



Office of the County Attorney

Fiscal Year 2019 Annual Report

July 1, 2018 – June 30, 2019

Matthew Bracken
County Attorney

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

- A. The Department's goal is to provide timely competent legal advice and representation to 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 Function

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, Kaua'i 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, Kaua'i 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 adviser of the county administration. Render opinions to county officers and employees on matters relating to the duties of their respective offices.

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 as provided in sections 52D-8 and 52D-9, Hawai'i Revised Statutes ("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 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.

10. 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 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.

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

12. 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.”

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

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

15. Legal assistance to the County Tax Collector.

16. 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
- 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
- Hawai'i 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.

A. Program 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.

B. Program Highlights

1. Continued legal and non-legal support to the Council, the Mayor, all departments and agencies, all boards and commissions, and all officers and employees despite limited resources.
2. Immediate response and review of all federal and state guidelines and requirements for responding to disasters as provided by state and county law. High quality guidance provided to all county departments when requested and recognized for such efforts by both state and federal agencies.
3. Drafted new solicitations and contract templates for FEMA reimbursement projects, in addition to other various forms to document that the County has complied with all federal rules and regulations for FEMA reimbursement.
4. Met with the State Procurement Officer and conducted a training to all County project managers on compliance with FEMA reimbursement rules and regulations.
5. Continued maintenance and updating of contract templates to standardize the following types of contracts and amendments: 1) goods; 2) goods (open ended); 3) services; 4) services (open ended); 5) professional services; 6) professional services amendment; 7)

professional services (HRS 464 licensed design engineers, architects etc.); 8) professional services (464) amendments; 9) professional services legal; 10) professional services legal amendments; and construction contracts.

6. Provided training to the Council, the Mayor, all departments and agencies, all boards and commissions, and all officers and employees on a range of subjects including, but not limited to administrative affairs, liability, personnel management, parliamentary procedures, commission rules, and contracting.
7. Continued HR training and guidance to lessen and mitigate liability and avoid costly court cases.
8. Continued assistance to the Division of Purchasing, in its initiative to move the County towards greater use of electronic records and electronic signatures.
9. Assisting DOW in adopting e-procurement which will lead to increased efficiency of water service and better maintenance of water infrastructure.
10. Assisted DOW in collecting delinquent accounts in order to ensure that water service is paid for equitably by the entire community.
11. Worked with Council and Administration to amend the county code to provide for legal avenues to allow for vending in the county's public right-of-ways when appropriate, according to the needs of Kaua'i's unique individual communities.
12. Continued to lead efforts to comply with the Federal and State Endangered Species Act, including efforts to extensively amend the Kaua'i Seabird Habitat Conservation Plan (KSHCP) to create a program that is affordable and fair for the island of Kaua'i, and revise the County's building and lighting inventory and lighting proposal for its Participant Inclusion Plan (PIP) to enable the County to have lights on at County facilities and hold night football games during the seabird fledgling seasons during the thirty (30) year permit duration.
13. Continued to provide advice and training on Uniform Information Practices Act requests.
14. Updated the "Advice & Counsel Division Treatise" that provides an outline and notes on frequent requests and legal analyses to improve service and efficiency in rendering legal advice, and provide a written form of institutional memory for future use of the office with posterity in mind.
15. Continued guidance and support to the Council, departments and agencies, and boards and commissions, in passing ordinances and resolutions, or administrative rules to support their operations.

16. Reviewed as to form and legality over 750 contracts and agreements.
17. The Litigation Unit continues to manage the majority of the new litigation filed against the County, as well as filing necessary cases to protect the County's interests in all of the various judicial and quasi-judicial venues, including Federal District Court, State Circuit Court, State District Court, State and Federal Appellate courts, and the various administrative agencies.
18. At times the County relies on outside Counsel when conflicts arise or when cases require specialization. The litigators vigorously defend the County's interests in various litigation cases, with increased cooperation with insurance carriers to best utilize our limited litigation resources in the most economic fashion. Collections of delinquent accounts receivables are always ongoing with many successes.

IV. BUDGET

Resources (General Fund)

Expense Type	<u>FY 2019</u> Appropriation	<u>FY 2019</u> Actual
Equivalent Personnel (E/P)	17	17
Salaries and Wages	\$ 2,265,270	\$ 2,041,275
Operations	\$ 533,982	\$ 470,629
Equipment	\$ 0	\$ 0
Total	\$ 2,799,252	\$ 2,511,904

V. ACCOMPLISHMENTS/EVALUATION

The Office of the County Attorney serves to provide legal support services to all other County departments and agencies.

1. The advice and counsel division (A&C) extensively studied and reviewed federal procurement laws, rules, and regulations, FEMA Procurement Public Disaster Assistance Team training and guidance materials, and Hawai'i's procurement rules, regulations, and laws to develop trainings, documentation, and new contract and IFB templates for FEMA reimbursement projects. A&C worked with the State Procurement Office (SPO) to develop solicitation and contract templates, checklists, and various other memorandums for records to allow the County to substantiate compliance with all federal rules and regulations for FEMA reimbursement projects. Some of these materials are now available for use on other disaster response projects statewide (e.g., for Hawai'i Island disaster response projects) through the SPO website.
2. Handling the majority of litigation in-house has reduced County reliance on special counsel.