

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;

- 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
- Council's Subcommittee on Housing
- Collective Bargaining
- Hawaii Labor Relations Board
- Workers' Compensation Appeals

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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. 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 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 counsel on legal issues pertinent to Ordinance 960 including but not limited to the following: Kaua'i Rising Charter Amendment Proposal, Resolution No. 2013-72, Draft 2 (EPHIS resolution), Drafting of Administrative Rules, and Small Business Regulatory Review Board.
 - Advice and counsel on Kaua'i Seabird Habitat Conservation Plan pursuant to ongoing dialogue with relevant State and Federal Governmental Agencies. Our probationary period has ended. We are currently in serious risk of being prosecuted for any future violation as our county is not protected by an incidental take permit.
 - Assisted and drafted amendments to the real property tax law and rules and regulations.
 - Advice on and defense of various personnel matters from all departments, agencies and Council.

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- Advice, counsel and representation to all boards and commissions and departments.
- Drafting and review of legal documents such as bills for ordinances, resolutions, contracts, lease agreements, rights-of-entries, etc.
- Advice and counsel the County Council in numerous executive sessions.
- Advice and counsel on all legal matters relevant to the existing landfill and the proposed new landfill at the Maalo site.
- Advice and counsel on Bill No. 2461 – Amendments to the Shoreline Setback Ordinance.

c. Activities

1. County Attorney's Office continues to actively defend the County in alleged police misconduct, personal injury, personnel and contract cases. The office also litigated a variety of cases such as condemnation and foreclosures, and represented the County in administrative proceedings with the EEOC, Planning Commission, etc.
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.

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 that is close to being resolved.
2. Legal Opinion on Bill No. 2491 (Trask & Hall) – Our legal opinion on state preemption sustained by U.S. Magistrate Judge Barry Kurren.
3. Second stewardship agreement – Ka Ulu A Paoa Heiau Complex within the Kē'e Beach Park Preserve.

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4. Transient Accommodations Unit law invalid: Lynn McCrory and Kaua'i Beach Villa successful. Federal Court Judge Kobayashi issued her decision invalidating both Ordinance No. 912 as well as the Charter Amendment to implement the General Plan. Significant because we anticipated legal challenges.

5. KPD Bearcat armored rescue vehicle purchased from a mainland company. Significant accomplishments because we were able to maneuver through legal hoops that were previously deemed improbable.

V. Budget

Resources (General Fund)

ExpenseType	<u>FY 2014</u> Appropriation	<u>FY 2014</u> Actual
Equivalent Personnel (E/P)	14	14
Salaries and Wages	\$ 1,736,712	\$1,582,183
Operations	\$ 1,593,742	\$1,472,978
Equipment	\$ 0	\$ 0
Total	\$ 3,330.454	\$3,055,161

VI. Statistics

Document Preparation, Review and Approval Statistics

	<u>FY 2013 - 2014</u>
<u>Opinions</u> Number of opinions	170
<u>Legal documents</u> (proclamations, ordinances, rules, and resolutions)	165
<u>Contracts</u> (materials, labor, supplies, equipment, consultant appraisal, services, and construction)	847
<u>Conveyances</u> (dedication, warranty, quitclaim and correction deeds, easements, and miscellaneous agreements)	320

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FY 2013 - 2014

<u>Miscellaneous documents</u> (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)	4,005
<u>Documents reviewed</u>	5,507
<u>Documents approved as to form and legality</u>	1,797
<u>Documents prepared</u>	802

Court Matters

	Pending 07/01/13	Cases Filed 07/01/13 - 06/30/14	Closed	Pending 07/01/14
<u>CASES FILED AGAINST COUNTY</u>				
U.S. Supreme Court	1	0	0	1
9th Circuit Court of Appeals	0	0	0	0
U.S. District Court	8	5	3	7
U.S. Bankruptcy Court	0	0	0	0
Hawaii Supreme Court	1	1	0	2
Inter. Court of Appeals	5	8	2	11
Circuit Court, 1st - 3rd	5	1	0	6
Circuit Court - 5 th	100	28	14	114
District Court	0	0	0	0
Department of Health, State of Hawaii	0	0	0	0
Land Court, State of Hawaii	1	0	0	1
Admin. Hearings, State of Hawaii	0	0	0	0
U.S. EPA	0	0	0	0
Tax Appeal Court	32	1	52	85

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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	0	1	0	1
Circuit Court, 1st - 3rd	0	0	0	0
Circuit Court - 5th	10	1	2	9
District Court	21	0	3	18
Tax Appeal Court	0	0	0	0

	Pending 07/01/13	Cases Filed 07/01/13 - 06/30/14	Closed	Pending 07/01/14
<u>CLAIMS AGAINST COUNTY</u>	80	46	50	76
<u>CLAIMS FILED BY COUNTY</u>	1	2	0	3
<u>WORKERS' COMPENSATION</u>	2	0	0	2
<u>GRIEVANCES</u>	0	1	1	2
<u>CIVIL SERVICE COMMISSION</u>	2	0	0	2
<u>HAWAI'I LABOR RELATIONS BD</u>	10	3	0	13
<u>EEOC</u>	8	8	2	18
<u>DLIR, EMPLOYMENT SECURITY APPEALS</u>	0	1	0	1
<u>DCCA</u>	0	0	1	1
<u>DEPARTMENT OF HEALTH</u>	0	1	0	1
<u>MISCELLANEOUS</u>	4	0	0	4
Land Use Commission & Public Utilities Commission				

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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 design consultant for a Residential Adolescent Drug Treatment Center.
- Provided continuing advice and counsel on the Eleele 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 Kaneiolouma Heiau restoration project.
- Provided continuing advice and counsel on Native Hawaiian group stewardship programs and partnerships to restore and preserve cultural sites.
- 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, 2014

Alfred B. Castillo, Jr.	County Attorney
Mauna Kea Trask	First Deputy
Ian K. Jung	Deputy
Jodi Higuchi-Sayegusa	Deputy
Nicholas R. Courson	Deputy
Stephen F. Hall	Deputy
Marc E. Guyot	Deputy
Mona W. Clark	Deputy
Andrea A. Suzuki	Deputy
Vacant	Deputy
Vacant	Law Office Manager
Barbara S. Montemayor	Supervising Legal Clerk
Allison A. Hiranaka	Legal Clerk IV
Owen L. Tango	Legal Clerk III

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Shayne I. Ventura.....Legal Clerk III
Michelle I. Vierra..... Legal Clerk I