

Proposal No. 6 – Separate Attorneys for Council & Boards and Commissions: Create Legislative Attorney and Independent Counsel For Separate Legal Advice, Counsel and Representation For County Council and Boards and Commissions

Rationale. Separate Attorneys for the Council and Boards and Commissions would ensure that the Council and Boards and Commissions, which regularly have divergent legal interests from the County Administration, would have regular access to independent advice free of the appearance of conflicts. It would also dramatically limit the need for the hiring of independent counsel and can be fully funded by decreasing the size of the Department of Corporation Counsel since some of its functions are being transferred.

Several Charter Commissions reviewed special provisions for “special counsel” and how corporation counsel was appointed. While the Hawai'i Rules of Professional Conduct provides great flexibility to government attorneys regarding conflicts of interest, the fact that the rule permits it doesn't mean that the result is best for the county. Legal advice shapes the policy decisions made by the boards and commissions and the county council and it is important that such legal advice is frank and honest and not confined to the policy perspective of the incumbent administration. The case of the Maui County Council v. Thompson, 84 Haw. 105 (1996) is an example of the necessity of the Maui County Council to have an official legal advisor where the Hawai'i Supreme Court found that Mayor Linda Lingle violated the charter by hiring her husband's law firm as special counsel when the corporation counsel determined it had a conflict of interest during a lawsuit brought by former county employees.