

OFFICE OF THE COUNTY ATTORNEY

I. Mission Statement

To diligently render competent legal services as an advisor and as an advocate, ethically and honorably, to the various municipal entities which comprise the County of Kaua'i.

II. Department Goals

To provide timely legal advice and legal representation to the Mayor, to the County Council and to all Departments, Commissions, Boards, and Agencies.

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.
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.

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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 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)

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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 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;

Mayor's Task Force Committee
Charter Review Commission
Arborist Advisory Committee
Historic Preservation Review Commission
Ethics Commission
Land Use Commission
Commission 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
Real Property Assessment Appeals
Cost Control Commission
Salary Commission
State Department of Commerce and Consumer Affairs Bid
State Department of Health
Collective Bargaining

Hawaii Labor Relations Board
Workers' Compensation Appeals

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. 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 Kauai 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 and Items of Note

1. The Office of the County Attorney continues to provide ongoing legal advice on other non Holo Holo 2020 projects which are:
 - Advice and oversight of compliance with the Endangered Species Act.
 - Representation of the County in contested cases and Circuit Court challenges on transient accommodation units.
 - Advice and counsel as an active participant in the siting of a new landfill.
 - Advice on various personnel matters from all departments and agencies.
 - Drafting of Charter amendment language and ballot questions for the Charter Review Commission.
 - Advice, counsel and representation to all boards and commissions and departments.

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- Drafting and review of legal documents such as bills for ordinances, resolutions, contracts, lease agreements, rights-of-entries, etc.

c. Activities

1. County Attorney’s Office actively litigated a variety of cases such as condemnation, foreclosure, personal injury and contract, and represented the County in administrative proceedings with the EEOC, Planning Commission, etc.

2. The deputies are active in the legal professional organizations which include serving on the Board of Bar Examiner for the Hawai’i State Bar Association, Access to Justice Commission Subcommittee, HSBA Committee on Delivery of Legal Services to the Community, Treasurer and Kaua’i Director for the Hawai’i State Bar Association Government Lawyers Section.

3. The county attorney and deputies also serve on a variety of State boards and commissions and community organizations which include the State Highway Safety Council and several local credit unions.

4. The county attorney and deputies participate in a variety of community activities and community service projects.

IV. Program Measures – Accomplishments/Evaluation

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

V. Budget

Resources (General Fund)

| ExpenseType | <u>FY 2012</u> Appropriation | <u>FY 2012</u> Actual |
|----------------------------|---------------------------------|--------------------------|
| Equivalent Personnel (E/P) | 16 | 16 |
| Salaries and Wages | \$ 1,853,327 | \$1,691,109 |
| Operations | \$ 1,206,394 | \$ 879,742 |
| Equipment | \$ 0 | \$ 0 |
| Total | \$ 3,059,721 | \$ 2,570,851 |

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VI. Statistics

Document Preparation, Review and Approval Statistics

FY 2011-2012

Opinions

Number of opinions 154

Legal documents

(proclamations, ordinances, and resolutions) 87

Contracts

(materials, labor, supplies, equipment, consultant appraisal, services, and construction) 556

Conveyances

(dedication, warranty, quitclaim and correction deeds, easements, and miscellaneous agreements) 372

Miscellaneous documents

(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) 3,167

Documents reviewed 4,776

Documents approved as to form and legality 1,466

Documents prepared 722

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Court Matters

| | Pending 07/01/11 | Cases Filed 07/01/11- 06/30/12 | Closed | Pending 07/01/12 |
|--|---------------------|---|--------|---------------------|
| <u>CASES FILED AGAINST COUNTY</u> | | | | |
| U.S. Supreme Court | 2 | 0 | 1 | 1 |
| 9th Circuit Court of Appeals | 1 | 0 | 1 | 0 |
| U.S. District Court | 5 | 3 | 3 | 5 |
| U.S. Bankruptcy Court | 0 | 0 | 0 | 0 |
| Hawaii Supreme Court | 1 | 0 | 0 | 1 |
| Intermediate Court of Appeals | 3 | 2 | 2 | 3 |
| Circuit Court, 1st - 3rd | 9 | 0 | 5 | 4 |
| Circuit Court - 5th | 77 | 29 | 31 | 75 |
| District Court | 0 | 2 | 2 | 0 |
| Department of Health, State of Hawaii | 0 | 0 | 0 | 0 |
| Land Court, State of Hawaii | 1 | 1 | 0 | 2 |
| Admin. Hearings, State of Hawaii | 0 | 0 | 0 | 0 |
| U.S. EPA | 0 | 0 | 0 | 0 |
| Tax Appeal Court | 24 | 27 | 13 | 38 |
| <u>CASES FILED BY COUNTY</u> | | | | |
| 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 |
| U.S. Bankruptcy Court | 0 | 0 | 0 | 0 |
| Hawaii Supreme Court | 0 | 0 | 0 | 0 |
| Inter. Court of Appeals | 0 | 0 | 0 | 0 |
| Circuit Court, 1st - 3rd | 0 | 0 | 0 | 0 |
| Circuit Court - 5th | 7 | 4 | 2 | 9 |
| District Court | 18 | 7 | 2 | 23 |
| Tax Appeal Court | 0 | 0 | 0 | 0 |

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| | Pending 07/01/11 | Cases Filed 07/01/11- 06/30/12 | Closed | Pending 07/01/12 |
|---|---------------------|---|--------|---------------------|
| <u>CLAIMS AGAINST COUNTY</u> | 26 | 54 | 50 | 30 |
| <u>CLAIMS FILED BY COUNTY</u> | 1 | 2 | 1 | 2 |
| <u>WORKERS' COMPENSATION</u> | 5 | 1 | 2 | 4 |
| <u>GRIEVANCES</u> | 0 | 3 | 0 | 3 |
| <u>CIVIL SERVICE COMMISSION</u> | 0 | 1 | 0 | 1 |
| <u>HAWAI'I LABOR RELATIONS BD</u> | 2 | 0 | 0 | 2 |
| <u>EEOC</u> | 1 | 5 | 0 | 6 |
| <u>DLIR, EMPLOYMENT SECURITY APPEALS</u> | 0 | 1 | 0 | 1 |
| <u>DCCA</u> | 0 | 1 | 0 | 1 |
| <u>MISCELLANEOUS</u> Land Use Commission & Public Utilities Commission | 5 | 2 | 1 | 6 |

VII. Holo Holo 2020 Projects & Status

1. 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 feasibility consultant for a Residential Adolescent Drug Treatment Center.
- Filing condemnation action for the Hanalei beach expansion.
- Promulgation and adoption of County Rules and Regulations of commercial activities in County parks.
- Acquisition of more lands for the Ke Ala Makalae coastal path in the Kapa'a-Wailua area.

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- Preparation and completion of documentation for the Native Hawaiian stewardship to restore and preserve Kaneioulouma Heiau in Po'ipū.

- Preparation of partnership documents to establish the Kalāheo Neighborhood Center community gardens.

- Assisted with the review of procurement and contractual documentation for the engineering/planning consultant for the Kekaha Gardens Park.

- Participated in the implementation of the Complete Streets resolution and documentation.

- Assisted with the review of charging station bill to allow for Electric Vehicle Charging Stations.

VIII. Office Staff as of June 30, 2011

| | |
|------------------------------|-------------------------|
| Alfred B. Castillo, Jr. | County Attorney |
| Amy I. Esaki | First Deputy |
| Jennifer S. Winn..... | Deputy |
| Mona W. Clark..... | Deputy |
| Ian K. Jung..... | Deputy |
| Jodi Higuchi | Deputy |
| Mauna Kea Trask..... | Deputy |
| Marc E. Guyot..... | Deputy |
| Justin F. Kollar..... | Deputy |
| Andrea A. Suzuki..... | Deputy |
| Pamela Y. Cox | Law Office Manager |
| Barbara S. Montemayor | Supervising Legal Clerk |
| Allison A. Hiranaka | Legal Clerk IV |
| Owen L. Tango | Legal Clerk III |
| Shayne I. Ventura..... | Legal Clerk III |
| Michelle I. Vierra..... | Legal Clerk I |