

OFFICE OF THE COUNTY ATTORNEY

I. Mission Statement

To diligently render proficient legal services ethically and honorably; and to act as an advisor and advocate to the various county entities which comprise the County of Kaua'i on behalf of the people.

II. Department Goals

The Department's goal is to provide timely competent legal advice and representation to all of Kauai via the Mayor, County Council, and to all Departments, Commissions, Boards and Agencies. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Powers, Duties, and Functions

1. The county attorney shall be the chief legal adviser and legal representative of the county administration, all county agencies, the county council, and all county officers and employees in matters relating to their official powers and duties. The county attorney shall also perform all other services incident to the county attorney's office as may be required by law.
2. The county attorney shall have the power to appoint such deputy county attorneys and necessary staff authorized by the council, within the appropriation made therefor. Such deputies shall serve at the pleasure of the county attorney.
3. The council may, by vote of five members, authorize the employment of special counsel for any matter necessitating such employment. Any such authorization shall specify the compensation, if any, to be paid for said services. (Article VIII, Section 8.06, Kauai County Charter)
4. Legal process against the county shall be served upon the county attorney or any of the deputies.
5. Legal adviser of the council. (Article VIII, Section 8.04, Kauai County Charter)
 - a. Attend their meetings when required.
 - b. Oppose all claims and accounts against the county when the county attorney deems them unjust and illegal.
6. Legal advisor of the county administration. Render opinions to county officers on matters relating to the duties of their respective offices. Give, when required and without fee, an opinion in writing to county officers on matters relating to the duties of their respective offices.

OFFICE OF THE COUNTY ATTORNEY

7. Defend county officers, acting within their official capacities, in civil actions. The county attorney is not required to defend any officer in any matter or case out of which criminal proceedings against such officer may arise.

8. Counsel for police officers. (Sections 52D-8 and 52D-9, HRS)

Section 52D-8 "Police officers; counsel for. Whenever a police officer is prosecuted for a crime or sued in a civil action for acts undertaken in the performance of the officer's duty as a police officer, the police officer shall be represented and defended:

- (1) In criminal proceedings by an attorney to be employed and paid by the county in which the officer is serving; and
- (2) In civil cases by the . . . county attorney . . ."

"Section 52D-9 Determination of scope of duty. The determination of whether an act, for which the police officer is being prosecuted or sued, was undertaken in the performance of the officer's duty, so as to entitle the officer to representation by county-provided counsel, shall be made by the county police commission. Before making a determination, the police commission shall consult the county attorney or the corporation counsel, who may make a recommendation to the police commission with respect thereto. The determination of the police commission shall be conclusive for the purpose of this section and section 52D-8."

9. Legal counsel for Firefighters prosecuted for any crime or sued civilly for acts done in the performance of their duty as a firefighter, or any traffic violations while in the course of operating any firefighting apparatus or other authorized emergency vehicle. (Section 46-35, HRS).

10. Legal adviser of the Board of Water Supply. (Section 54-16, HRS)

Prosecute and defend any and all actions and proceedings involving matters under the jurisdiction of the Board of Water Supply.

11. Legal adviser of the Liquor Control Commission. (Chapter 281, HRS, as amended)

Defender of investigators and employees.

- a. Section 281-104. "Whenever any investigator or other employee of the liquor commission shall be . . . sued in any civil cause for acts done in the performance of the investigator's or employee's duty as such investigator or employee, the investigator or employee shall be represented and defended . . . (2) in any such civil cause by the . . . county

OFFICE OF THE COUNTY ATTORNEY

attorney, of the county in which the investigator or employee is serving. . . . "

- b. Section 281-105. Determination whether acts were in scope of duty shall be made by the liquor commission after consultation with the county attorney who may make a recommendation to the commission. Such determination shall be conclusive for such purpose only.

12. Act as counsel for appointing authority under Chapter 76, HRS, (Civil Service Law). (Section 76-47, HRS)

13. Duty under Chapter 480, HRS: Monopolies; Restraint of Trade.

Section 480-20: "(a) . . . The county attorney . . . shall investigate and report suspected violations of this chapter to the attorney general. (b) Whenever this chapter authorizes or requires the attorney general to commence any action or proceeding, including proceedings under Section 480-18, the attorney general may require the county attorney . . . holding office in the circuit where the action or proceeding is to be commenced or maintained, to maintain the action or proceeding under the direction of the attorney general."

14. Legal assistance to Chief of Police in enforcement of Automobile Safety Regulations. (Section 287-2, HRS)

15. Prosecute violations of Food, Drug and Cosmetic Act. (Section 328-28, HRS)

16. Legal assistance to Tax Collector.

17. Other duties.

Provide legal advice and advocacy upon request for commissions, boards, hearings, regular and special council and committee meetings, department and division meetings, conferences with Mayor and staff, including:

- Charter Review Commission
- Arborist Advisory Committee
- Historic Preservation Review Commission
- Board of Ethics
- Land Use Commission
- Committee on the Status of Women
- Fire Commission
- Public Access, Open Spaces Natural Resources Preservation Fund Committee
- Planning Commission
- Building Board of Appeals
- Housing Agency

OFFICE OF THE COUNTY ATTORNEY

- Police Commission
- Liquor Commission
- Board of Water Supply
- Civil Service Commission
- Board of Review
- Cost Control Commission
- Salary Commission
- Council's Subcommittee on Housing
- Collective Bargaining
- Hawaii Labor Relations Board
- Workers' Compensation Appeals

To establish a litigation team to better serve the County in defending more cases in-house.

III. Program Description

The county attorney is the legal advisor and representative to the Council, the Mayor, all departments and agencies, all boards and commissions, and all officers and employees in matters relating to their official powers and duties.

Objectives

1. Assess all claims filed against the County, efficiently process those which this office determines to be valid, and vigorously defend against all others.
2. Produce and review all documents generated for the purpose of facilitating the delivery of governmental services by the County of Kaua'i to its citizens.
3. To provide such continuing legal education to the Mayor, the County Council, Departments, Commissions, Boards, and Agencies, as shall keep them current on changes in the law which affect the efficient and fair discharge of the duties of the County to its citizens.

Program Highlights and Items of Note

1. The main Departmental highlight and/or item of note is the continued commitment to the restructuring of the County Attorney's Office in order to fulfill the budgetary policy statement of reducing outside litigation costs for special counsel. The County Attorney's Office's commitment has led to not only a reduction of special counsel costs so far but also to more legal enforcement support in civil administrative actions like zoning code enforcement.
2. The re-structuring has also focused the Office's Advice and Counsel section dedication to working together both intra-office and with other county

OFFICE OF THE COUNTY ATTORNEY

departments to provide consistent legal advice and to identify concurrent opportunities to assist multiple departments and to centralize the support of those departments that provide ubiquitous services to the entire county like the Department of Human Resources and the Department of Finance. A major recent effort was standardization of contract templates that will benefit the contracting functions of the entire county.

Activities

1. County Attorney's Office continues to actively defend the County in alleged police misconduct, personal injury, personnel and contract cases.
2. The county attorney and deputies engage in providing for pro bono services for various community agencies.
3. The county attorney and deputies participate in the aid station at the Kaua'i Marathon, a variety of community activities and community service projects.
4. Assisted and drafted amendments to the real property tax law and rules and regulations.
5. Advice on and defense of various personnel matters from all departments, agencies and Council.
6. Advise, counsel, and represent all boards and commissions and departments.
7. Drafting and review of legal documents such as bills for ordinances, resolutions, contracts, lease agreements, rights-of-entries, etc.
8. Advise and counsel the County Council in numerous executive sessions.

IV. Program Measures – Accomplishments/Evaluation

The Office of the County Attorney serves to provide legal support services to all other County departments and agencies. Since 2009, the legal opinions of the Office have been accurate and supported by subsequent court rulings.

1. Kulana Subdivision Case: A highly legal complex case should be resolved by the end of 2016.
2. Assisted the Kaua'i Police Department with the policy aspects of implementing their Body Worn Camera program to enhance accountability and transparency.

OFFICE OF THE COUNTY ATTORNEY

3. Conducted OIP Training for County Employees which promotes open and transparent government.
4. Assisted the Division of Purchasing in its initiative to move the County towards greater use of electronic records and electronic signatures which will improve operational efficiency, create opportunity for cost savings, and address the County's storage issues.
5. Assisted the Human Resources Department in completing a new Policy against Discrimination, Harassment, and Retaliation.
6. Reduced the County's reliance on special counsel as the litigation unit has taken the majority of the County's litigation cases.
7. The litigation unit has filed cases to protect the County's interests and collect delinquent account receivables.
8. Provided leadership to the Finance Department and the Division of Purchasing in creating Contract Templates for Professional Services, Construction, Goods, and Services and also creating the Insurance Requirements document for all procurement. Assisted the Division of Purchasing in updating the General Provisions for Construction Contract and updating the General Terms and Conditions for Goods and Services Contracts.
9. Implementing a new private cloud based case management software that assists with managing case matters, time tracking, conflict checking, document and report generating, and workflow control. This will allow the County Attorney's Office to function more efficiently like a private law firm and allow remote access to the deputies to accommodate easier access to their desktop remotely.
10. Identified extensive cost savings in electronic legal reference services, via contract amendment with Westlaw that concurrently increased the type and quality of legal services received both for the County Attorney's Office and for the Office of the County Clerk.

OFFICE OF THE COUNTY ATTORNEY

V. Budget

Resources (General Fund)

Expense Type	FY 2016 Appropriation	FY 2016 Actual
Equivalent Personnel (E/P)	16	16
Salaries and Wages	\$ 1,855,225	\$ 1,678,352
Operations	\$ 1,042,758	\$ 365,788
Equipment	\$ 0	\$ 0
Total	\$ 2,897,983	\$ 2,044,140

VI. Statistics

Document Preparation, Review and Approval Statistics

	<u>FY 2015 - 2016</u>
<u>Opinions</u>	
Number of opinions	120
<u>Legal documents</u>	62
(proclamations, ordinances, rules, and resolutions)	
<u>Contracts</u>	644
(materials, labor, supplies, equipment, consultant appraisal, services, and construction)	
<u>Conveyances</u>	399
(dedication, warranty, quitclaim and correction deeds, easements, and miscellaneous agreements)	
<u>Miscellaneous documents</u>	3,364
(revocable permits, waiver and indemnity agreements, permits, right-of-entry documents, releases, leases, concession agreements, charter of incorporation and by-laws, legislative bills, court pleadings, claims, rules)	
<u>Documents reviewed</u>	4,589
<u>Documents approved as to form and legality</u>	1,419
<u>Documents prepared</u>	636

OFFICE OF THE COUNTY ATTORNEY

Court Matters

	Pending <u>07/01/15</u>	Cases Filed 07/01/15 - 06/30/16	Closed	Pending <u>07/01/16</u>
<u>CASES FILED AGAINST COUNTY</u>				
U.S. Supreme Court	1	0	0	1
9th Circuit Court of Appeals	1	1	1	1
U.S. District Court	7	2	2	7
U.S. Bankruptcy Court	0	1	0	1
Hawaii Supreme Court	5	1	2	4
Inter. Court of Appeals	13	5	1	17
Circuit Court, 1st - 3rd	0	1	0	1
Circuit Court - 5 th	94	13	11	96
District Court	1	3	4	0
Department of Health, State of Hawaii	0	0	0	0
Land Court, State of Hawaii	2	1	0	3
Admin. Hearings, State of Hawaii	0	1	0	1
U.S. EPA	0	0	0	0
Tax Appeal Court	44	9	14	39

CASES FILED BY COUNTY

U.S. Supreme Court	0	0	0	0
9th Circuit Court of Appeals	0	0	0	0
U.S. District Court	0	0	0	0
2 nd Judicial District Court, State of Nevada (County of Washoe)	1	0	0	1
U.S. Bankruptcy Court	0	0	0	0
Hawaii Supreme Court	0	0	0	0
Inter. Court of Appeals	1	0	0	1
Circuit Court, 1st - 3rd	0	0	0	0
Circuit Court - 5th	11	0	1	10
District Court	15	13	6	22
Tax Appeal Court	0	0	0	0

OFFICE OF THE COUNTY ATTORNEY

	Pending 07/01/15	Cases Filed 07/01/15 - 06/30/16	Closed	Pending 07/01/16
<u>CLAIMS AGAINST COUNTY</u>	64	43	48	59
<u>CLAIMS FILED BY COUNTY</u>	4	4	5	3
<u>WORKERS' COMPENSATION</u>	1	0	0	1
<u>GRIEVANCES</u>	3	7	9	1
<u>CIVIL SERVICE COMMISSION</u>	0	1	1	0
<u>HAWAI'I LABOR RELATIONS BD</u>	18	1	10	9
<u>EEOC</u>	16	4	13	7
<u>DLIR, EMPLOYMENT SECURITY APPEALS</u>	2	2	3	1
<u>DCCA</u>	0	0	0	0
<u>DEPARTMENT OF HEALTH</u>	1	0	0	1
<u>MISCELLANEOUS</u> (Land Use Commission, Public Utilities Commission & Water Resource Commission)	5	3	2	6
<u>CONTESTED HEARINGS</u>	4	40	7	37
<u>SUBPOENAS</u>	0	10	6	4

VII. Holo Holo 2020 Projects & Status

The Mayor announced in 2010 his Holo Holo 2020 Project List. The Office of the County Attorney assisted the various departments and agencies with several Holo Holo projects by providing legal advice, review of procedures, review and drafting of legal documents which are as follows:

- Assisted with the review of procurement and contractual documentation of the design consultant for a Residential Adolescent Drug Treatment Center.

OFFICE OF THE COUNTY ATTORNEY

- Provided continuing advice and counsel on the Lima Ola 75 acre green affordable housing development.
- Provided continuing advice and counsel on the expansion of Hanalei Beach Park.
- Provided continuing advice and counsel on the County’s various stewardship agreements.
- Provided continuing advice and counsel on the pilot closure of Eiwa Street.
- Provided continuing advice and counsel on the development of the new resource recovery park and landfill site.

VIII. Office Staff as of June 30, 2016

Mauna Kea Trask	County Attorney
Matthew M. Bracken	First Deputy
Jodi Higuchi-Sayegusa	Deputy
Mahealani Krafft	Deputy
Nicholas R. Courson	Deputy
Adam P. Roversi	Deputy
Teresa Tumbaga	Deputy
Shoshana O’Brien	Deputy
Vacant	Deputy
Vacant	Deputy
Vacant	Deputy
Teresa Tamura	Private Secretary
Barbara S. Montemayor	Law Office Manager
Allison A. Hiranaka	Supervising Legal Clerk
Owen L. Tango	Legal Clerk III
DonnaLee McCalla	Legal Clerk III
Michelle I. Vierra	Legal Clerk I