

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Council Chamber

November 4, 2019

CONVENE: 9:01 a.m.

PRESENT: Councilmember Michael J. Molina, Chair (left at 11:13 a.m.)
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair (arrived
at 9:02 a.m.)
Councilmember Tasha Kama
Councilmember Alice L. Lee
Councilmember Tamara Paltin
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura (arrived at 9:06 a.m.)

EXCUSED: Councilmember Riki Hokama
Councilmember Kelly T. King

STAFF: David Raatz, Supervising Legislative Attorney
Pauline Martins, Committee Secretary

Kate Griffiths, Executive Assistant to Councilmember King

Zhantell Lindo, Council Aide, Molokai Council Office (via telephone
conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via
telephone conference bridge)

Mavis Oliveira-Medeiros, Council Aide, Hana Council Office (via
telephone conference bridge)

ADMIN.: Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department
of the Corporation Counsel
Tony Linder, Water Treatment Plant Division Chief, Department of
Water Supply
Marvin Ignacio, Water Treatment Plant Maintenance Supervisor,
Department of Water Supply
Tivoli Faaumu, Chief, Department of Police
Gary Murai, Deputy Corporation Counsel, Department of the
Corporation Counsel

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Kristin Tarnstrom, Deputy Corporation Counsel, Department of
the Corporation Counsel

Caleb Rowe, Deputy Corporation Counsel, Department of the
Corporation Counsel

Thomas Kolbe, Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: None

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR MOLINA: ... *(gavel)* ... The Governance, Ethics, and Transparency Committee meeting for Monday, November 4, 2019 will now come to order. Thank you very much, Members, for attending this special edition on Monday. Normally we do meet on Tuesdays, but I appreciate you making, adjusting your schedules to meet here in the Chambers. Let's start off first with the attendance. I'm the Committee Chair, Mike Molina, and let's go out to our Hana representative. Good morning, Mr. Sinenci.

COUNCILMEMBER SINENCI: Aloha, and good morning, Chair.

CHAIR MOLINA: Aloha. And we have from Wailuku, Ms. Alice Lee.

COUNCILMEMBER LEE: Bom dia, Mr. Chair.

CHAIR MOLINA: Good, and what language is that?

COUNCILMEMBER LEE: Oh, that's Portuguese.

CHAIR MOLINA: Portuguese, all right, mahalo. And then we have from Kahului our Council Pro Tempore, Ms. Tasha Kama.

COUNCILMEMBER KAMA: Good morning, Chair.

CHAIR MOLINA: Good morning. And I know in the building we have our West Maui representative, Ms. Tamara Paltin who will be approaching her seat real soon, and just entering the Chambers now is Committee Vice-Chair, Ms. Keani Rawlins-Fernandez. Good morning.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair.

CHAIR MOLINA: Good morning.

COUNCILMEMBER PALTIN: Aloha kakahiaka, Chair.

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CHAIR MOLINA: Aloha, Member Paltin. And from Committee Staff we have Mr. Raatz who's covering for Ms. Espeleta for this morning's meeting, and good morning. And we have Ms. Martins, our wonderful Secretary for the Committee. Good morning. And joining us from Corporation Counsel we have Deputy Corporation Counsel, Mr. Ed Kushi who will be part of our proceedings today. Good morning, Mr. Kushi. All right, Members, we have four items on our agenda. But before we do that, Ms. Martins, do we have anyone signed up for public testimony this morning? And do we have any signups on, well, let's go out to our friends on Molokai.

. . . BEGIN PUBLIC TESTIMONY . . .

CHAIR MOLINA: Ms. Lindo on Molokai, do we have anyone signed up for public testimony for today's meeting? Okay. Are we connected? Okay. You know what, let's go out to Hana. Miss...Mavis, do we have anyone in Hana?

MS. OLIVEIRA-MEDEIROS: Aloha, Chair, this is Mavis from the Hana Office. There's no one here waiting to testify.

CHAIR MOLINA: Okay. Mahalo. And let's go out to Ms. Fernandez on Lanai. Do we have anyone set to testify for our agenda item today?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez at the Lanai Office and there are no testifiers.

CHAIR MOLINA: Okay. Mahalo, and we'll go back to Molokai to confirm if we have any testifiers for any of our four agenda items there. Do we have anyone here in the Chambers set to testify, Ms. Martins? Okay. Thank you. What we'll do, Members, we'll go ahead and proceed with our agenda. And once we get confirmation from Molokai, the Chair will make a determination whether to keep testimony open or closed. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. So, ordered.

**GET-11(27) LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION:
RETENTION OF THE OFFICE OF THE CORPORATION COUNSEL, COUNTY
OF HAWAII, AS SPECIAL COUNSEL TO MAUI COUNTY BOARD OF
ETHICS; COMPLAINT 19-05) (CC 19-29)**

CHAIR MOLINA: All right, Members, first item on the agenda has to do with the Special Counsel Authorization: Retention of the Office of the Corporation Counsel, County of Hawaii, as Special Counsel to Maui County Board of Ethics. The resolution is again,

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Authorizing the Retention of Special Counsel from the Office of Corp. Counsel, County of Hawaii, to advise Maui County Board of Ethics in a Matter of Complaint No. 19-05 Alleging Violations of the Maui County Code of Ethics, by Officer and Employees of the County of Maui. And the intent of this proposed resolution, again, is what I had previously stated. So, with that being said, the Chair would like to open up the floor for any comments from Corporation Counsel.

MR. KUSHI: Mr. Chair, I'll hand it over to our Deputy, Gary Murai.

CHAIR MOLINA: Okay. Thank you. Thank you, Mr. Murai, for joining us for the proceedings today. And once Mr. Murai gives his opening remarks, the Chair will open the floor for questions on this.

MR. MURAI: Good morning, Mr. Chair --

CHAIR MOLINA: Good morning, Mr. Murai.

MR. MURAI: --and good morning, Members. The reason why the, my office had submitted this resolution was in situations...well first of all, I had, I'm assigned to advise the Maui County Board of Ethics. And in situations where the, one or more parties where my office may be in conflict with one or more parties, we have a long standing reciprocal relationship with the Hawaii County Board of...Hawaii County Corporation Counsel wherein, when they have situations where their Board of Ethics, their Deputy assigned to the Board of Ethics may be in conflict with one or more parties we will go over to the Big Island and serve as special counsel for them. And when the Board of Ethics and the Corporation Counsel here on Maui may have a conflict of interest, then Hawaii County, upon request, will send a special Deputy Corp. Counsel to come to Maui to serve and advise the Board. So, what this does is, what this reso does is seeks the Council's approval to do that. There are no fees involved. It's done as a courtesy. However, each side will reimburse the other for things like airfare, you know, rental car, if any.

CHAIR MOLINA: Okay. Thank you. And is this arrangement exclusive only between Maui and Hawaii County or do we also include Kauai County and Oahu County with this?

MR. MURAI: We've never been requested, we've never been asked to serve as special counsel on Kauai or City and County of Honolulu, and they've never asked us. It's just that, you know, historically we've had this relationship with Hawaii County and it's just never been necessary to go outside of, you know, go to Kauai or Honolulu.

CHAIR MOLINA: Okay. All right, thank you, Mr. Murai. Members, the floor is now open for questions for Mr. Murai. The Chair would like to recognize Member Paltin and also the appearance of Councilmember Sugimura to our proceedings this morning.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

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CHAIR MOLINA: Thank you, good morning. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. So, my questions is like why has there been no discussion about the merits of the complaint before the request to go straight to this process? Like what triggered it and what's the minimum threshold for requesting the Corp. Counsel from a different County?

CHAIR MOLINA: Mr. Murai?

MR. MURAI: Well, what we do is we look at the Rules of Professional Conduct, specifically Rule 1.7 which is a general rule of conflicts which also applies to government attorneys. I'm going to paraphrase the rule, but basically, if counsel, in other words, the Deputy assigned to the Board of Ethics has a conflict of interest with one of the parties, then that person would be, and by extension the office would be precluded from advising the Board in that matter. So, which is why we bring in an outside attorney.

COUNCILMEMBER PALTIN: And the, so that would be the minimum threshold, just a conflict of interest on the part of Corporation Counsel?

MR. MURAI: Right, and in this particular case, while, you know, and I heard your concern about why is it just, you know, this issue, the rest of the matter is a Board of Ethics matter and is not, you know, typically something that we would be coming to Council for. In other words, it's unlike say the other matters on the calendar today which are settlement authority. The thing that brings us here is the, a portion of the Code of Ethics that, I'm sorry not the Code of Ethics, but the Charter that requires us to seek leave of approval of the Council to bring in an outside attorney.

COUNCILMEMBER PALTIN: And it's triggered because it's a complaint against...

MR. MURAI: Well, in this particular case, the complaint is against, well, it's a complaint against multiple parties, one of which happens to be, you know, my boss, the Corporation Counsel. And because of that, because I have an interest in my employment that may be inconsistent with my duties, you know, the Rules of Professional Conduct, you know, counsel us to seek outside counsel, I mean or special counsel. And the Charter requires us to seek approval of the County Council to bring in special counsel in this matter even though fees are not, you know, there's no fees paid out.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Before I recognize another Committee Member, so just to get a little bit more clarity on this, the complaint item is before the Ethics Board and we're really, it's not appropriate to get into specifics about the

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complaint. Basically, the resolution is just asking this Council to authorize up to \$1,000, or not to exceed \$1,000 for expenses related to bringing in a Big Island attorney. And because of the potential conflict with you, Mr. Murai, as the Ethics Board attorney, and the complaint naming our Corporation Counsel as part of the complaint So, just to alleviate any potential conflict of interest if you will.

MR. MURAI: That's correct, Mr. Chair.

CHAIR MOLINA: Okay. Okay. Very good. Members, the floor is open, again in open session for Mr. Murai with regards to the proposed resolution to authorize the \$1,000 expenditure for expenses related to bringing in a Big Island attorney for the Ethics Board complaint. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had a clarification question for Mr. Murai. So, this has nothing to do with...it's just a complaint that has come to the Board of Ethics?

MR. MURAI: Yes.

COUNCILMEMBER SINENCI: And so, you're seeking the Big Island attorneys to help with...

MR. MURAI: Right, it wouldn't be for all purposes. In any typical agenda there are a number of items. But when this particular complaint comes up, I would step aside and the Deputy that we bring over from the Big Island would take my seat to handle this particular matter.

COUNCILMEMBER SINENCI: And just to be clear, we were given a lawsuit last week Tuesday I believe, and, but it had, your boss was included in it, but this has nothing to do with that lawsuit?

MR. MURAI: No, totally unrelated.

COUNCILMEMBER SINENCI: Okay. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Members, any other questions for Mr. Murai? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Murai.

MR. MURAI: Good morning.

VICE-CHAIR RAWLINS-FERNANDEZ: So, okay, I just want to make sure I understand this correctly, so, it's the Director of Corporation Counsel who is conflicted?

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MR. MURAI: No, it's actually me. I'm the one who's conflicted because one of the parties to the complaint happens to be my boss. So, the problem would be, I'm the one there advising the Board of Ethics on procedural or legal matters when my boss is one of the respondents who's in front of the Board.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. That kind of answers my next question too then, I guess. Okay. So, the complaint is your boss, against your boss? One of them.

MR. MURAI: One of the parties.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Okay. Mahalo, Chair. And so, for the \$1,000, we're just covering the cost of airfare and transportation?

MR. MURAI: Yes, and even the \$1,000 is being, you know, cautious. The reason why we said 1,000 is in case there may be multiple hearings. If there's only hearing, then it's just whatever the cost of a roundtrip plane ticket from Hilo to Kahului is and taxi or rental car from the airport to the County building.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. And our County vehicles wouldn't be able to pick the Corp. Counsel up?

MR. MURAI: I suppose we could if we could arrange it. But we've never been asked to pick anyone up. They'll either take an Uber, or a cab, or rent a car.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Mr. Murai.

MR. MURAI: You're welcome.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you, Member Rawlins-Fernandez. Any other questions for Mr. Murai before the Chair makes a recommendation? Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: Sorry, last question.

CHAIR MOLINA: Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. And what was the section in the Charter that you were citing?

MR. MURAI: I don't have it in front of me.

VICE-CHAIR RAWLINS-FERNANDEZ: Oh, okay, later on.

MR. MURAI: Mr. Kushi has it open.

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CHAIR MOLINA: Mr. Kushi?

MR. MURAI: Yeah, I think it's under Powers of the Council. But what Charter section? Section 3-6 Powers of the Council, Paragraph 6, to retain, employ, or designate by a vote of two-thirds of its entire membership special counsel as legal representative for any special matter presenting a real necessity for such employment. Any such employment shall specify the compensation, if any, to be paid for such services.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Mr. Murai.

MR. MURAI: You're welcome.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you very much. Okay. With that said, then Members, Chair is going to offer a recommendation. The Chair will ask for a motion to Authorize [sic] the Retention of Special Counsel from the Office of Corporation Counsel, County of Hawaii, to Advise the Maui County Board of Ethics in the Matter of Complaint No. 19-05, Alleging Violations of the Maui County Code of Ethics by Officer and Employees of the County of Maui.

COUNCILMEMBER KAMA: So moved.

COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Okay. Moved by Member Kama, seconded by Member Sugimura. Any discussion? Seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and King.

MOTION CARRIED.

**ACTION: ADOPTION OF RESOLUTION AND FILING OF
 COMMUNICATION.**

CHAIR MOLINA: Okay. Thank you. The Chair mark it seven "ayes" with two absences, Chair King and Member Hokama. Thank you very much, Mr. Murai. This matter will go on to the full Council --

MR. MURAI: Thank you, thank you, Members.

CHAIR MOLINA: --in the near future. And we'll check back in with Molokai. I believe if Ms. Lindo was online, do we have any testifiers on our agenda item for today, Ms. Lindo? Testing one, two, three...four, five, six. Okay. And we can get some e-mail confirmation then if that's the case.

MR. RAATZ: We did.

CHAIR MOLINA: Oh, you did get that? So, they did send an email confirming there are no testifiers? Okay. Members, with that being said, if there are no objections, we will close public testimony for our four agenda items today. Any objections?

. . . END OF PUBLIC TESTIMONY . . .

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. So, ordered.

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**GET-11(23) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: A CHARGE OF
DISCRIMINATION FILED WITH THE HAWAII CIVIL RIGHTS COMMISSION
AND FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON
OCTOBER 5, 2018 UNDER EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION 486-2018-00541)) (CC 19-29)**

CHAIR MOLINA: Next on our agenda is GET item 11(23) which relates to A Charge of Discrimination Filed with the Hawaii Civil Rights Commission and Federal Equal Employment Opportunity Commission on October 5, 2018 Under Equal Employment Opportunity Commission. Again, this is a matter to authorize settlement of this matter. And we have from Corporation Counsel, and if you could please identify your full name, I'm, I know your name I'm sorry, I think I, like Tristin.

MS. TARNSTROM: That's perfectly fine.

CHAIR MOLINA: Okay.

MS. TARNSTROM: Aloha. My full name is Kristin Tarnstrom.

CHAIR MOLINA: Kristin, I know there's two Kristin's in the Department. I always get them mixed up.

MS. TARNSTROM: Yes, there were, and it was very confusing.

CHAIR MOLINA: Forgive the Chair for this senior moment, so.

MS. TARNSTROM: It's okay, Chair.

CHAIR MOLINA: So, I'll go ahead and ask you to give us opening remarks on this matter and then I'll open the floor for questionings later, proceed.

MS. TARNSTROM: Sure. Thank you, Chair. Before you today is discussion and a request for settlement of a matter that stems from an EEOC complaint of sex discrimination and retaliation that was filed in October of 2018. The EEOC complaint procedure is kept completely confidential, which is why I can't disclose the complainant's name presently. The complaint was completed before the EEOC and she was, sorry, this person was issued a right-to-sue letter and the County was sent an initial demand letter, which is what we're here to discuss. After receiving the demand letter, we entered mediation in an attempt to resolve it early and we were initially successful and we're here today just to request settlement authorization to close out the case. And in order to do that, I would request that we move into executive session.

CHAIR MOLINA: Okay. Thank you very much for your opening remarks. So, we have a question from the floor. Member Paltin?

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COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Tarnstrom. I just was wondering after the EEOC gave them permission to proceed, was it the County that approached them for a settlement, or was it them that approached the County for a settlement?

MS. TARNSTROM: I believe it was raised initially by the County.

COUNCILMEMBER PALTIN: Thank you.

MS. TARNSTROM: Thank you.

CHAIR MOLINA: Thank you very much, Member Paltin. Members, any other questions for Ms. Tarnstrom in open session on this item? Okay. Seeing none, and as stated, Ms. Tarnstrom's going to recommend executive session for this. So, Members, with that being said, if there are no objections, the Chair would like to proceed to, the Chair's anticipating executive session for the next two items. So, I'd like to move on to the next item for discussion in open session, an overview. And at a later point the Chair will recommend going into executive session for all...this item as well as the next two items. So, any objections to operating in that manner? Okay. So, noted, thank you.

GET-11(29) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: ROBERT G. STRAUB V. COUNTY OF MAUI AND TEENA RASMUSSEN, USDC; CIVIL 17-00516 JMS-RLP)) (CC 19-29)

CHAIR MOLINA: Okay. From Corporation Counsel now we're on the next matter which is GET item 11(29) which relates to a Settlement Authorization: Robert G. Straub versus County of Maui and Teena Rasmussen, USDC; Civil Case No. 17-00516. And we have Mr. Caleb Rowe from Corporation Counsel to give us an overview of this proposed settlement matter. Mr. Rowe?

MR. ROWE: Thank you, Chair. Robert Straub was appointed by Mayor Alan Arakawa in January of 2011 as an at-will employee. He took a series of FMLA leaves. Upon returning from one of those leaves, a week later he was terminated by his supervisor, Teena Rasmussen with the Office of Economic Development. In addition to his work with OED, Mr. Straub also ran a personal business called Ultra Hawaii. They sold things like t-shirts and trophies, and I believe they did engravings. The County did do quite a business, quite a bit of business with him. In July 12, 2017 after he was terminated, Mr. Straub filed a charge of discrimination with the Hawaii Equal Rights Commission and the Equal Employment Opportunity Commission. He was given a right-to-sue letter in both of those and he ended up initiating a lawsuit on October 13 in 2017. He amended his complaint on November 9, 2017 to include Teena Rasmussen in her individual capacity. His claims include, the first one is FMLA interference. He's claiming that he was retaliated against for taking FMLA leave. The

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second count is FMLA retaliation. He's claiming that we, that the County discontinued purchasing from Ultra Hawaii in retaliation for his filing a complaint with the EEOC and the HCRC. The third is for violations of the Americans with Disabilities Act. He was claiming he was terminated because of his association with a disabled person. His fourth claim was age discrimination under Hawaii and Federal law. The County filed a motion for summary judgment and the Court dismissed two of the counts. A copy of that order should have been attached with my transmission. The first, for FMLA interference was dismissed because the Court found that the FMLA forms submitted by Mr. Straub to certify his need for leave were falsified because the digital signature from Mr. Straub's wife's doctor was not authentic, and there's a specific court finding on that. The court also dismissed count four, which was the age discrimination claim. It found that Mr. Straub was 71 and his replacement was only 5 years younger at 66. As a result, there are two claims remaining, those are FMLA retaliation and ADA association discrimination. We currently have a motion for reconsideration on the FMLA retaliation pending, and that should be heard within, or we should have some idea of that within the next couple of weeks at which point we would only have the ADA association claim left. Currently, trial is set for December 17, 2019. There has been some fairly unsuccessful discussions regarding settlement. They made a recent demand and we are going to present it to you. But to discuss it in more detail I would like to go into executive session.

CHAIR MOLINA: Okay. Thank you very much, Mr. Rowe. Members, any questions in open session as it relates to GET item 11(29) for Mr. Rowe? Member Sugimura followed by Member Paltin.

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, just a question. Are you asked, what is ADA Association? Is that what the one claim...

MR. ROWE: Yes, so, ADA is the Americans with Disabilities Act. His claim is that we fired him because his wife was a disabled person. And the basis for that claim is that he was terminated shortly after returning from FMLA leave.

COUNCILMEMBER SUGIMURA: Thank you. I don't follow the logic. But thank you.

MR. ROWE: Okay.

COUNCILMEMBER SUGIMURA: Thank you for that explanation.

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

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Rowe. My question is, I have a couple questions, what is the date of his termination?

MR. ROWE: The date of his termination, he was terminated on January 27, 2017, and it was effective January 31, 2017.

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COUNCILMEMBER PALTIN: And then, is there any consequence to submitting a falsified signature from a doctor?

MR. ROWE: The consequence in this case was that that claim was dismissed. As far as any other exposure that he may have I'm not qualified to do that. That's up to other people.

COUNCILMEMBER PALTIN: And then, in your opening statement when you said that he was appointed at an, as an at-will employee --

MR. ROWE: Correct.

COUNCILMEMBER PALTIN: --what is the meaning of that in terms of letting go an at-will employee? Is there a certain procedure that needs to be followed different from a civil service employee being terminated?

MR. ROWE: Yes, there is. So, civil service employees have certain rights, including union representation and, you know, kind of the union challenges to any termination. At will literally means it's at will. The Administration is allowed to terminate people. They just can't do it for an improper purpose such as discrimination.

COUNCILMEMBER PALTIN: And so, are they required, is the Administration then required to give a reason for the termination?

MR. ROWE: I believe that they did in this case and I think that they are supposed to.

COUNCILMEMBER PALTIN: And in relation to the County's contract with Ultra...

MR. ROWE: Ultra.

COUNCILMEMBER PALTIN: Ultra Hawaii?

MR. ROWE: Ultra Hawaii.

COUNCILMEMBER PALTIN: Is there a, was that terminated early, or was it just not renewed?

MR. ROWE: So, we never really had a contract with him. There were several departments that on occasion would have needs for goods and sometimes they would go to him, sometimes they would go through other people. There was no sort of formal agreement. It was kind of done as an as need, you know, we need t-shirts for this event, we're going to buy them through him today. But there's no long-term contract saying we're going to buy t-shirts from you every single time. And if you actually go through the County's finances, we actually did continue to buy t-shirts through Ultra

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Hawaii, just there was a couple of specific contracts that he had gotten in the past that he didn't get.

COUNCILMEMBER PALTIN: And is there evidence that the people that got them, those contracts, was it a better price or anything?

MR. ROWE: We have submitted evidence that, of what the purpose for them, what the reasoning was for them purchasing from other people, yes.

COUNCILMEMBER PALTIN: And then, we'll go over that in executive session?

MR. ROWE: Yes.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Member Paltin. Member Kama?

COUNCILMEMBER KAMA: Thank you, Chair. So, for what reason was he terminated?

MR. ROWE: He was terminated because the head of the Office of Economic Development was told by the Budget Director that she needed to make personnel, she needed to make cuts in her personnel budget. In addition to that, there was one employee who had been on a special assignment who he had been on a special assignment through the Mayor's Office, but he was still technically under the umbrella of the Office of Economic Development. So, he was on her payroll. So, a determination was made to put him in the place that Mr. Straub was currently fulfilling. And so, he was replaced by someone else who was already under the payroll of the Office of Economic Development. So, basically, there was one job, there were two people. She chose one.

COUNCILMEMBER KAMA: Were they both at will?

MR. ROWE: They were both at will, yes.

COUNCILMEMBER KAMA: Does it say which one was hired before the other?

MR. ROWE: I would have to look into that. I believe it was about the same time. I think they both came in right at the start of the Arakawa Administration.

COUNCILMEMBER KAMA: And therefore, the one who stayed was the younger one?

MR. ROWE: Correct.

COUNCILMEMBER KAMA: Thank you.

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CHAIR MOLINA: Okay. Thank you, Member Kama. Before the Chair recognizes any other Members who have questions about this, I would like to disclose that I did have a working relationship with Mr. Straub. We were both appointees of the former Administration. He at one time was the Office Manager on the Ninth Floor. Later he went over to the Office of Economic Development where all of this stuff occurred. So, I just wanted to disclose that to the Members, to all of you. If any of you are uncomfortable with me participating, please let me know. I feel I can rule objectively in this matter. So, just for the sake of full disclosure, any objections with the Chair participating in this matter? Okay. Hearing no objections, we'll continue. Members, questions in open session on this item? Member Paltin?

COUNCILMEMBER PALTIN: I just was, there's no financial --

CHAIR MOLINA: None whatsoever.

COUNCILMEMBER PALTIN: --interest for you?

CHAIR MOLINA: I did buy a shirt from him once. So, I'll just say that. But it was, no financial interest in his business or anything like that.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you. Any other questions in open session for Corporation Counsel? Mr. Sinenci?

COUNCILMEMBER SINENCI: Yeah, just again, clarification, Mr. Rowe, so in the resolution it says on September 24, District Court of Hawaii granted summary judgment in favor of the County, but those were just on the counts of FMLA interference and age discrimination.

MR. ROWE: That is correct. So, there are two counts remaining. We have a pending motion for reconsideration on one of those counts which is the FMLA retaliation claim. I'm cautiously optimistic about that. However, as of right now we have two claims. If that is granted, then we'll have one claim.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Members, any other questions in open session for GET item 11(29)? Seeing none, okay, thank you, Mr. Rowe.

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GET-11(21) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: TIMOTHY C. GALBRAITH V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-11-00877)) (CC 19-29)

CHAIR MOLINA: We'll move on to our next item for discussion, which is GET item 11(21), and it relates to Authorizing Settlement of Timothy C. Galbraith versus County of Maui; Disability Compensation Division Case No. 7-11-00877. And I believe Mr. Rowe are, this is a matter you're handling as well?

MR. ROWE: Yes, and sorry, Chair, I just want to make sure, did I request to go into executive session? I think that I did. But I just want to be sure that I did on that last one.

CHAIR MOLINA: Yeah, I think you --

MR. ROWE: Okay. Okay.

CHAIR MOLINA: --yeah, gave some subtle comments, yeah.

MR. ROWE: Sorry, I just, I couldn't remember if I had or not. Okay.

CHAIR MOLINA: Yeah. But yeah, we will definitely consider that.

MR. ROWE: Okay.

CHAIR MOLINA: Can you give us some opening comments on this next matter?

MR. ROWE: Yes, so Timothy Galbraith is a now retired plant maintenance worker at the Olinda Treatment Plant for the Department of Water Supply. On May 2, 2011, he was lifting a battery to put it in a battery box and that was on the tongue of a ten-inch portable pump. As he was lifting, he felt a sharp pain in his back and his left leg. He was determined to have a fairly sever back strain and the County accepted liability of this injury. He went through a lot of physical therapy. It was eventually determined that he was a surgical candidate. He did have surgery. Eventually, it was determined that he was unable to return to work. So, he was able to get disability retirement and that occurred in March of this year. Currently, he does have a PPD rating at a certain percent that was done by our independent doctor. So, that's part of what our settlement request is. However, we'd also like to request an additional amount of money, a wash agreement to kind of basically wash the indemnity claims that still could accrue. Because he has been determined unable to return to work as a result of his work injury, he is entitled to vocational rehabilitation services. When you are under, going under VR even if you are no longer working with the County, you are allowed wage replacement which would be based on I believe it's 66 and two-thirds of his former salary. So, he would be getting that amount of money for the entire duration of his VR and we are hoping to have him waive his right to VR and his right

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to those payments so we're going to ask for an additional amount of money for that as well.

CHAIR MOLINA: Thank you very much, Mr. Rowe. Members, questions in open session as it relates to GET item 11(21)? I'm sorry, Member Paltin, followed by Member Sinenci.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Rowe. I just was wondering if it's possible for you to tell us the person's age.

MR. ROWE: He's 54 years old.

COUNCILMEMBER PALTIN: Thank you.

MR. ROWE: Yes.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Member Sinenci?

COUNCILMEMBER SINENCI: You mentioned the acronyms PPD I believe...

MR. ROWE: Yes, sorry about that. Permanent Partial Disability. And in the Workers Comp. progress when you become medically stable you get a kind of lump-sum payment compensating you for the amount that you've been injured. And that's determined by an independent physician and it's a percentage of a body part. And then that goes through a formula under the law.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Members, any other questions in open session as it relates to this matter? Member Paltin?

COUNCILMEMBER PALTIN: Sorry, thank you. Do you know the weight of the battery and the height of the box?

MR. ROWE: I believe, do I have the...I do not. I know that it was a ten-inch portable pump. I did ask two people from the Department of Water Supply to be here during executive session in case you guys had any sorts of questions like these that I wasn't really able to answer, so.

COUNCILMEMBER PALTIN: Is that an executive session question?

MR. ROWE: It doesn't have to be. If you want, I can ask them to come down now and answer those.

CHAIR MOLINA: Member Paltin, would you like the representatives from the Department to answer that specific question you have right now in open session?

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COUNCILMEMBER PALTIN: Yes, please.

CHAIR MOLINA: Okay. Please, gentlemen, please proceed to the front and identify yourself prior to responding to Member Paltin's questions. Good morning, gentlemen, and thank you for joining us for our proceedings. And, Member Paltin, if you want to repeat the question again for the gentlemen?

COUNCILMEMBER PALTIN: Sure thing. Thank you, Chair. I just was wondering if you knew the weight of the battery and the height that it needed to be lifted to?

MR. IGNACIO: You want me to answer that? My name is Marvin Ignacio, one of the treatment plant supervisors.

CHAIR MOLINA: I'm sorry, Mr. Ignacio, could you pull the mic closer to your, yes there you go.

MR. IGNACIO: Okay. I'm the Water Treatment Plant Supervisor for the east side. I was working with him, but I was not supervisor at the time. So, I can't give you any information on that. All I know, he lift the battery, probably, it was a trailer tongue, I'd say it was maybe two feet off the ground that's my guesstimate on that.

COUNCILMEMBER PALTIN: And do you know the approximate weight of the battery?

MR. IGNACIO: That was about 50 pounds.

COUNCILMEMBER PALTIN: Okay. Thank you so much. Sorry to bring you down here.

MR. IGNACIO: No problem.

CHAIR MOLINA: Okay. Members, any other questions for the Water Department personnel in open session? Member Lee?

COUNCILMEMBER LEE: Was that a typical process, you know, procedure to be lifting the battery by him or other people?

MR. IGNACIO: Yeah, he should've asked for help.

COUNCILMEMBER LEE: He should've asked for help?

MR. IGNACIO: We always said for anything above 50 pounds if you need help, to get some help. And he thought he could handle it and...

COUNCILMEMBER LEE: You mean he's never lifted a battery before?

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MR. IGNACIO: Yeah, well, this is a pretty big battery.

COUNCILMEMBER LEE: No, but he didn't lift it, he doesn't do that in his normal course of business, of work?

MR. LINDER: I'll take that one, Member Lee. Chair, my name is Tony Linder. I'm the water treatment plant's Division Manager. It is typical for someone in his position to lift a battery of this size. And as Marvin stated, if...all of our job classifications are, you have to be able to lift up to 50 pounds.

COUNCILMEMBER LEE: Okay.

MR. LINDER: And we state, we have monthly safety meetings and we always, you know reaffirm to everybody that if you're doing something that you feel you might need help with then you ask for help. If there is something that you might need equipment to help you lift, or move something with, we always make that equipment available and we also provide personal protective equipment for all of our employees. So, yeah, it would be something that we would expect him to do typically as a Water Treatment Plant Mechanic.

COUNCILMEMBER LEE: Thank you, gentlemen.

CHAIR MOLINA: Okay. Thank you, Member Lee. Member Kama followed by Member Paltin.

COUNCILMEMBER KAMA: Thank you, Chair. So, I wasn't sure if he was reaching for it or lifting it from the ground. So...

MR. IGNACIO: He was lifting it from the --

COUNCILMEMBER KAMA: From the ground?

MR. IGNACIO: --from below him, not from the top --

COUNCILMEMBER KAMA: And he was...

MR. IGNACIO: --yeah.

COUNCILMEMBER KAMA: So, he was lifting it from the ground, and he was lifting it to put where? Just...

MR. IGNACIO: No, he just was lifting it from the ground to put...

CHAIR MOLINA: I'm sorry, Mr. Ignacio, could you, bring the mic, yeah.

MR. IGNACIO: Sorry, he was lifting it from --

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CHAIR MOLINA: You have a nice voice.

MR. IGNACIO: --the ground and putting it on the trailer.

COUNCILMEMBER KAMA: So, how, what's the difference in...

MR. IGNACIO: It's about two feet --

COUNCILMEMBER KAMA: Okay.

MR. IGNACIO: --two-and-a-half feet --

COUNCILMEMBER KAMA: So, he was just lifting it --

MR. IGNACIO: --from the ground.

COUNCILMEMBER KAMA: --two feet off the ground?

MR. IGNACIO: Yeah.

COUNCILMEMBER KAMA: Put into the trailer?

MR. IGNACIO: No, to...it was on the ground, he lifted it two-and-a-half feet to put it on the trailer.

COUNCILMEMBER KAMA: I thought that's what I said. But that's okay. Okay. So, he only had to lift 50 pounds, 2 feet high?

MR. IGNACIO: Yeah.

COUNCILMEMBER KAMA: Okay. Thank you.

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

COUNCILMEMBER PALTIN: Thank you. Sorry, couple more questions. Do you guys have annual training about like using your knees when you lift?

MR. LINDER: Yes, we do. We document all safety meetings. And like I said, we have two safety meetings each month, one on the east district, and one on the west.

COUNCILMEMBER PALTIN: Oh, each month?

MR. LINDER: Yes and lifting comes up quite a bit. It's one of the things we key on.

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COUNCILMEMBER PALTIN: And for the battery, was there handles on the side, or did he have to just lift the box?

MR. IGNACIO: Yes, there were handles on the side. The bigger batteries have two ropes. You can lift it up like a cooler.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Any other questions in open session for our Water Department personnel? Okay. Well, gentlemen, you've certainly drawn a lot of interest just in open session. Wait until we get to executive session. Thank you for being here. All right, Members, the Chair is going to recommend, and I'll ask for a motion for executive session pursuant to Section 92-5(a)(4) in HRS, and Section 92-5(a)(8) as it relates to GET items 11(23), 11(29), and 11(21). And just as a friendly reminder, we do need six votes to go into executive session. That is the Chair's recommendation. Chair is asking for a motion.

VICE-CHAIR RAWLINS-FERNANDEZ: So moved.

COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Okay. Moved by Committee Vice-Chair Rawlins-Fernandez, seconded by Member Sugimura. Any discussion? Seeing none, all those in favor of the motion to go into executive session, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

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

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmembers Hokama and King.**

MOTION CARRIED.

ACTION: **APPROVE; RECESS open meeting and CONVENE
executive meeting on Items 11(23), 11(29) and
11(21).**

CHAIR MOLINA: Thank you. The Chair marked it seven “ayes” and two absence [*sic*], I believe that was told to us by Chair King at a recent Council meeting, that is the appropriate action to take. So, it’s absent, Chair King and Member Hokama. Ms. Martins, just for the record, I believe Ms. King did notify the Committee she would not be here. Did we get the same consideration from Member Hokama? Did he inform the Committee he would not be here this morning? He did as well? Okay. Thank you. So, I appreciate both Members notifying the Committee in advance of not being able to be here today. So, with that said, Members, we will now secure the Chambers for executive session. Please take care of whatever personal needs you need to have and please report back to the Chambers for our session. So, we’ll be discussing the three items. And once we get to open session, then we’ll make a decision on each of these three items. Okay. So, the meeting is in recess and we will be convening in executive, I’m sorry, Member Sugimura? Oh, okay. We’ll be convening in executive session. Meeting in recess. . . .(*gavel*). . .

RECESS: **9:40 a.m.**

RECONVENE: **11:42 a.m.**

VICE-CHAIR RAWLINS-FERNANDEZ: . . .(*gavel*). . . Will the GET Committee please return to order. It is 11:42 on November 4, regular GET meeting. I’m your GET Vice-Chair who will be taking over for our GET Chair for the remaining portion of our meeting. Mahalo for that time in executive session. We’ll now take up each of the items that we discussed in executive session and vote on what we had agreed to in executive session. Okay.

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**GET-11(23) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: A CHARGE OF
DISCRIMINATION FILED WITH THE HAWAII CIVIL RIGHTS COMMISSION
AND FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON
OCTOBER 5, 2018 UNDER EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION 486-2018-00541) (CC 19-29)**

VICE-CHAIR RAWLINS-FERNANDEZ: So, we'll first take up GET 11(23), Litigation Matters, Settlement Authorization: A Charge of Discrimination Filed with the Hawaii Civil Rights Commission and Federal Equal Opportunity Commission on October 5, 2018 Under Equal Employment Opportunity Commission. Okay. The Chair will entertain a motion on what we agreed to in executive session.

COUNCILMEMBER KAMA: So moved.

COUNCILMEMBER SINENCI: Second.

VICE-CHAIR RAWLINS-FERNANDEZ: Moved by Pro Temp Kama, seconded by Member Sinenci. Pro Temp Kama, as the movant, would you like to speak to your motion?

COUNCILMEMBER KAMA: I think for me at least, I feel like we've had enough discussion that I would just like to ask Members to support the motion.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Pro Temp Kama. Okay. And just a correction to the motion, it wasn't something we agreed to in executive session, it was the recommendation that was made in executive session.

COUNCILMEMBER KAMA: Move to approve the recommendation, then?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

COUNCILMEMBER KAMA: Is that what it should read?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

COUNCILMEMBER KAMA: Okay. I would do that.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Pro Temp Kama, mahalo, Member Sinenci. Member Lee?

COUNCILMEMBER LEE: I think usually you would say move to approve the Chair's recommendation, yeah? Okay. And I support it, and I hope that we make a strong statement with this recommendation. Thank you.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Lee. Okay. Okay, everyone, okay, and I will be voting in favor of the motion as well. Oh...

COUNCILMEMBER LEE: We're on GET-11(27) yeah?

COUNCILMEMBER KAMA: Twenty-three, 23.

VICE-CHAIR RAWLINS-FERNANDEZ: Twenty-three.

COUNCILMEMBER LEE: Oh, we already voted on 27? Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: The retention of special counsel we already voted on --

COUNCILMEMBER LEE: That we voted on.

VICE-CHAIR RAWLINS-FERNANDEZ: --before we went into executive session.

COUNCILMEMBER LEE: Yeah, 'cause I saw that as my first item.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

COUNCILMEMBER LEE: But I forgot that we voted on it. And I certainly wouldn't want to make a strong statement on that one. So, anyway, just getting things in order here.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

COUNCILMEMBER LEE: Yeah, I am happy to support your recommendation.

VICE-CHAIR RAWLINS-FERNANDEZ: On GET-11(23) for the discrimination complaint?

COUNCILMEMBER LEE: Yes, yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Strong message.

COUNCILMEMBER KAMA: Call for the question.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Member Paltin?

COUNCILMEMBER PALTIN: I just want to ditto Member Lee, call for the question, and ditto Member Kama as well.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Member Paltin. Okay. Good, 'cause I was agreeing with Member Lee's comment about sending a strong message and I'm glad we're talking about the same item. And I also, you know, don't see it as a reflection of our Chief, I, you know, our Chief is doing his best and --

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MR. RAATZ: Chair, excuse me, Chair, sorry.

VICE-CHAIR RAWLINS-FERNANDEZ: Yes?

MR. RAATZ: Just one procedural note going back to the first item, GET-11(27). For most of your litigation matters you don't have a County communication that's included 'cause you have a direct referral from Corporation Counsel to Committee. For this item, you actually did have a County communication that's part of the agenda item. Staff assumes that part of the recommendation is to file the communication. We just want to make sure that's on the record, please.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Was the intention of this body to file the County communication?

COUNCILMEMBERS KAMA: Absolutely.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Yes, so, for the record, the, this Committee intended to also file the County communication. Okay. Anything else? Okay. Thank you, Members. It's 11:49, we are finishing our meeting early. The regular meeting for GET on November 4th is adjourned at 11:49. Mahalo, Members. . . . *(gavel)* . . .

ADJOURN: 11:50 a.m.

APPROVED BY:



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

get:min:191104:mt

Transcribed by: Marie Tesoro

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CERTIFICATE

I, Marie Tesoro, 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 26th day of November 2019, in Wailuku, Hawaii

A handwritten signature in black ink, appearing to read "Marie Tesoro", is written over a horizontal line.

Marie Tesoro