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A Law Corporation

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October 31, 2019

Mr. Elbert Lin  
Hunton Andrews Kurth LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074

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

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

Dear Mr. Lin:

I am writing to make you aware of the attached lawsuit and its contents, and also the attached section of the Maui County Code. Your client in the pending Supreme Court appeal is the County of Maui. Pursuant to its authority under Maui County Code §3.16.020(E), the County Council by majority vote has decided to abandon the appeal and settle the case, and instructed all attorneys acting on its behalf to withdraw the appeal. I am aware that Mayor Victorino as well as Maui's Corporation Counsel want you to go forward with the appeal, but as you can see from the attached code section and the analysis in paragraphs 33-37 of the attached Complaint, neither of them have authority in this matter -- the County Council's decision to accept a settlement offer is "binding on the county and on legal counsel." As you will see from the definitions in the attached code provision, subsection (G), the term "legal counsel" in that Code section includes you and your firm. Pursuant to its authority under Maui County Code §3.16.020(E), the County Council has voted to abandon the appeal. As such 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.)

I trust you have been provided with a copy 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). 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.

I respectfully submit that it is your 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 6<sup>th</sup>, you will be violating the Maui County Code and the expressed wishes of your client. The applicable Rule of Professional Conduct here in Hawaii would be 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.” Presumably your jurisdiction has a corresponding rule.

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 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 advocate against their position in the United States Supreme Court next week, then several individuals (on whose behalf I am authorized to speak) intend to file disciplinary complaints against you and any participating members of your law firm. Said complaints would be filed with the applicable bar oversight authorities in the States of

Virginia, West Virginia, Massachusetts, and the District of Columbia. All available grounds will be included in said complaints.

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. According to the attached County Council Resolution, your firm has been retained to represent the County of Maui. The County of Maui includes both the Mayor and the County Council. They both must be considered your clients, and their wishes are diametrically opposed. You cannot represent one of them without simultaneously acting against the express wishes and interests of the other. In such a case, I would respectfully suggest that it may be your duty to immediately withdraw as counsel. Please refer to the applicable provision of the code of professional conduct in the jurisdictions in which you are licensed. In Hawaii it would be 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.

As an alternative to withdrawing as counsel, I believe it would be acceptable 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 may be cleared to proceed.

In regard to what specific request you might make to the Supreme Court in terms of postponing the oral argument, the following information may be useful: I expect to file a motion for summary judgment in the attached case in 18 days from now (the earliest time permitted by court rules), and it will be heard in approximately 3 weeks from the time of filing, so we are expecting resolution of this matter in the Second Circuit Court of Hawaii before Christmas.

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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 (keeping in mind the six-hour time difference), or to e-mail me. Thank you. Please pass on a copy of this letter to any other attorney in your firm who is also actively involved in the Supreme Court appeal.

Very truly yours,

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

Anthony L. Ranken

cc: Moana Lutey