

SPECIAL COUNCIL MEETING

MARCH 4, 2009

The Special Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, Historic County Building, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Wednesday, March 4, 2009 at 9:09 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro
Honorable Lani T. Kawahara
Honorable Derek S.K. Kawakami
Honorable Bill "Kaipo" Asing, Council Chair

APPROVAL OF AGENDA:

Mr. Kaneshiro moved for approval of the agenda as circulated, seconded by Mr. Furfaro, and unanimously carried.

Chair Asing: Can we have the first item please?

PETER A. NAKAMURA, COUNTY CLERK: The next item is communication C 2009-99 for approval.

C 2009-99 Communication (02/26/2009) from the Mayor, informing the Council of Amy Esaki's tendered resignation as County Attorney effective March 4, 2009, and requesting Council confirmation of Alfred B. Castillo, Jr. as the County Attorney effective on or about March 4, 2009:

Chair Asing: Thank you. We also have a memo from the present County Attorney Amy Esaki and Councilmembers, I believe you have a copy of that memo. With that, what I would like to do is suspend the rules and have the members of the public speak on this item first. Is there anyone in the public who wants to speak on this item?

There being no objections, the rules were suspended.

Chair Asing: Al, do you want to come up please? Al, let me just open it up for yourself to give us some background and any information you can share with the Councilmembers regarding this appointment.

ALFRED B. CASTILLO, JR.: Okay, first of all, Mr. Chair, good morning. Councilman Kaneshiro, Councilmember Bynum, Councilmember Kawahara, Councilmember Kawakami... good morning again Councilmember Furfaro, good

morning again Councilmember Chang. I would like to thank everyone. First of all, I hope that nothing is taken for granted and I hope that you accept the resignation of Amy Esaki and approve or confirm my appointment. You know, I would like to really thank Amy Esaki and Darren Suzuki for carrying the load in these past months because I know the task was very hard because they were really short staffed. I'd like to tell all of you that I have been practicing here on Kaua'i for 27 years and I am not new to this community.

I want to improve communications between the County Attorney's Office, the Administration, the Council, Council Services, and all of the agencies that we assist... even the State agencies. You know, I am confident that the work that we will do is going to be work that is based on the law as we see what the law is and the facts that are applied to the law. I like the fact that I have been given... I am an independent person and what you will get from our office with the deputies that I select, basically is the law, and the facts that are applied to the law. I hope that the communication lines that we open will help streamline the process between the County Attorney's Office and the County Council. I am concerned about our spending... exorbitant amount of moneys in hiring special counsel. You know, I am basically a trial attorney and I have been for 27 years. However, it is not an easy analysis as to why or why not we hire special counsel, but I will be looking at that very closely. Another thing that I will be looking at which I have been wondering for years is why don't we go after the people that owe us money. I know my predecessor has started on that process and I am going to continue and improve or try to improve on what he started.

You know, I am aware of the challenges ahead. I don't come here with bright eyes. I come here knowing the daunting task ahead of me. I would like to lead a team of attorneys that are dedicated, that work hard, that can maintain the integrity that I think... oh, I know, I have been to the office. I look forward to working with everyone. I look forward to working for this County. Thank you.

Chair Asing: Thank you. With that, Councilmembers, any comments, questions? Councilmember Furfaro?

Mr. Furfaro: Thank you Mr. Chair. Good morning Al and it is very good to see you there. I just want the other Councilmembers to know as I am in Lion's International as well as Al being a westside Lion I believe. I certainly know of his work in the community through various non-profit organizations including the fact that Al was on our board with Habitat For Humanity when we needed special counseling as it related to our financial standings during a period of time that we were attempting to build some houses. I am very happy to report that because of Al's commitment to voluntary services... you might have read recently in the Garden Island that Habitat completed its 100th home. So I have been able to work with Al in that capacity. I am also very glad to hear about your trial attorney experience because that is one of the things that has put us in a position where we know that there are areas where we have to contract out services because of the

expertise associated to the various circumstances with various cases. And I want to say on the record that I am certainly not expecting the County Attorney with his trial experience to be the one that is in court because that eats up a tremendous amount of time, but at the same time, I do like hearing the fact that Al is saying he will survey and evaluate which cases we may have to go and look to some special counsel for. You know, over the last 4 months, we had 5 County Attorneys. Many of them acting in capacities until we were able to bring someone on full-time. I want to thank you for recognizing Darren and Amy because I think they both have been very supportive in the efforts to get us good information, so that we can make the right decisions. I am glad that you share that... Amy, in particular, is now, I think the one we're most confident with as far as being briefed on the Charter amendment. I would hope that this Council can convey to the new County Attorney's Office the importance, perhaps, to let these items be continued to be pursued by them. There is an urgency for us to come to an understanding on what we are going to do in the next step. Obviously, right now, in this economy, it doesn't seem to be as press... the pressure is really because there is not a lot of applications in front of us. But the reality, that amendment is the law today because it has passed the test of the 50 days since the election.

I also wanted to say that Darren has been working on our tax piece. You know, we have a tax appeal bill going in front of us right now. He has recently communicated to me that on the laws regarding the potential appeals and amendments and arbitration that there needs to be a little bit more time allowed for arbitration and to understand its affect on the County, and that is on today's agenda. But I just wanted to say those are 2 pressing issues as it relates to giving us good guidance and I hope you can take my comments from the standpoint that I would like to see them continue to focus on those items. Your comment about collection is very refreshing. I think there is some opportunities there for us to tighten the belt as we go into these economic times. Also, just the consistency we need in making sure that everybody is treated fairly and there is a standard practice about collection especially when we are dealing with water and sewer bills, and so forth. So those were all very much appreciated comments by you upfront and I just wanted to share with my other Councilmembers that I have always had a very good experience working with you even in non-profit boards. I want to thank you for stepping forward Mr. Castillo. Thank you very much.

Mr. Castillo: You're welcome.

Chair Asing:
Councilmember Chang? Thank you. Councilmembers, any other comments?

Mr. Chang: Thank you Chair. I'd like to just say aloha to you Al. We have known each other for many years on other projects that we have worked on, but congratulations to you.

Mr. Castillo: Thank you.

Mr. Chang: But really importantly as a new Councilmember, I would like to just share and thank you for acknowledging Darren Suzuki and Amy Esaki. They have worked very, very, very, very hard in this short time that I have been here, so I am just glad that you acknowledged them because we certainly learned a lot from their counsel and good luck to you and your staff.

Mr. Castillo: Thank you.

Chair Asing: Councilmember Kawahara?

Ms. Kawahara: Thank you. Good morning, it is good to see you here.

Mr. Castillo: Good morning.

Ms. Kawahara: And I just wanted to thank Amy also while she is here for her work with us. I wanted to thank her because she was very forthcoming and really effective communicator. I am really looking forward to working with you. I know that you have a lot of experience... more present experience in private law practice and you had a lot of experience in the County of Kaua'i before that. We shared and talked a little bit earlier... if you could maybe share with us why it is that you are ready at this point in your life to come back to public service which I am very glad for. I think the Council is very glad and we are looking forward to having you here.

Mr. Castillo: Thank you. It is because I grew up here and that is the primary reason. I, throughout the years, have been watching the County Attorney's Office, watching Kaua'i grow, and what I shared with you earlier was... several months ago, maybe a year ago, playing golf at Kiahuna, looking at what was going around me, looking at red dirt right below me in the Knudsen property... Kukui'ula all the way up to Kukuiolono, a trail of red dirt. I, at that point in time, said you know what, if I don't try to help Kaua'i, then I cannot grumble about what happens to this island, so it is because I care. You know, to me, improving the County is my goal. Doing it with integrity, with dignity and respect is my... is the way that I foresee me practicing from now and I have been doing that since I started my law practice. So that is what you can get from me, an honest straight answer. Thank you.

Ms. Kawahara: Thank you. I just wanted to also echo Councilmember Furfaro's note on the urgency of working with us on the Charter amendments. I hope that you can support us in that and work with us diligently and quickly, so that we can get that going and out there as soon as possible.

Mr. Castillo: Just to let you know, I have already spent many, many hours on the Charter amendment, so it is not like it is new to me. I have

already read a lot of things regarding the Charter amendment, so I will start rolling as soon as I am approved.

Ms. Kawahara: That is great to hear. Thank you.

Mr. Castillo: Thank you.

Chair Asing: Thank you. Councilmember Bynum?

Mr. Bynum: Good morning Al.

Mr. Castillo: Good morning Sir.

Mr. Bynum: Great to see you here.

Mr. Castillo: Thank you.

Mr. Bynum: And I... you know, I want to start... I may have more specific questions than I have heard so far, but I want to start by saying that I am thrilled that you are here. We have known each other for a long time and when you were at the Prosecutor's Office, I had an opportunity to meet you and work with your office, and I am thrilled that we have an attorney of your standing and your reputation, and community stepping forward. I very appreciate that.

Mr. Castillo: Thank you.

Mr. Bynum: I am also anxious that we have stability at the County Attorney's Office because we have a myriad of issues. You know, like most legal issues, they are complex, and they take time to work out. I know that meeting some of those goals is going to require the expertise of a (inaudible) legal team. I know that is your goal to put that in place. You know, regarding the amount of money that we spend on special counsel, I have been very impressed with the special counsels that we acquire and I understand the rationale for that. But it is a logical question for lay people and for the Council to say, when we are expending hundreds of thousands of dollars, you know, how much of this can we do in-house. You know, when one case eats up, you know, \$100,000 or \$200,000, we say, geez, you can hire a full-time attorney for that, right? So I hope that we do look at the staffing and the County Attorney's Office and how... what is the cost benefit analysis of perhaps even expanding the staff in the future if we can belay some of that, would you agree with that?

Mr. Castillo: Absolutely. You know, it is my impression that we, too, we cry for help too fast, and it seems like it is too easy, and that is the reason why I would like to take a good look at that. I have been told that we have over 30 special counsels on board right now. I am sure that the staff that I put together will be able to handle some of the cases that we have outsourced. I am confident that we

can do it and researching it already, asking the questions, investigating... I am confident that we can.

Mr. Bynum: And for the sake of the general public who kind of looks at this. I don't think they understand the routine work that comes to the... nothing is routine, but, you know, reviewing every contract that the County enters into that there is a pretty huge caseload of just kind of day to day County business that the County Attorney has to deal with. So I wouldn't want the public to say, wow, we have "x" amount of attorneys and we never went to court because there is a whole lot more work that happens there. But, you know, there has been some specific issues that Councilmembers have expressed concern about the County Attorney. I know... I don't expect a commitment from you, but I wanted to highlight a couple of those and if you have comments today, that is great, if not, that is fine too. But I am surprised the other members haven't brought up an issue that was spoken here routinely over the last couple of years is about the presence of the County Attorney or someone from the County Attorney's Office at Council meetings. You know, this current Council has been working quite efficiently. We have been out of here on time, but sometimes we have pressing business that takes us into the evening, and it was a contentious issue over the last couple of years that sometimes there was no attorney present at our meeting when we needed consultation or even kind of observing what was going on. Are you aware of that issue?

Mr. Castillo: I am aware of that issue and it is... for me, personally, I would like to be at all Council meetings and hearings, so that you could get the answer from myself personally, so I think it is important for the County Attorney to be here. Also, but I know for a fact that there will be times that I would not be able to attend. I would just be unavailable, but knowing that beforehand, and we get the agenda beforehand, I would have someone here that knows the issue, and would be able to handle the questions. And, you know, this thing about, I want to see it in writing, I don't think that it is... it is counter productive at times, so, you know, when you ask a question, I sure hope that I will provide you with an answer. If I don't have an answer, I would tell you that I would research it, and get it back to you within a reasonable amount of time. So, you know, I think if we have an open dialogue, if I am here, I think it would alleviate past problems.

Mr. Bynum: I appreciate that response and, you know, becomes sometimes we have been known to meet late into the evening, and there was kind of an... and I understand that "the" County Attorney may not be present, but having an attorney present in the room to observe the... at least observe what is going on is helpful. The other issue that is related to that is a sense that when it is appropriate for the attorney present to intervene. For instance, if I personally am getting into an area or making comments that might create legal issues for the County in the future, I personally would appreciate a tap on the shoulder that said, let me give you a caution about this. You know, because I see that as the role of the attorney

representing the Council and I think there has been a reluctance to do that both here at the Council and at Planning hearings. You know, I wonder if you have an opinion about, is the County Attorney's role kind of proactive to try to give us advice when it feels like it needs to or is it only when we ask for it?

Mr. Castillo: The County Attorney is supposed to defend the County and being proactive at times is... would be what is needed, however, it is my understanding that Peter Morimoto is coming on board. I don't know what his role is going to be here for the County Council, but as far as I am concerned, if any of the Councilmembers get into an area that they should be forewarned that, you know, hold on, wait a minute, take a step back... I think at least one of us should be there to say, wait, stop, and give you the legal advice that is needed. The reason why I am saying that is that I am not aware of what the role of Mr. Morimoto is going to be and once I get that cleared, then I can answer that question more accurately I think.

Mr. Bynum: And I appreciate that. I just want to underscore, you know, if you are not prepared to comment on these issues right now, I would understand that because...

Mr. Castillo: I don't mind telling you. You can ask any question that you want. I don't mind giving you an answer from what I know from this standpoint.

Mr. Bynum: Another issue that has been... that had a lot of discussion is about finding that balance between open public dialogue and access to information in areas where things need to remain confidential because I think all of us... our goal is to be as open as possible. In the State law and in practice in other counties, there is a distinction made between opinions as to law versus advice from an attorney. I think the general public and everybody understands that advice from your attorney is something that is confidential. We all watch t.v. and see how important that confidentiality is, but then there are issues where we ask questions like, what does the law say about this? And it is an interpretation of the current law and an opinion of the current law, and there has been frustration for me, and I will own it, and for members of the public that our written opinions about, what does the law say about this isn't something that is shared or hasn't been shared with the general public as freely as it is in other jurisdictions in my opinion anyway. Do you have any comment about that?

Mr. Castillo: Yes, I do. I chuckle because I think I woke up at 3 o'clock this morning thinking about this issue and I can tell you for a fact that there is going to be a policy created in the County Attorney's Office regarding this particular subject. When I spoke to you a few months ago, I did relay to you that it is my belief that the County Attorney should make his or her opinion public. However, you know, there is the rules of professional conduct that we have to abide by. I am not... and in any practice of law, a lot of times, it is... you have attorneys

that can quickly say, sorry, privileged, and that is the easy way out. As far as I am concerned, this is an opportunity when there is some law that you would like to define, explain to the public... it is an opportunity for the County Attorney to tell the public what the law is, to open it up, so that the public understands where you are going, and how you are going about doing your job. So I am not one to hide. I will be confident in my opinions and I am sure that me and my entire staff would have researched the issue before making an opinion. So the answer to that question is, I am open.

Mr. Bynum: Thank you. I appreciate that very much and, you know, it is an issue that I have tried to help define and get to a norm that is acceptable to everyone. You know, with the previous County Attorney, we were deep in those discussions. I have a bill pending and a proposed rule change that I was working through with the previous attorney, and we were close, so I will look forward to following up with you as soon as possible to try to bring that back onto the agenda.

Mr. Castillo: Okay, thank you.

Mr. Bynum: Thank you very much again. I am really thrilled you are here and I hope we will have a productive working relationship for a long time.

Mr. Castillo: I hope so too.

Mr. Bynum: Stability in the County Attorney's Office is in everyone's best interest.

Mr. Castillo: I certainly agree.

Mr. Bynum: Thank you very much.

Chair Asing: Councilmember Kaneshiro?

Mr. Kaneshiro: Thank you Chair. Thank you Al. I don't have any questions for you. My goal is to get you appointed as soon as possible. The half hour ticking away with a 30 or so attorneys that we have out there that we use special counsel probably be costing us a hell of a lot of money. So, for me, the sooner we get you on, the better we will be able to accomplish what we want to accomplish. You know, I just want to make a comment that I see your resume and your community involvement is real important and looking at the different or various organizations that you serve on really shows the kind of person you are about how you really care about this island. And looking even at the part about you being a Board of Director or the McBryde Credit Union... that impresses me as the Finance Chair for this Council because we know the tough times that we are going through, and with your knowledge and some of the, you know, banking and budget, and so

forth, you will be a great asset to all of us. So congratulations and I am looking forward for you to be sworn in as our new County Attorney this morning.

Mr. Castillo: Thank you. You know, being on the board of a financial institution and going through these hard times, you know, it... when you are on the board, you are responsible for millions of dollars, so thank you very much for that comment, and we take our job very seriously being on the board.

Chair Asing: Any other comments Councilmembers? If not, I would like to thank you for stepping forward Al. And I guess Al, like other Councilmembers... each Councilmember I know met with you and discussed the different issues. I did have an opportunity to sit down with you and discuss what I felt was the role of the County Attorney and we are very close in agreement to the expectation of the Council and the Administration. I guess looking back on your resume, it is very interesting to find that at your very start of your career that you were a Summer law intern, and that is in 1980. So I am saying, wow, 1980 I guess he gets out of school and he is now going to be an intern with the County starting with the Prosecuting Attorney's Office, and look at who you are today. Great career and thank you for stepping up, thank you for helping us, and I want you to know that you have my full commitment and support. I know, definitely, that we will work together well. So is there any other comments from the members of the Council? Councilmember Furfaro?

Mr. Furfaro: Thank you Mr. Chair for pointing out the fact that despite, maybe some interpretations that we were surprised with some of the questions... some of us like the Chair had opportunities to meet with you on an individual basis. I do want to clarify 2 other points here. First of all, I would like you to look into our loss prevention goals set by this Council which included staffing an attorney at the Police Department to give advice and counsel... while we are talking about advice and counsel, there are members here in the audience that I want to make very clear... when the Council hires Peter Morimoto, he is hired as a Legal Analyst. I don't want them raising their hand and saying, let's ask this attorney for an opinion. He is a Legal Analyst. He is not there for advice and counsel. The Charter provides advice and counsel to this body through your office Al. I also want to make sure you are not over committing yourself here... that when we talk in terms of having an attorney here, we are not talking about having you here. We are talking about having someone from your office here. As Mr. Bynum said, that will raise his hand and basically say, you know, that is a privileged question, let's move on. And then from that point, I would think that the public would appreciate an explanation, not from the individual Councilmembers which has happened in the past, but I think which is also pointed out... you know, we are getting better with our specifics and we are doing things on a more timely basis, and we would like to keep to that agenda. But, again, you have my full support.

Mr. Castillo: Thank you.

Chair Asing: Thank you. Anything else? If not, thank you very much Al. Glenn, everybody had an opportunity to speak prior to, and I opened it up for the public for this purpose, and I will not be opening it up again a second time. So with that, thank you Al.

Mr. Castillo: You're welcome.

Chair Asing: I'd like to call the meeting back to order and have a roll call vote unless we have further discussion.

The meeting was called back to order, and proceeded as follows:

Mr. Bynum: We need a motion Mr. Chair?

Chair Asing: Yes.

Mr. Bynum moved to approve C 2009-99, seconded by Mr. Furfaro, and carried by the following vote:

FOR APPROVAL:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL - 7,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0.

Chair Asing: Thank you. Congratulations. With that, I believe we will have the swearing in occur at this time, so I am going to adjourn the meeting.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:44 a.m.

Respectfully submitted,



PETER A. NAKAMURA
County Clerk