

JOURNAL
of the
SENATE OF THE
TWENTY - FIFTH LEGISLATURE
of the
STATE OF HAWAII

Second Special Session of 2009

Convened Tuesday, August 18, 2009
Adjourned Wednesday, August 19, 2009

TABLE OF CONTENTS

	PAGE
First Day, Tuesday, August 18, 2009	1
Second Day, Wednesday, August 19, 2009	2
 Appendix:	
Standing Committee Report	4
 History:	
Senate Resolutions	5

THE
 TWENTY-FIFTH LEGISLATURE
 STATE OF HAWAII
 SECOND SPECIAL SESSION OF 2009
 JOURNAL OF THE SENATE

FIRST DAY

Tuesday, August 18, 2009

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Special Session of 2009, was called to order at 9:07 a.m., by Senator Russell S. Kokubun, Vice President of the Senate, in accordance with the following Proclamation:

"August 17, 2009

PROCLAMATION

I, Colleen Hanabusa, President of the Senate of the Twenty-Fifth 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 for the purpose of carrying out its responsibility established by Section 3, Article VI of the Constitution of the State of Hawai'i for a period of two (2) days commencing on Tuesday, August 18, 2009, at 9 o'clock a.m.

/s/ Russell S. Kokubun
 for Colleen Hanabusa
 President of the Senate,"

was read by the Clerk and was placed on file.

The Divine Blessing was invoked by the Honorable Brickwood Galuteria, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senators Bunda, Hee, and Hanabusa who were excused.

MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 1, submitting for consideration and confirmation, the nomination of CRAIG H. NAKAMURA to the office of Chief Judge, Intermediate Court of Appeals, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was read by the Clerk and was referred to the Committee on Judiciary and Government Operations.

Senator Baker rose on a point of personal privilege and said:

"Colleagues, today is the 89th anniversary of the ratification of the Nineteenth Amendment (Amendment XIX) to the United States Constitution, which conferred suffrage on those of us who happen to be female. In honor of that anniversary, I thought it was an appropriate day to kick off an initiative that the Senate is embarking upon to help improve women's health by making strides against breast cancer.

"I'd like to call to everybody's attention to a little brochure that is on your desk. It explains the Making Strides 5K Walk that will take place October 3. We have a couple of teams already formed, we've issued our challenge to the House, and invite all of you to help us not only find ways that we can improve folks' quality of life who are suffering from breast cancer, but also help continue the funding for a researcher that is at the Cancer Research Center of Hawai'i who is doing important research to find that element in an individual's body

that causes cancer to metastasize. And he's very close to a breakthrough, and once that happens it has just all kinds of ramifications, not only for breast cancer but for other cancers—so we're delighted to be a part of that effort as well.

"Finally, I would also call your attention to the five images of women on the brochure. One of them is in dark pink. That's to demonstrate this reality: one in five women do not receive a screening for breast cancer because of inadequate funding. So one of the goals of this effort is to raise funds both for screening, early detection, and treatment as well as for research. We invite all of you to join with us. Thank you, Mr. President."

STANDING COMMITTEE REPORT

On motion by Senator Sakamoto, seconded by Senator Slom and carried unanimously, the Clerk was authorized to receive a standing committee report on Gov. Msg. No. 1. In consequence thereof, and subsequent to its recessing at 9:16 a.m., the Senate took the following action:

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate consent to the nomination of CRAIG H. NAKAMURA to the office of Chief Judge, Intermediate Court of Appeals, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Gov. Msg. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1 and Gov. Msg. No. 1 was deferred until Wednesday, August 19, 2009.

ADJOURNMENT

At 11:39 a.m., the Senate adjourned until 11:00 a.m., Wednesday, August 19, 2009.

SECOND DAY

Wednesday, August 19, 2009

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Second Special Session of 2009, convened at 11:11 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Josh Green, M.D., Hawai'i State Senate, after which the Roll was called showing all Senators present.

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 (Gov. Msg. No. 1):

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

Senator Taniguchi then moved that the Senate consent to the nomination of CRAIG H. NAKAMURA to the office of Chief Judge of the Intermediate Court of Appeals, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Takamine.

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

"Your Committee on Judiciary and Government Operations heard from Judge Nakamura and we are convinced that he will serve well in his capacity as the Chief Judge.

"The testimony received was overwhelmingly in support of Judge Nakamura, including testimony from the Attorney General and the Prosecuting Attorney for the City and County of Honolulu. We also received information from the Hawaii State Bar Association that Judge Nakamura is qualified to serve as the Chief Judge.

"For these reasons I am asking my colleagues to support the consent of Judge Craig Nakamura as the next Chief Judge of the Intermediate Court of Appeals. Thank you."

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

"On behalf of your Senate Minority, we too would like to offer our full support for the confirmation of Judge Nakamura. During the confirmation hearings, in fact there was no opposition or questions raised either about his ability, experience, integrity, clear thinking, and his writing abilities as well. We are fortunate to have a person in this capacity to follow in the footsteps of Judges Burns and Recktenwald. He will do an excellent job. He has community service and the community on his mind and will be a benefit to all of us. So I urge all of our colleagues to support the nomination. Thank you."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 25. Noes, none.

At this time, Senator Taniguchi introduced Judge Nakamura to the members of the Senate. Judge Nakamura was accompanied by his mother Adora Nakamura, his wife Elise Matsumoto, his children Whitney, Jordan, and Mia, his two sisters Gayle and Sherry Nakamura, his long-time secretary and judicial assistant Ginger Matayoshi, and long-time friend Curtis Tom.

At 11:18 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:40 a.m.

SENATE RESOLUTION

The following resolution (S.R. No. 1) was read by the Clerk and was disposed of as follows:

S.R. No. 1 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE SECOND SPECIAL SESSION OF 2009."

Offered by: Senators Hooser, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 1 was adopted.

At this time, Senator Baker stood to recognize and celebrate the legacy and accomplishments of Mr. Tadashi Sato and said:

"Madam President, colleagues, and guests, on behalf of the Maui delegation and friends of Art in Public Places in this chamber, it is my distinct honor and privilege to pay tribute to a renowned and very talented son of Maui—Mr. Tadashi Sato. In a few short days, we'll celebrate the 50th anniversary of becoming the 50th state of these United States of America. So, it's fitting that our celebration of statehood should include a celebration of the life the artist whose mosaic, *Aquarius*, the focal point of our Capitol rotunda, has recently been restored to its original splendor.

"Colleagues, Tadashi Sato was born in Kaupakalau, Maui on February 6, 1923. He grew up in Lahaina and graduated from Lahainaluna High School in 1941. He went on to serve with the decorated 442nd Regimental Combat Team; and upon completion of his military service, Mr. Sato returned to Hawai'i to further his education, later moving to New York City where his passion for contemporary art blossomed and matured, and saw his pieces exhibited and acquired by some of the most prestigious museums and galleries. After spending 12 years between New York and Hawai'i, Mr. Sato returned home to Maui to continue his art in the islands he loved.

"Tadashi Sato's work can be found in private collections and public venues across the state. We on Maui are especially proud to have his art incorporated in public spaces in Lahaina, Kahului, and Wailuku. *Aquarius*, located here in the Hawai'i State Capitol, may in fact be his most famous piece. This round glass tile mosaic, 36 feet in diameter, depicts the reflections of stones submerged in the ocean. This mosaic not only provides a beautiful center point to the Capitol rotunda, but it signifies the natural beauty of the ocean that surrounds us in Hawai'i. This recent renovation of *Aquarius* has revived the vision and artistry of Mr. Sato's original piece with vibrant shades of blue and green shining across our rotunda floor. It continues to inspire all who see it to remember the values and beauty of our Hawai'i.

"We all know that government can move slowly, and unfortunately Mr. Sato passed away before this beautiful renovation was completed, although he was involved in its planning. So in celebration of the beauty he left as a legacy, we celebrate the many artistic accomplishments of this talented son of Maui and say 'Mahalo' to his family for sharing him with the world.

"It's my pleasure to turn the microphone over to Senator Brian Taniguchi to conclude our presentation."

At this time, Senator Taniguchi introduced family members of Mr. Sato to the members of the Senate, including his daughter Janice Shimamura, his sisters Keiko Sato, and Fumiko Sagai and her daughter Lois. Senator Taniguchi also recognized members of the State Foundation on Culture and the Arts, including Ron Yamakawa, Executive Director, and various board members and staff of the State Foundation on Culture and the Arts.

At 11:46 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:58 a.m.

ADJOURNMENT

Senator Sakamoto moved that the Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Second Special Session of 2009, adjourn Sine Die, seconded by Senator Slom and carried.

At 12:01 p.m., the President rapped her gavel and declared the Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Second Special Session of 2009, adjourned Sine Die.

STANDING COMMITTEE REPORT

SCRep. 1 Judiciary and Government Operations on Gov. Msg. No. 1

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

INTERMEDIATE COURT OF APPEALS, CHIEF JUDGE

Gov. Msg. No. 1 CRAIG H. NAKAMURA, for a term of ten years.

Your Committee received testimony in strong support of the nominee from Chief Judge Susan Oki Mollway, United States District Court; Senior Judge Helen Gillmor, United States District Court; Senior Judge Alan C. Kay, United States District Court; Judge J. Michael Seabright, United States District Court; the United States Attorney; the Federal Public Defender; Representative Blake Oshiro, State of Hawaii House of Representatives; the State Attorney General; the Hawaii State Bar Association (HSBA); the Prosecuting Attorney, City and County of Honolulu; and twenty-five individuals. Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Board of Directors of the Hawaii State Bar Association found Judge Nakamura to be qualified for the position of Chief Judge, Intermediate Court of Appeals, based upon the criteria of integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, public service, collegiality, and writing ability.

Your Committee finds that the nominee graduated with distinction with a Bachelor of Arts degree in Economics from the University of Hawaii and cum laude with a Juris Doctorate degree from Harvard Law School. Currently, the nominee is an Associate Judge with the Intermediate Court of Appeals. Prior to his service on the Intermediate Court of Appeals, the nominee was an assistant United States Attorney, where he served as the Appellate Coordinator for the United States Attorney's Office from 1992 until 2004. The nominee was also a law clerk to the Honorable Herbert Choy, United States Ninth Circuit Court of Appeals, and an Adjunct Professor of appellate advocacy at the William S. Richardson School of Law. The nominee is also a current member of the Hawaii State Bar Association and served as a Director of the Hawaii State Bar Association from 1990 to 1991. Judge Nakamura also served as a member of the 2005 Penal Code Review Committee, which submitted comprehensive recommendations to the Legislature regarding proposed revisions to the Hawaii Penal Code, and served as the Chairperson of the subcommittee on revisions to Chapter 706, Hawaii Revised Statutes.

Judge Nakamura was appointed in 2004 to the Intermediate Court of Appeals. During his tenure with the Intermediate Court of Appeals, Judge Nakamura has strived to apply the law fairly and impartially to each case before him. Testifiers also noted that Judge Nakamura is a good listener, has good common sense, and works well with his colleagues. Additionally, many testifiers praised his opinions as well-written and well-reasoned. Moreover, Judge Nakamura has also been involved with the administrative aspects of the Court by working to decrease the Court's case backlog and seeking efficiency in other ways.

Your Committee finds that Judge Nakamura is well-respected in the legal community, with a reputation not only for his thorough and analytical reasoning and writing skills, but also for his ability to work collaboratively and fairly with those with differing viewpoints. His case management experiences with the United States Attorney's Office and his contributions while he has been on the Intermediate Court of Appeals have provided the administrative experience necessary to successfully lead the Court and to improve on the progress already being made with the Intermediate Court of Appeals. Your Committee finds that the nominee will be a great asset as the Chief Judge of the Intermediate Court of Appeals.

Your Committee finds that, based on the testimony submitted on his behalf, Craig H. Nakamura has the experience, temperament, judiciousness, and other competencies to be the Chief Judge of the Intermediate Court of Appeals, and has a good sense of where the equities, rights, and responsibilities lie in a case and the administrative abilities which are essential for the Chief Judge of the Intermediate Court of Appeals.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations 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, 6. Noes, none. Excused, none.

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
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S.R. No. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE SECOND SPECIAL SESSION OF 2009.	2			2
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