that?

MR. GUZMAN: Okay.

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Can I put on my old, like former Councilmember hat on?

COUNCILMEMBER KAMA: Sure.

MR. GUZMAN: Real quick. Okay. So, the background behind that particular provision is that yes, I sat on the Council that put forth those provisions. I think that in retrospect we, it does need to be tweaked the, through a Charter amendment that there needs to be an end date to all of this. I mean at some point in time as it reads it could go on forever and ever, 60 days, non-appointment, and denial so you could have like you could have this process going on for four years. So, to correct that I think a Charter amendment needs to be proposed to get an end date and it could be before you folks enter into budget because I know once you enter into budget it gets crazy. So, there needs to be a date certain to end the process, okay. And the other factor of whether the interim and the acting that also too needs to be clarified, but in my personal opinion and I'm not sitting as Corp. Counsel I'm just speaking as an individual person who has looked at and reviewed that provision is that in my opinion it is the acting director who is not reappointed it should then be the director that steps in...the deputy director that steps into the shoes of the director and that the interim



# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

provision...you know what I'm gonna stop what I'm gonna say right now because I do not want to, I'm not a Councilmember no longer. I apologize for not completing my thoughts, but I really feel uncomfortable about going into the legislation of that particular item. I apologize, Councilmember Kama.

COUNCILMEMBER KAMA: I apologize for asking the question if that made you uncomfortable. So, Chair, with that being said, I'm done. Thank you.

CHAIR MOLINA: Thank you very much, Member Kama. You've asked some very tough questions. Members, Chair is aware of the time and Chair intends to take action today. We are short one member and I know some of you have commitments and I would like to have as much of a full body to vote on Mr. Guzman's nomination. So, I'll ask one last question and, Members, if you have a question to ask Mr. Guzman prior to the Chair's recommendation please feel free to do so and I apologize for having to curtail your line of questioning a little bit, but it is what it is. Mr. Guzman, I got another one of those toughies for you. In responding to questions from the Members about your past as a Councilmember and you did run for Mayor, should you be confirmed as the Prosecuting Attorney over time will you be seeking any type of public office thereafter? And I ask this question because sometimes people who seek higher, high positions in the community with a lot of notoriety do that to sometimes advance their future political agenda. Can we get a commitment from you, we've got another election coming up in 2020 at least that should you be confirmed as Prosecuting Attorney you will not be seeking any type of political office? I'm gonna put you on the spot, Mr. Guzman.

MR. GUZMAN: Okay. Thank you for the question, Chair. I believe it's a personal decision that I'll need to make at that time. I currently am presented with the opportunity to really make a difference in this Department. And this is where I came from, this is where I started my legal career. And so, to come back to it I am committed to do the very best I can in the next four years. After the four years I don't even know what will happen, whether this Administration will be the same, I don't know. But time will tell, and if called by the people to seek a higher office I feel that I have, my skills are ready, available and if it, if the people want me to stay and the Administration wants me to stay as Head Prosecutor then I will also consider that as well. I believe it's a personal decision that I have not yet crossed so until that time I really am not focusing on four years from now. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Guzman. Members, the floor is open for one last question from any of you. Chairman King?

COUNCILMEMBER KING: The only question I have, Chair, is of you, is like I don't see a resolution on Granicus so I'm just wondering. The resolution that's on Granicus is for the previous director that we did, we disapproved. So, when we get to the point is there a handout for that resolution?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

CHAIR MOLINA: Sure, I'll consult with Staff in the meantime.

COUNCILMEMBER KING: Thank you. But other than that, I'm ready to make a motion.

CHAIR MOLINA: Okay. Members, any other one last question for Mr. Guzman prior to the Chair making a recommendation?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes.

CHAIR MOLINA: Committee Vice Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Mr. Guzman, there has been admission of unrestrained favoritism as well as nepotism within the Department, the hiring of relatives and friends that do not have the educational backgrounds, skill job experience or otherwise under qualified for some of the positions for advertised and unadvertised positions with extremely high starting pay. It has actually been brought to my attention that many employees within the Department are blood related which leads me to wondering if during the time that we were, we had our confirmation process with Mr. Kim I received reports after that the Prosecuting Offices, the Prosecuting Attorney's Office ran background checks on Councilmembers and our staff without probable cause and without any current or pending litigation. As my Staff was vocal and testified against the appointment of Mr. Kim and wondered if this was a form of retaliation or possible intimidation where these background checks that were done within the, with County funds and resources lawful and necessary and how do you intend to address this and plan to control the rampant ongoing nepotism to rectify the issues within the Department?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you for the question, Ms. Fernandez, which is a very difficult question to answer at this stage. Knowing the fact that I don't, I am not personally aware of your, you know, the statements that you have provided to me today. I will look into it and rest assured that if there is a person or personnel that is committing intimidation or there is nepotism wherein the people are being hired because of certain relations that needs to all stop. You know, so for me it's about merit, are you qualified for the position, are you doing the job correctly and at this stage coming in as on the top level I just want to give everybody an opportunity to have a clean slate and work with what I have and observe their work and their functionality. And if I discover issues I will take appropriate actions to it. But I definitely will look into what you're saying, and we can speak further after this meeting if I'm confirmed, yeah. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Guzman. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Last questions from Members? Member Sugimura followed by Member Kama.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER SUGIMURA: I'm just...the vote...

CHAIR MOLINA: Go ahead, I'm trying to see who had their hand up first.

COUNCILMEMBER SUGIMURA: Tamara had her had up first.

UNIDENTIFIED SPEAKER: Yeah, Tamara first.

CHAIR MOLINA: Okay, Councilmember Paltin followed by Member Sugimura and Member Kama.

COUNCILMEMBER PALTIN: Thank you, Chair. I also did receive reports of background checks of myself and my office staff and so I just was wondering if that's like a regular practice or if it's something that you would discourage?

MR. GUZMAN: Thank you, Chair. Thank you, Councilmember Paltin, for the question. I know that currently we have a visitor, a background policy, background check policy. So, I did read the memo on that and it...anytime there is a visitor that comes or has an appointment with the Prosecutor's Office the memo indicates that there that the office is to do a background check on that person. And I believe it's for safety reasons because we are in a very precarious position, with dealing with kind of the criminal element of things and so I do understand why there are background checks for those who visit the office. As to what Ms. Fernandez was pointing to, whether the office was doing background checks randomly on Councilmembers is disturbing.

COUNCILMEMBER PALTIN: And their staff.

MR. GUZMAN: Yeah. Yeah and their staff, that's disturbing, there'd be no reason to do so unless there was some type of investigation that was connected or has some kind of nexus to a case or investigation. So, in my opinion it should not have been done and County resources shouldn't have been used for such a thing. It's very disturbing to hear that.

COUNCILMEMBER PALTIN: And just to follow up I did visit that building but I didn't go past the lobby so that's not what you're talking about 'cause they don't have any information of who had just visit the building it's like an appointment to see somebody then you would do a background check?

MR. GUZMAN: Right. I think that if I can recall the memo of, the memo directive regarding the people who visit and the background checks, it didn't specify what area of the...it just said visit and background check, appointment so I'm not sure why they would do that. But I definitely would like to invite all the Councilmembers to take a tour of the Department and really and I promise you there will be no background checks for Councilmembers.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBER PALTIN: I think I already passed it.

MR. GUZMAN: Yeah, yeah, yeah. I don't know why that was done. I apologize if that offended anybody and we definitely need to make sure that our deputies know that the Council is to be respected. I...

COUNCILMEMBER PALTIN: For me, I mean I feel like I put myself in that position but my staff in no way did. They just took a job, you know, and they didn't subject themselves to that level of public scrutiny or they just want to come and do their job so they, I don't appreciate that kind of thing.

MR. GUZMAN: Absolutely.

CHAIR MOLINA: Thank you, Member Paltin. Member Sugimura?

COUNCILMEMBER SUGIMURA: I was gonna talk about the same thing so basically I'm not sure who got, you know, that kind of scrutiny and I hope it didn't involve my staff, it's kind of shocking. I'm just curious where Keani Rawlins gets all this information it's kind of like these bombshells.

COUNCILMEMBER RAWLINS-FERNANDEZ: They feel comfortable coming to me and safe I guess, so.

COUNCILMEMBER SUGIMURA: Sherlock Holmes sits amongst us. But that's basically, you know, I'm not sure what's gonna happen with this, but I would be curious just personally I just do not want my staff to go through that kind of scrutiny. You can scrutinize me that's why we signed up for this job, but not necessarily, you know, people that I hire. So, Chair, I'm concerned about that I don't know what your, you know, you would do with that kind of information. That's all I wanted to say. And thank you for taking that position. Thank you.

MR. GUZMAN: Thank you.

CHAIR MOLINA: Chair appreciates your concerns about this and certainly as Members of an elected body all subject to scrutiny individually and maybe even our families and people we associate with. But, certainly, there needs to be good cause if people other than us are being investigated and having background checks. So, I thought this stuff only happens in Washington D.C., you know, but anyway. Member Kama?

COUNCILMEMBER KAMA: So, I have a very easy question, Chair, more I think for you, but after Mr. Guzman responds because there is some questions that came up today that we'll probably have to allow him to return back so is that possible for him come back and tell us all what he's done? I mean there's a lot of things that were listed in my mind that he needed to come back and report back on. So, is that possible for him to do that?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

CHAIR MOLINA: We could, well I guess there's a couple of options the Committee could consider if you'd like to submit questions to Mr. Guzman in writing and he could respond back or if this goes to Council it's up to the Council Chair if she'd like to have Mr. Guzman to be available in the gallery to answer questions at a future Council meetings that is a consideration.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: So, that's basically what we're looking at. But, typically we try to do as much of the work in Committee; however, if there is a pressing need and on occasion it does happen prior to Council, just before Council meetings certain issues arise.

COUNCILMEMBER KAMA: The question...okay in my mind then is he's gonna have to go home and clean house right and how do we know if he cleaned the house the way we like to clean house. I mean --

MR. GUZMAN: ...(inaudible)...

COUNCILMEMBER KAMA: --you know, sweeping and mopping is one thing, but I mean did you do the dishes, did you dry them, did you put them away.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Chairman King?

COUNCILMEMBER KING: I'm happy to entertain questions at Council but I don't think we can expect Mr. Guzman to go back to the Prosecuting Attorney's Office and fix all these things that we're talking about in the time, you know, in the short period time. I think the questioning has been, you know, all we can do is project and ask him questions about the intentions for the future. So, you know, we don't have the time to, we don't have six months or as long as it would take to do some of these --

COUNCILMEMBER KAMA: Right.

COUNCILMEMBER KING: --actions so, I think we're kind of in a position...we didn't we...probably have grilled Mr. Guzman more than we did his predecessor and we didn't ask the same questions of his predecessor and/or expect those actions to happen before the approval, but we did we really don't, you know, it's really gonna be I think, you know, up to authority of the Mayor of whether things get done or not, as it would be with head of, with Corp. Counsel as well, so.

CHAIR MOLINA: Okay. Thank you. And, I believe, Mr. Guzman could give us an update should it come around to that point. Mr. Guzman, briefly.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

MR. GUZMAN: Thank you, Chair. Thank you for your concerns, Councilmember Kama. I also too want to have a better relationship with the Council, our Department, and to have...and updates given because I know in past practice we really haven't had the Prosecutor's Office come before the Council for updates and I believe under your purview, Chair, your Committee has the Prosecutor's Offices as part of its subject matter. And so, we will coordinate with Chair Molina to make sure that when he wants an update and we definitely will plan our schedule. We are more than willing to come and before this Council and give updates as to what are some of these concerns that are being addressed to me.

CHAIR MOLINA: Thank you, Mr. Guzman. And, Members, as you recall, Mr. Guzman did make himself available to answer any prior questions that you may have had as well and certainly you have that privilege of asking Mr. Guzman prior to the Council hearing any other questions. So, with that being said, the Chair's going to end the line of questioning for today. Chair has spoken to Mr. Guzman prior to the meeting about his financial disclosure form which has been transmitted as I was told, Mr. Guzman?

MR. GUZMAN: Yes, Chair. I did submit it yesterday to the County Clerk's Office as well as the Corporation Counsel Office.

CHAIR MOLINA: Okay. Thank you very much. And Chairman King brought up the issue of the resolution, I was informed by Staff if you look on the March 4<sup>th</sup> in your Granicus there is a revised resolution to approve. Also, I believe was the resolution for disapproval revised as well? So, okay the resolution to disapprove was not revised, but the resolution to approve was revised and it's under the March 4<sup>th</sup>.

COUNCILMEMBER KING: So, March 4<sup>th</sup>.

CHAIR MOLINA: Yeah, in your Granicus, yeah. Okay. Alright, Members, Chair is ready to offer a recommendation and the recommendation is for the adoption of the revised proposed resolution entitled Approving the Mayor's Appointment of Donald S. Guzman for Prosecuting Attorney; and to incorporate any non-substantive revisions that may be needed; along with the filing of the proposed resolution entitled Disapproving the Mayor's Appointment of Donald S. Guzman for Prosecuting Attorney. The Chair will entertain a motion on the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Moved by Committee Vice-Chair Rawlins-Fernandez, seconded by Member Kama. The floor is open for discussion. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I speak in favor of Mr. Guzman's confirmation, I think he adequately and creatively addressed a lot of the really hard

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

questions that we had today regarding overtime, backlog, really taking better care of our victims. I appreciated his list of priorities, I feel they're good priorities to have and I support them. I think a lot of the responses were a little long but very attorney like of you, Mr. Guzman. But I really hope that the issues that were brought up are taken seriously because these are very serious allegations and I will provide you with the supported documentation for you to further investigate. And I look forward to joining you at the blessing that you mentioned at our office that you plan to have, I think that is very much needed and would be appropriate. So, for those reasons, Chair, I support this confirmation.

CHAIR MOLINA: Thank you very much, Member Rawlins-Fernandez, very attorney like in your comments. Thank you. Member Sinenci, followed by Member Lee.

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Mr. Guzman. I too would like to support your confirmation today. And with meeting with myself and my staff and answering some of our questions and I too believe that you are a good person and the right person to address some of the past issues that plagued the Prosecutor Attorney's Office and address some of the issues of overtime and nepotism that still plague the office. And it is my hopes that if confirmed today that you will begin the process of healing some of the families and the victims and to make some of the closure that they've held on for all these years. So, thank you again.

CHAIR MOLINA: Thank you, Member Sinenci. Member Lee, followed by Chairman King.

COUNCILMEMBER LEE: Thank you, Chair. I will be voting in favor of the confirmation of Mr. Guzman although I vote with reservations. I too believe that some of your, many of your responses were circuitous and overly extensive. So, and in addition I still have some, a few concerns, but I am willing to give you a chance. Thank you.

CHAIR MOLINA: Thank you, Member Lee. Chairman King?

COUNCILMEMBER KING: Thank you, Chair. First of all, I need to apologize that I didn't get the same questionnaire out to this candidate that I did to all of the first 11 because the notice came on March 1<sup>st</sup> when I was in Washington D.C. for a week. So, that was something that was afforded to all the other candidates for the various department directorships was a questionnaire from the, from my office so that we could start with that base of questions having already been answered so I apologize with the timing of it, it came up after I left for D.C. and then I was gone for a week. That being said, I want to let folks know that I support Don Guzman. I like Don Guzman, I didn't like the times that you lost control and we talked about that in my office probably more than anyone else on this Council, I was the brunt of it, you know, and we had a good talk about that. And I originally was not going to bring it up on Council floor but I think in light of what happened after that meeting with our Corp. Counsel I think it was really important to discuss that on the floor and let folks know that we are aware and that we've moved, you know, we're giving you a chance to move past that, you

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

know, that what I call anger management issues. I think Mr. Guzman has a good sense of the Council's concerns of the Prosecuting Attorney's Office because of the, you know, my last two years we had major questions with the budget, with the vacancies, with the rate of pay that was always at the top for every attorney even when they hired attorneys at the, you know, at the beginning part of that scale. Your qualifications are there for the position I believe and I wanted to say, Chair, that I understand the appreciation for having the parameters of a job description because I was kind of in that same position when I was on the Board of Education you have no job description, you have no supervisor and you have no, well on the Board of Education you have no pay 'cause it was totally voluntary and going from that to actually and not...and having to invent the job which is what all of our all of us have to do, we have to decide how many hours we're gonna put in, what does this job mean to us, what issues we're gonna focus on. And when you get to a, an actual private sector job which this is a public job, but it's basically a paid job, a full-time job with a job description, you actually do have a supervisor, you have someone who can fire you and I think there's some relief in that because now you know what hours you're supposed to be at work and what you're supposed to be doing. Whereas when you're elected office a lot of times you're reinventing what that is on an annual basis. So, I can appreciate the difference for Mr. Guzman between going from Council which is, you know, some people think it's part-time, I firmly believe it's full-time because I know the hours I've been putting in. But I, above all I think that at sometimes you have to bring, if you want to change the culture of a department or of any organization sometimes you have to bring somebody from outside that organization into that organization rather than just continuing to move people up within the organization because I believe this is a Department that needs a culture shift within the Department. I believe that the teamwork is paramount because what we heard in testimony was unilateral decision making and, you know, a lot of the fears I had about the way that Department was being run I think were solidified after we were able to hear from people who felt free to express those concerns from the, within the Department. So, I'm happy, I mean and I've been in other positions where I've recommended to governors or people in other State departments person, you know, directorships, people to take over directorships that were outside of those departments and what I saw from that was the ability to go in and have that attitude shift and have that culture changed. So, that's what we're looking for from Mr. Guzman. I think you've told us that, that is your top priority, or one of your top priorities. So, thank you for that. Thank you for sitting through the process. I'm sure you expected it because you saw what happened with the other 11 positions. But I stand in support of this candidate, Chair. Thank you.

CHAIR MOLINA: Thank you very much, Chairman King. Members, any other comments as it relates to the motion to approve Mr. Guzman's nomination as Prosecuting Attorney? Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. I just want to say that I support Mr. Guzman. And I almost wore my orange dress today, but I thought I better not. Just kidding,



# GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

March 15, 2019

---

just kidding. But I do want to say, Don, that during the past two years when I served with you one of the things to your credit was you were a problem solver and I saw your ability to solve community concerns through the process, right, our, what we are as policy makers and I'm gathering by your answers today that you will do the same thing and so as to not only try...find the victims, but also to help the families that need it. You know, I think that's in your veins, right, in terms of how to solve problems. I too witnessed some of your outbursts, I, and you know with me because you know what I went through the first two years right, I have a thing about violence in the workplace so I hope that that never translates to anything like that, you know, in this position and I think that would be pretty remote, but I just want to make that statement because I think that it's painful to go through it and unwarranted. So, I look forward to working with you, I said that and prosecuting attorneys really was a part of our government department that we never heard from because we never really had to interact with them, this Department until we had budget or unless it was a budget concerns, but because you felt like you came home this, you know, today by being with us that I hope you do visit us more and maybe share some of the successes that you may have so we don't have to hear horror stories, you know, at the end of people who have suffered because of many different reasons. We are here to, you know, help our community, so thank you very much.

CHAIR MOLINA: Councilmember Kama?

COUNCILMEMBER KAMA: Thank you, Chair. I'm really looking forward to working with Mr. Guzman and my fellow Councilmembers Sinenci and Rawlins-Fernandez in trying to what we call mihi certain situations in our community and, you know, the hurt that we talk about or the healing yeah, the Hawaiian word for hurt is eha it's just not a hurt it's pain, it's deep pain and that's where our community sometimes is at with your office and I hear that from Yuki Lei sometimes too. So, I'm really looking forward to working with you, Mr. Guzman, and my fellow Councilmembers in really getting off to a really good start with this Department and our Council. So, thank you, Chair.

CHAIR MOLINA: Thank you very much, Ms. Kama. Any final comments from any one of you? Okay, the Chair will take the last privilege to comment on the motion on the floor. Mr. Guzman, first of all thank you for going through a nearly three-hour process here. You know it's always interesting to always grill an attorney ...(inaudible)... Anyway, I'm just trying to make light of things, but anyway the, I would hope that...the expectations will be high for you in a high-profile position and I would hope that you be very open to new ideas and suggestions from your fellow attorneys and staff and agree to disagree in a respectful manner. You referenced a higher order meaning you pray to, you know, bring closure to any issues and I hope that continues 'cause it's gonna take a lot of prayer. This Department does need healing and the time for healing begins now. So, I will give you my blessings and support you for this position. So, with that being said, Members, the Chair will call for the vote. All those in favor of the motion to approve the Mayor's appointment of Donald S. Guzman for Prosecuting Attorney signify by saying "aye."

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed. Seeing none, the Chair will mark it eight "ayes" with one excused, Member Hokama.

**VOTE:       AYES:   Chair Molina, Vice-Chair Rawlins-Fernandez,  
                          Councilmembers Kama, King, Lee, Paltin,  
                          Sinenci, and Sugimura.**

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   Councilmember Hokama.**

**MOTION CARRIED.**

**ACTION:   ADOPTION OF REVISED RESOLUTION TO APPROVE THE  
                  APPOINTMENT OF DONALD S. GUZMAN AS THE  
                  PROSECUTING ATTORNEY AND FILING OF RESOLUTION  
                  TO DISAPPROVE.**

CHAIR MOLINA: This matter will now go on to the full Council. Congratulations, Mr. Guzman.

MR. GUZMAN: Thank you, Members.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

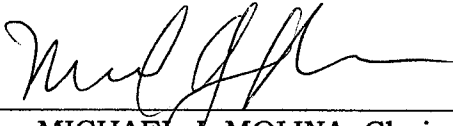
**March 15, 2019**

---

CHAIR MOLINA: And thank you, Members, for all of your hard work on this Aloha Friday, March 15<sup>th</sup>. If there's no other announcements the meeting from, recessed meeting of March 12, 2019, the GET meeting, it's four minutes after the hour of 12 o'clock on March 15<sup>th</sup>, this meeting is now adjourned. . . . *(gavel)* . . .

**ADJOURN: 12:04 p.m.**

APPROVED BY:



MICHAEL J. MOLINA, Chair  
Governance, Ethics, and Transparency  
Committee

get:min:190315r:ck

Transcribed by: Cheryl von Kugler

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**March 15, 2019**

---

CERTIFICATE

I, Cheryl von Kugler, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 9<sup>th</sup> day of April, 2019, in Kihei, Hawaii

A handwritten signature in cursive script, appearing to read 'Cheryl von Kugler', is written over a horizontal line.

Cheryl von Kugler