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A Law Corporation

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October 31, 2019

Ms. Moana Lutey
Corporation Counsel
County of Maui
200 S. High St.
Wailuku, Hawaii 96793

via e-mail attachment only
(original will not be mailed)

Re: USSC No. 18-260, County of Maui v. Hawai'i Wildlife Fund, et al.

Earlier this week you were served with the attached lawsuit. Please review its contents carefully if you have not already done so. Pursuant to its authority under Maui County Code §3.16.020(E), the Maui County Council by majority vote has decided to abandon its appeal of *County of Maui v. Hawai'i Wildlife Fund, et al.*, S.Ct. No. 18-260, and to settle that case, and it has instructed all attorneys acting on its behalf to withdraw the appeal. As explained in the attached section of the Maui County Code and the analysis in paragraphs 33-37 of the attached Complaint, the County Council's decision to accept a settlement offer is "binding on the county and on legal counsel." Now that the County Council has voted to abandon the appeal, all attorneys acting on its behalf must withdraw the appeal from before the Supreme Court. (See attached memo from Council Chair to Corporation Counsel specifically affirming those instructions.) As stated in the first paragraph of my letter of yesterday to the County's special counsel Elbert Lin, I believe it is clear that he has a separate and independent duty to follow his client's instructions and withdraw the appeal, regardless of your preference. However, to the extent that part of your own role is to instruct him, advise him, and/or control his actions and decisions in regard to the appeal, it is your duty to instruct him that the appeal is to be withdrawn or at a minimum that further advocacy (namely the oral argument) must be avoided until the issue of settlement authority can be decided by a Hawaii court.

You are no doubt aware of both Corporation Counsel's and Council Services' conflicting legal analyses of the authority that the Council has in this matter. Clearly under the Maui County Code there is no doubt as to the Council's exclusive

authority to settle the lawsuit and withdraw the appeal. The only question is whether the above Code provision conflicts with the Maui County Charter and is therefore invalid (unconstitutional, so to speak). The Oct. 3, 2019 memo from Corporation Counsel relies heavily on the Harris v. DeSoto case, but both the facts of that case and the applicable law are different from our case. The facts are different because of the nature of the settlement (which is likewise very different in our case from all the examples of executive authority cited in Harris v. DeSoto), and the law is different because the Charter of Maui County is not the same as the Charter of Honolulu – most notably, the latter does not include our catch-all allocation of all residual powers to the Council as provided in Charter §2-2, referred to and quoted in paragraph 37 of the attached Complaint and not dealt with at all in the October 3, 2019 memo from your Deputy Corporation Counsel.

I respectfully submit that it is your and Mr. Lin's duty to either withdraw the pending appeal or to inform the Supreme Court that due to a question as to your authority to proceed and a potential conflict of interest, you cannot at this time conduct the oral argument next week. There is no harm in delaying the proceedings until the above issues can be worked out by a court with jurisdiction over said questions. If you persist in moving forward with the oral argument on November 6th, you will be violating the Maui County Code and the expressed wishes of your client the Maui County Council. The applicable Rule of Professional Conduct is HRPC Rule 1.2., SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER, which states simply: "A lawyer shall abide by a client's decision whether to settle a matter."

I understand that in light of the current confusion over settlement authority you may not want to take action that would irrevocably forfeit the County's rights while the Supreme Court appeal is pending. Therefore I offer you the following solution: You or Mr. Lin could propose to the Plaintiffs a stipulation to stay the U.S. Supreme Court proceedings until the Hawaii courts can make a determination of whether the Council has exclusive authority to accept a settlement or whether the mayor can legally reject the Council's decision. I am confident that such a stipulation would be accepted by the Plaintiffs.

I feel it is my duty to make you aware that if you persist in ignoring the instructions of your client the Maui County Council, and if you proceed to encourage, promote, or assist in advocating against their position in the United States Supreme Court next week, then certain individuals (on whose behalf I am authorized to speak) intend to

file disciplinary complaints against you with the Office of Disciplinary Counsel. I am informed that such a complaint has already been drafted by another attorney.

In addition to the above point that by continuing to advocate at oral argument you would be violating the wishes of your client, you also have a conflict of interest that prevents you from participating in or encouraging further advocacy before the Supreme Court. Both the Mayor and the County Council are your clients, and their interests in this matter are diametrically opposed. You cannot represent one of them without simultaneously acting against the express wishes and interests of the other. I would respectfully suggest that it is your duty to immediately cease representation of either, pursuant to HRPC Rule 1.7, CONFLICT OF INTEREST: GENERAL RULE, which provides in pertinent part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

I believe it would comply with the above for you to avoid further representation for the time being and maintain the status quo while the Hawaii court resolves the conflict between the branches of government comprised by your client "The County of Maui." If it is decided in court that the County Council has no say in the litigation, then at that time you and Mr. Lin may be cleared to proceed.

I would welcome an opportunity to explore with you further the important and urgent issues raised in this letter. Please feel free to call me at any time, or to e-mail me. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Ranken', with a stylized, cursive flourish at the end.

Anthony L. Ranken

cc: Elbert Lin