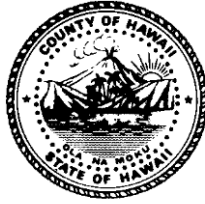


William P. Kenoi
Mayor



Lincoln S.T. Ashida
Corporation Counsel

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COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

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October 9, 2009

Sent via email; no hard copy will follow

Robert D. S. Kim, Esq.
Attorney at Law
P.O. Box 188
Kealahou, HI 96750

Dear Mr. Kim:

**RE: West Hawai'i Today v. County Council, et. al.
Civil No. 09-1-279K**

Thank you for your written offer of settlement dated October 1, 2009 in the above case. We appreciate your willingness to discuss a possible settlement of all claims.

My client hereby rejects your offer of settlement as outlined in your October 1, 2009 letter. However the Council has indicated a willingness to continue working with you in order to work towards a possible settlement.

Despite the continued public innuendo by your client there has been a legal determination the Council has violated the Sunshine Law¹, as you know there has not been such a formal finding by the Court. The Court's order on your request for a temporary restraining order (that became effective only *after* the Council had already reversed their June 16 reorganization) was limited to a determination it was likely the Plaintiff would prevail on the merits.

The count in your Second Amended Complaint related to the June 16 reorganization has been dismissed by the Court. It is our understanding (and the County intends to submit pleadings to the Court to this effect) all valid claims for attorney fees and costs have similarly been extinguished by the Court's actions.

¹The following passage appears in an October 9, 2009 West Hawai'i Today column entitled "Reorganization displays ego in the absence of legislative acumen":

While we were displeased by the original efforts to reassign key committee leadership positions during the County Council's initial June 16 reorganization attempt, we were outraged by its members' flagrantly illegal actions.

Robert D. S. Kim, Esq.

October 9, 2009

Page 2

The allegation there has been a Sunshine Law violation committed by certain Council members during their legitimate lobbying visit with State lawmakers in April of 2009 is similarly deserving of dismissal. In fact, given the evidence developed at the hearing on this incident so far, there is a question as to the existence of the necessary foundational basis for the bringing of such claims.

You previously indicated your attorney fees and costs to date were approximately \$23,000. We assume this figure represents fees incurred after the Court's order on the temporary restraining order, and included your fees for all court appearances to date. Although as previously stated the County believes any basis for fees has since been extinguished, we recognize you will argue that at minimum fees should be awarded for your work done prior to the issuance of the temporary restraining order.

We were pleased to learn that based on your representations in Court on September 24, 2009, your client does not oppose the reorganization of the Council leadership:

THE COURT: Maybe I should ask you the pointed question. Are you against the reorganization because of the – on a personnel basis or are you against the reorganization on a procedural basis?

MR. KIM: We're not against the reorganization. All we want is the law to be complied with.

Your representation above is supported by your client's editorial statements made in the West Hawai'i Today on October 9, 2009:

The Hawai'i County Council has again reorganized, as we knew its members would, and to its credit – this time – it did so without violating state law.

Perpetuation of this case based on recent actions by the Court would not be consistent with the public and in-court representations made by you and your client. Based on the above and in a good faith effort to settle all claims in this case, the County proposes the following to your client:

1. All claims by West Hawai'i Today will be dismissed with prejudice.
2. The County will pay attorney fees and costs in the amount of \$23,000. The County will be responsible for its own fees and costs, and for fees and costs of private counsel who were hired as a result of your client's threat to initiate criminal action against members of the Hawai'i County Council.

If your client agrees to this offer by the County of settlement, please let me know by 4:30 p.m. on Monday, October 12, 2009. Please know this is the extent of the authority I have to settle this case. Different or additional terms would need the consent of the Council which is not scheduled to meet again until October 21, 2009.

Robert D. S. Kim, Esq.
October 9, 2009
Page 3

In the spirit of limiting the unnecessary expenditure of time and effort, the County will not object to a short continuance of the October 15 hearing in the event you believe settlement is possible. However you must let us know immediately so we may notify our witnesses. We will be submitting a supplemental witness list for the October 15 hearing; you will be provided a copy of this list under separate cover.

Thank you for your kind attention to this matter.

Very truly yours,

LINCOLN S. T. ASHIDA
Corporation Counsel

c: Brian J. De Lima, Esq.
Dwayne Lerma, Esq.
Diana Van De Car, Esq.

LF: WHT v. County Council, Civ. No. 09-1-279K