

**JOURNAL**  
**of the**  
**SENATE OF THE**  
**TWENTY - SEVENTH LEGISLATURE**  
**of the**  
**STATE OF HAWAI'I**

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**Special Session of 2013**

**Convened Monday, August 5, 2013**  
**Adjourned Tuesday, August 6, 2013**

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**THE  
TWENTY-SEVENTH LEGISLATURE  
STATE OF HAWAI'I  
SPECIAL SESSION OF 2013  
JOURNAL OF THE SENATE**

**FIRST DAY**

**Monday, August 5, 2013**

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Special Session of 2013, was called to order at 11:39 a.m., by Senator Donna Mercado Kim, President of the Senate, in accordance with the following Proclamation, which was read by the Clerk and placed on file:

"July 24, 2013

PROCLAMATION

I, Donna Mercado Kim, President of the Senate of the Twenty-Seventh Legislature of the State of Hawai'i, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawai'i, and at the written request of two-thirds of the members to which the Senate is entitled, do hereby convene the Senate in Special Session on Monday, August 5, 2013, at 11:30 o'clock a.m. for the purpose of carrying out its responsibility established by Section 3, Article VI of the Constitution of the State of Hawai'i.

/s/ Donna Mercado Kim  
Donna Mercado Kim  
President of the Senate"

The Roll was called showing all Senators present with the exception of Senators Baker and English who were excused.

**JUDICIARY COMMUNICATION**

The following communication from the Judiciary (Jud. Com. No. 1) was read by the Clerk and disposed of as follows:

Jud. Com. No. 1, submitting for consideration and confirmation, the nomination of JAMES H. ASHFORD to the District Court of the First Circuit, State of Hawaii, for a term of six years, was referred to the Committee on Judiciary and Labor.

At this time, Senator Hee made the following announcement:

"Your Committee on Judiciary and Labor will hold decision making on Judiciary Communication No. 1 at 11:45 this morning in Conference Room 016."

**STANDING COMMITTEE REPORT**

On motion by Senator Espero, seconded by Senator Slom and carried unanimously, the Clerk was authorized to receive a standing committee report on Jud. Com. No. 1. In consequence thereof, and subsequent to its recessing at 11:43 a.m., the Senate took the following action:

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate consent to the nomination of JAMES H. ASHFORD to the District Court of the First Circuit, State of Hawaii, in accordance with Jud. Com. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1 and Jud. Com. No. 1 was deferred until Tuesday, August 6, 2013.

**ADJOURNMENT**

At 4:30 p.m., the Senate adjourned until 11:30 a.m., Tuesday, August 6, 2013.

## SECOND DAY

Tuesday, August 6, 2013

The Senate of the Twenty-Seventh Legislature of the State of Hawai'i, Special Session of 2013, convened at 11:37 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senators English, Shimabukuro, and Wakai who were excused.

The President announced that she had read and approved the Journal of the First Day.

## ORDER OF THE DAY

## ADVISE AND CONSENT

Stand. Com. Rep. No. 1 (Jud. Com. No. 1):

Senator Hee moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Gabbard and carried.

Senator Hee then moved that the Senate consent to the nomination of JAMES H. ASHFORD to the District Court of the First Circuit, State of Hawaii, for a term of six years, seconded by Senator Gabbard.

Senator Hee rose to speak in support of the nominee as follows:

"Madam President, your Committee on Judiciary and Labor has approved and does consent to the nomination of James Healani Ashford, the judicial nominee to serve on District Court of the First Circuit.

"I would like to say that I believe that the process of your Committee on Judiciary and Labor was as thorough as it could be under the circumstances. There's very little question in my mind that having gone through the hearing on Friday and the hearing yesterday that there is little, as far as I know, that we haven't covered with respect to Mr. Ashford as a son of Hawai'i; a son of a very well-known attorney, his father Tink Ashford; a graduate of Punahou; a graduate of Loyola Law School; a volunteer with several community organizations, including the Judiciary History Center; and a kind and loving father of two daughters.

"As in most confirmations, there were a few issues which arose. One was the issue of pro bono work in the community as a member of the bar. Your committee is satisfied, given the extensive discussion and dialogue on this issue, that Mr. Ashford has met the requisite requirements. But more importantly, your committee is concerned that the Rule 6.1 governing pro bono by the Judiciary needs further clarification, and I believe that the Administrative Director of the Courts agrees. So, we look forward to more clarity going forward on Rule 6.1.

"Your committee also had a thorough discussion on an issue brought before the committee with respect to an affidavit. It is sufficient to say, given the concerns raised by the committee and the dialogue responded to by Mr. Ashford, that we 'agreed to agree' that had Mr. Ashford the opportunity to do it over again, he would have done things a little differently. Nonetheless, Mr. Ashford responded to the satisfaction of the committee, and more importantly, I believe that both the committee and the nominee have learned from this experience. I further believe that this will help Mr. Ashford as he prospectively rules from the bench on issues relating to affidavits.

"I am very appreciative of Mr. Ashford. If you read this morning's paper, I will quote him: 'I think it was very thorough,

and I genuinely and sincerely appreciate the thoroughness and the attention that the senators gave to their responsibility on the process.' That is a statement that I believe most, if not all, members of the Judiciary and Labor Committee would agree to.

"I am honored to recommend to this body the consent to the nomination of Mr. Ashford as District Court Judge of the First Circuit. Thank you."

Senator Slom rose to speak in support of the nominee as follows:

"Thank you, Madam President and colleagues. On behalf of the Senate Minority, I rise in full and enthusiastic support of the nominee.

"It was a good and comprehensive two days of hearings. I think it was significant that all of the testimony was in very strong support by people that had known Mr. Ashford for, usually, it was 15 years or longer. It was a little disheartening that the one negative testimony given by a fellow attorney – he chose not to attend either Friday's hearing or yesterday's hearing, which is always difficult because then you can't ask questions. But I think that the questions that were posed were fair and they were complete, and I think that Mr. Ashford answered them completely and directly.

"As my colleague from the Big Island said yesterday, whenever we're going through this process, we need to look at the whole person, and that certainly is true. And the whole person here, we're getting a real bargain because of the integrity, the character, the experience, the background, and the judicial temperament. I, for one, always appreciate our hearings and our advise and consent process. I think it is one of the truly most important things that we do; we all learn from it. I think also that the District Court position, which some may look at as being the lowest rung on the ladder starting up – there's Circuit Court and Intermediate Court of Appeals and Supreme Court. This actually, though, seems to be the most important part of our judicial system because this is where the rubber meets the road; it's where most people have their initial entertainment by the Judiciary and they form their opinions. And so, you need strong judges and individuals that are willing and able to meet with all kinds of people, to have a firmness and yet a flexibility, and I think that's what our nominee has. So, I would urge all of my colleagues to overwhelmingly support the nomination. Thank you, Madam President."

Senator Ihara rose to request that remarks in support of the nominee with reservations be entered into the Journal, and the Chair so ordered.

The Chair having so ordered, Senator Ihara's remarks read as follows:

"I am in support of district court judge nominee James Ashford, and want to outline my reservations on the nomination. I believe the nominee is well qualified to serve as a judge. He has extensive trial experience, impressive professional demeanor, and is highly regarded by colleagues in the bar. In his Judiciary Committee hearings, I had two concerns about the nomination that have been resolved in my mind, mainly because of the nominee's outstanding qualifications.

"First, there's the matter of voluntary compliance with judiciary rule 6.1 on pro bono service to persons unable to afford an attorney. The rule asks attorneys to aspire to perform 50 hours of pro bono service. The nominee reported none, zero. Rule 6.1 has an 'in lieu of' provision that allows a donation to the Hawaii Justice Foundation or other qualified organizations



## STANDING COMMITTEE REPORT

**SCRep. 1            Judiciary and Labor on Jud. Com. No. 1**

Recommending that the Senate consent to the nomination to the following:

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

J.C. No. 1            JAMES H. ASHFORD, for a term to expire in six years.

Your Committee has reviewed the resume and statements submitted by the appointee and finds James H. Ashford to possess the requisite qualifications to be appointed to the District Court of the First Circuit, State of Hawaii.

Testimony in support of the appointment of Mr. Ashford was submitted by the King Kamehameha V Judiciary History Center, Retired Judge Eden Elizabeth Hifo, and thirty-five individuals. Testimony in opposition was received from one individual. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

The Hawaii State Bar Association Board of Directors found the appointee to be qualified for the position of District Court Judge, First Circuit, based on established criteria for determining the qualifications of judicial and executive appointments generally using the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. Specifically, the Board uses the following criteria in its deliberations: integrity and diligence, legal knowledge and ability, professional experience, judicial temperament, financial responsibility, public service, health, and ability to perform the responsibilities and duties required of the position for which the applicant has been nominated. The Board's rating system includes the categories of "qualified" and "not qualified".

Mr. Ashford earned his Bachelor of Arts degree in Political Science from Claremont McKenna College where he was a member of the school's wrestling team from 1981 to 1984 and was twice recognized as Most Inspirational Team Member. He later obtained his Doctorate of Jurisprudence from Loyola Law School where he earned Dean's List honors during his first two years of law school.

Mr. Ashford currently is a Partner in the Litigation Department of Cades Schutte, LLP, where he focuses his practice on commercial litigation, including real estate transactions, employment, fraudulent transfers, condominiums, trusts and estates, and commercial landlord and tenant matters. He also represents private schools in disputes concerning employee termination, accommodations, tenure, discipline, expulsion, or tuition and performs a variety of transactional work, such as employment documentation, pre-termination counseling, real estate transactions, and leases. He has tried more than twenty cases in state and federal court and regularly represents his clients in arbitrations, mediations, and agency investigations. He previously served as an Associate at Moon, O'Connor, Tam & Yuen after graduating from law school and then as a paralegal in Washington, D.C. before moving back to Hawaii in 1990 to join Cades Schutte, LLP.

Mr. Ashford is licensed to practice law in Hawaii and is a member of the American Bar Association and the Hawaii State Bar Association where he served as a Director of the Association's Young Lawyers Division for one term. He is an active legal volunteer in the community by serving as a moot court judge for Loyola Law School's annual moot court competitions and as a speech and debate judge and moot court judge for various high school competitions in the State. He previously served as a Court Annexed Arbitration Program (CAAP) arbitrator several times. Since August 2012, he has volunteered his time at the Access to Justice Room at the District Court of the First Circuit providing advice to pro se parties concerning collection law, landlord and tenant issues, and temporary restraining orders. Mr. Ashford also served as a Director for the Friends of the Judiciary History Center from 2006 to 2012.

Mr. Ashford has been a member of the Employers Counsel Network since approximately 2004 and has spoken at the annual Advanced Employment Issues Symposium on various employment law topics, such as retaliation and the federal Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA). He has also spoken at many legal seminars in Honolulu and conducted numerous presentations to various human resource groups and private employers. Lastly, he serves as the Co-Editor of the Hawaii Employment Law Letter, which is a monthly newsletter designed for employers and human resource professionals.

Testimony in support of Mr. Ashford's appointment indicates that he is a knowledgeable and skilled trial attorney. He is described as a quick study who is able to quickly grasp the facts and law that are relevant to any presented dispute. He is described as a passionate, committed, and decisive attorney who is able to make fair decisions based on his exceptional analytical skills. He is appreciated by his peers for his ability to articulate different viewpoints and to provide an informed opinion based on cogent logic and sound legal principles. Through his legal professional experience and volunteer work, he is intimately familiar with the burdens and expenses placed on parties who seek justice through the court system, and he is resourceful at appropriately addressing and resolving disputes in a fair manner.

Your Committee notes two concerns that were raised during the course of the hearing. The first concern relates to Mr. Ashford reporting in his application to the Hawaii Supreme Court zero hours of pro bono public legal service activities within the past three years despite indicating in the application his volunteer work at the Access for Justice Room at District Court and as a Director for the Friends of the Judiciary History Center. Mr. Ashford testified that reporting zero hours of pro bono service was a cautious decision on his part because pro bono activities are not mandated and also due to the lack of a clear definition of the activities that constitute pro bono services. The Administrative Director of the Courts responded to questions regarding the pro bono provisions under Rule 6.1 of the Hawaii Rules of Professional Conduct. Your Committee appreciates the thoughtful discussion regarding Rule 6.1 and believes that the need to more clearly define pro bono service merits further discussion in the future.

The second concern relates to the testimony submitted in opposition to the appointment which pertained to an affidavit of service by certified mail that was filed by Mr. Ashford in the Circuit Court of the First Circuit in 2007. Mr. Ashford represented the plaintiff in the case. The testimony claims that the defendant in the case was not properly served the lawsuit complaint and summons because the defendant did not sign the certified mail restricted delivery receipt. Mr. Ashford was notified prior to the filing of the affidavit that the defendant's office manager, rather than the defendant, signed the return receipt. However, the affidavit was subsequently filed with an attached copy of the certified mail receipt with a signature that did not match the name of the addressee. Mr. Ashford testified that he

made a second attempt to provide service of process subsequent to the filing of the affidavit, which failed for reasons beyond Mr. Ashford's control. With a third attempt to provide service of process Mr. Ashford provided proper service of process to the defendant's attorney.

Your Committee engaged in a careful and thoughtful discussion with Mr. Ashford regarding this matter and appreciated his candor and honesty. Although he could not recall all of the details of this incident or his mindset during this incident, he admitted to your Committee that he was wrong. In hindsight, he testified that he should have adopted a more prudent course of action. Your Committee further notes that a disciplinary complaint was not filed against Mr. Ashford on this matter.

As such, your Committee finds that, based on testimony submitted on his behalf, James H. Ashford has the experience, temperament, judiciousness, and other competencies to be a District Court Judge. He has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a District Court Judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the appointee, has found the appointee to be qualified for the position to which appointed and recommends that the Senate consent to the appointment.

Signed by the Chair on behalf of the Committee.

Ayes, 7; Ayes with Reservations (Ihara). Noes, none. Excused, none.

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. No. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE FIRST SPECIAL SESSION OF 2013.	3			3