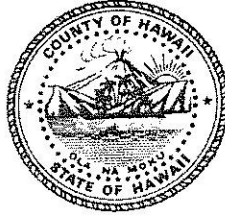


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October 9, 2009

Hawai'i County Charter Commission
75-5706 Hanama Place, Suite #109
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Dear Commissioners:

For your consideration, I have added language to the Charter's 2006 Edition under Article IX Prosecuting Attorney. This language is modeled from the current City and County of Honolulu Charter relating to the expanded duties of a prosecuting attorney based on *Rees v. Carlisle*, 113 Haw. 446, 153 P. 3rd 1131 (2007). In the *Rees* case, the Supreme Court found that the Prosecutor exceeded his authority under the City Charter in promoting the passage of a constitutional amendment authorizing the direct filing of complaints. The Charter Amendment subsequently adopted by the City and County of Honolulu clarified the previously understood role of a public prosecutor. The language addition is provided below:

"Section 9-3. Powers, Duties and Functions.

The Prosecuting Attorney shall:... (a) – (f)

The Prosecuting Attorney may:

(a) Research, evaluate, and make recommendations regarding crime, crime prevention, and the criminal justice system to the governor, the legislature, the judiciary, the council, the mayor, the Hawai'i police department and other criminal justice agencies, or the general public, as the prosecuting attorney deems appropriate.

(b) Provide crime prevention training programs for law enforcement agencies, citizens, businesses, and civic groups; and

(c) Develop public education programs through various broadcast or print media, to provide the general public information that will assist citizens in developing the knowledge and confidence to prevent crime and to avoid being victims of crime.

(d) Receive and expend financial grants, donations and other funds as permitted by the provisions of the revised charter, city ordinances and applicable city, state, and federal financial and budget policies for crime research, prevention, and education."

I also recommend a change to the Charter language by removing language prohibiting the Corporation Counsel from representing any elected official in an impeachment proceeding.

"Section 6-2.3. Powers, Duties and Functions.

The corporation counsel shall be the chief legal advisor and legal representative of all county agencies, the council and all officers and employees in matters related to their official powers and duties. The corporation counsel shall represent the county in all civil legal proceedings and shall perform all other services incident to the office as may be required by law. [The corporation counsel shall, however, be prohibited from representing any elected officer in impeachment proceedings.]

The following proposed replacement language is also from the City and County of Honolulu Charter that allows the retention of special counsel when the Corporation Counsel has been disqualified. This language should be added to section 6-2.5 of the current charter.

"Section 6-2.5. Special Counsel.

- (a) The council may, by two-thirds
- (b) Where the corporation counsel has been disqualified, special counsel may be retained by any officer or employee in matters relating to the official powers and duties of such officer or employee. The mayor or any councilmember may also retain special counsel in impeachment proceedings. The council shall appropriate the necessary funds to pay reasonable fees for such legal services.
- (c) Except in circumstances where the corporation counsel has been disqualified, any special deputy or counsel appointed under this section shall be a subordinate of the corporation counsel."

Sincerely yours,

/s/ JAY T. KIMURA

JAY T. KIMURA
Prosecuting Attorney