

**JOURNAL**  
**of the**  
**SENATE OF THE**  
**TWENTY - SIXTH LEGISLATURE**  
**of the**  
**STATE OF HAWAII**

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**Special Session of 2012**

**Convened Thursday, June 28, 2012**  
**Adjourned Friday, June 29, 2012**

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THE  
 TWENTY-SIXTH LEGISLATURE  
 STATE OF HAWAII  
 SPECIAL SESSION OF 2012  
 JOURNAL OF THE SENATE

FIRST DAY

**Thursday, June 28, 2012**

The Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Special Session of 2012, was called to order at 11:38 a.m., by Senator Shan S. Tsutsui, President of the Senate, in accordance with the following Proclamation, which was read by the Clerk and placed on file:

"June 18, 2012

PROCLAMATION

I, Shan S. Tsutsui, President of the Senate of the Twenty-Sixth 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 Thursday, June 28, 2012, at 11:30 o'clock a.m.

/s/ Shan S. Tsutsui  
 Shan S. Tsutsui  
 President of the Senate"

The Roll was called showing all Senators present with the exception of Senator Shimabukuro who was excused.

At this time, Senator Hee introduced David Cobb, who works in the refuse disposal industry and was visiting from the mainland, and Kerry Komatsubara.

Senator Baker welcomed Peter Cahill, Maui attorney and nominee to the Circuit Court of the Second Circuit.

**MESSAGE FROM THE GOVERNOR**

The following message from the Governor (Gov. Msg. No. 1) was read by the Clerk and was disposed of as follows:

Gov. Msg. No. 1, submitting for consideration and confirmation, the nomination of RICHARD W. POLLACK as Associate Justice of the Supreme Court of the State of Hawaii, for a term of ten years, was referred to the Committee on Judiciary and Labor.

**JUDICIARY COMMUNICATION**

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

Jud. Com. No. 1, submitting for consideration and confirmation, the nomination of PETER T. CAHILL to the Circuit Court of the Second Circuit, State of Hawaii, for a term of ten years, was referred to the Committee on Judiciary and Labor.

Senator Baker rose to speak on a point of personal privilege as follows:

"I would just like to congratulate five of our colleagues who will not have to stand for election this year, in terms of campaigning. They cast their own votes, and they are elected. So, to you, Mr. President, Madam Vice President, Senator Chun Oakland, Senator Wakai, and Senator Tokuda—congratulations. The rest of your colleagues are envious.

"Also, Mr. President, among that distinguished group of five is a birthday girl, so I'd like to say hau'oli lā hānau yesterday to Senator Chun Oakland."

Senator Espero rose to speak on a point of personal privilege as follows:

"I'd just like to take this opportunity to congratulate Hawai'i's favorite first son, the President of the United States, for the landmark decision made today by the United States Supreme Court. As we all know, the Affordable Care Act was passed in 2010. By a 5-to-4 vote today, the Supreme Court made the right decision and upheld this law. This is a great moment for our President. 'Obamacare' now will become an iconic word in the language of our nation; and more importantly, the residents of our state and our nation will begin being involved in the new health care system that will provide health care to more Americans and, at the end of the day, also reduce the costs which are continually rising. So again, thank you and congratulations, Mr. President, for a job well done."

Senator Slom rose to speak on a point of personal privilege as follows:

"Well, it may be a great day—every day is a great day where we take a breath and can stand up and exercise our democratic principles—but I think that some people are going to rue the day for the decision that was made today. And I think that while the Supreme Court did not overturn the Obamacare ruling, I think the voters will overturn that ruling on November 6 of this year.

"It should also be troubling to all of us that the ruling talked about the tax provision of the United States and not the commerce clause. From my standpoint, it's a victory because had the commerce clause been upheld as being the reason for Obamacare, then we would have 'Bloomberg mania' and we would have the federal government telling us what we could drink, what we could eat, what size shoe we'd have to wear, where we'd have to go, and all of that. Now we cannot do that because the commerce clause does not allow that, and that was what was part of the decision today.

"But the other part of the decision more troubling is that the Supreme Court has declared that this is a tax, and it's the only way that it could be upheld because it is a tax. I remember candidate Obama saying, 'No, it's not a tax, and we won't tax the middle class.' I remember President Obama saying, 'No, it's not a tax, and we will not tax the middle class.' I remember the Democrat Congress saying, 'No, it's not a tax, and we will not tax the middle class.' And now we know it is a tax, and it is the largest tax on the middle class in the history of the United

States. So, if you want to celebrate that, then I say go ahead. I will do my celebrating November 6. Thank you very much.”

**STANDING COMMITTEE REPORTS**

On motion by Senator Espero, seconded by Senator Slom and carried unanimously, the Clerk was authorized to receive standing committee reports on Gov. Msg. No. 1 and Jud. Com. No. 1. In consequence thereof, and subsequent to its recessing at 11:47 a.m., the Senate took the following actions:

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 RICHARD W. POLLACK as Associate Justice of the Supreme Court of the State of Hawaii, 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 Friday, June 29, 2012.

Senator Hee, for the Committee on Judiciary and Labor, presented a report (Stand. Com. Rep. No. 2) recommending that the Senate consent to the nomination of PETER T. CAHILL to the Circuit Court of the Second Circuit, State of Hawaii, in accordance with Jud. Com. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2 and Jud. Com. No. 1 was deferred until Friday, June 29, 2012.

**ADJOURNMENT**

At 4:30 p.m., the Senate adjourned until 11:30 a.m., Friday, June 29, 2012.

## SECOND DAY

Friday, June 29, 2012

The Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Special Session of 2012, convened at 11:40 a.m. with the President in the Chair.

The Roll was called showing all Senators present with the exception of Senator Shimabukuro who was excused.

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

At this time, Senator Slom introduced former State Senator Gordon Trimble who was seated in the gallery.

Senator Galuteria welcomed Maika'iokalani and Avery Lee, mo'opuna of Senator Kahele who were seated in the gallery.

## ORDER OF THE DAY

## ADVISE AND CONSENT

Stand. Com. Rep. No. 1 (Gov. Msg. 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 RICHARD W. POLLACK as Associate Justice of the Supreme Court, State of Hawaii, for a term of ten years, seconded by Senator Gabbard.

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

"I stand in support of the nominee, and I encourage my colleagues to join me in support.

"Mr. President and members, it is indeed an honor for me to recommend to the Senate the confirmation of Richard W. Pollack to serve as an Associate Justice of the Hawai'i Supreme Court. I was pleased and honored in 1987, when I served as the Senate Judiciary Chairman, to first meet Judge Pollack when he served as the public defender. I hadn't seen him since that time, and if you'll indulge me, I'd like to share some information which I believe warrants this confirmation today.

"Judge Pollack has his Bachelor of Arts degree from the University of California at Santa Barbara. He received his Doctorate of Jurisprudence from the University of California Hastings College of Law. I was reminded recently that one of his professors, as a student at law school, was John Van Dyke. He has, since May 2000, served as a presiding Circuit Court Judge in the First Circuit. On the civil trial calendar, Judge Pollack has presided over and mediated cases involving personal injury, employment, business, contract and construction claims, and complex litigation cases. On the criminal trial calendar, he has presided over 150 jury trials involving the entire range of felony offenses and has placed approximately 650 offenders in HOPE probation. Judge Pollack has also served without compensation as an adjunct professor at the Richardson School of Law.

"Members, I think what sets this appointment apart from others that we have heard and evaluated is what struck me as Judge Pollack's candor. It was remarkably refreshing to ask him questions and get a straight answer on a number of cases. The most recent one was yesterday when asked by the minority leader his views on the U.S. Supreme Court ruling on Obamacare, to which without reservation he responded.

"I believe that Judge Pollack will serve the people of Hawai'i with great honor and great humility. I am certain that his knowledge of the law and his execution of the law with his

humility will go a long way in serving not only the state, but the dignity of those cases which will come before the Hawai'i Supreme Court. It is an honor for me to recommend Judge Pollack to serve as Associate Justice of the Hawai'i Supreme Court. Thank you."

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

"As I explained in yesterday's vote in the Judiciary Committee, I have the utmost respect for Judge Pollack. I had the honor 12 years ago of participating in his confirmation for Circuit Court Judge. In those 12 years, I think he has distinguished himself as not only an outstanding jurist, an individual with compassion and with even temperament, but also someone we can emulate in terms of trying to reform and make more efficient the judicial process, because when that occurs then everyone benefits from that.

"We've had several discussions together, for which I am grateful. My only reservations—and they are not very strong reservations, but they are reservations for the record—because of the discussion we had at the initial hearing and discussion about the United States Constitution, some words that were used and some description of both the Constitution and of the U.S. Supreme Court decisions. To make this perfectly clear, my reservations have nothing to do with the fact that Mr. Pollack comes from a public defender background versus a prosecutorial background, and it has nothing to do with Republican versus Democrat, liberal versus conservative, but it does have to do with a firm belief in the importance of and the fairness of the United States Constitution and the body of the Supreme Court. I found it interesting, and as the Judiciary Chairman mentioned, I did ask the judge yesterday about his opinion on yesterday's ruling because he had been very critical of a number of rulings and positions by the Supreme Court, but he was fully supportive of that particular ruling, and that's fine. The only reason I stand with reservations is because his remarks that were made in the initial hearing will be part of the permanent record; and whether we choose to use different words or whatever, the words that were said are the words that are on the record, and I wanted to make sure that my words of concern are also there. But I have no hesitation whatsoever to believe that Judge Pollack is going to be an excellent Supreme Court Justice in the Hawai'i State Supreme Court, and I wish him the best and give him my support. Thank you, Mr. President."

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

"Mr. President, members, we've seen the impact that new justices have on the high court. I strongly believe that our votes here today are among the most important votes we will cast as Senators in our careers. A Supreme Court Justice, once confirmed, will serve on a court that is truly foundational in our democratic system. Our Supreme Court has acted as a true check on government abuses, as a reliable and impartial tribunal for the resolution of private disputes, and as a final arbiter where the people of Hawai'i can come to seek protection of their fundamental constitutional rights. The cases that reach the Supreme Court are not easy ones. When the law is clear, a case is settled by the parties or resolved by the District Courts or the Courts of Appeal. It is when the law is open to multiple interpretations or when constitutional values must be weighed against each other that a case is likely to reach the Supreme Court. These decisions are not automatic. Instead, each of the justices must examine the facts, study the laws, and reach his or her best conclusion. The court's rulings are not as abstract statements for the law books, but binding decisions with a

lasting impact on the lives of Hawai'i's people. So, when we undertake our constitutional ways of providing advise and consent, we do so with the understanding that every nominee to the high court is not the same, and each and every one could have a lasting impact on the future of our state.

"We've examined his professional record, as the Chair of the Judiciary and Labor Committee mentioned, but Mr. President, our nominee must also show that he or she has the appropriate judicial temperament, has a commitment to follow the law, and brings a judicial philosophy. His addition to the high court will broaden the perspective, and in other words, it is the court's role to make sure that even the people who have no place else to go can come to the courts and the courts will hear them and hear their claim fairly. It's a valuable lesson indeed for every judge, but certainly for a new Supreme Court Associate Justice.

"In addition, colleagues, and equally important: When the justices are called upon to interpret a statute or determine its constitutionality, it is essential that they have some appreciation for the process by which the law came to be and the extent of the Legislature in writing and shaping that law. In my private talk story with Judge Pollack, I believe he has that appreciation.

"I might add mahalo nui loa to our State Senate Judiciary Committee and its chair, who have received pages of documents spanning Judge Pollack's entire career. He has testified before them and answered questions for the record, and they've perused scores of letters sent to them regarding his qualifications. What repeatedly emerges from all of this is that our appointee is both a pragmatist and visionary (if that's even possible), a problem solver, and a constitutional scholar.

"So in sum, Mr. President, and in conclusion, I believe Richard Pollack will be a fine justice, and I'm proud to support his appointment to the high court. Thank you, Mr. President."

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

"I just want to say that Judge Pollack has already shown that he is a good judge of character because his wife is from Wahiawā. So, I just want to speak in support. He's already shown that he's insightful and he can obviously know who quality people are. With his wife at his side, I know he'll do a good job. Thank you."

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

Ayes, 24; Ayes with Reservations (Slom). Noes, none. Excused, 1 (Shimabukuro).

At this time, Senator Hee introduced Associate Justice Richard Pollack to the members of the Senate, who was accompanied by his wife Candy, daughter Alana, mother-in-law Helen Mendes, and public defenders who were seated in the gallery with the Honorable Neil Abercrombie, Governor of the State of Hawai'i.

At 11:57 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:07 p.m.

Stand. Com. Rep. No. 2 (Jud. Com. No. 1):

Senator Hee moved that Stand. Com. Rep. No. 2 be received and placed on file, seconded by Senator Gabbard and carried.

Senator Hee then moved that the Senate consent to the nomination of PETER T. CAHILL to the Circuit Court of the Second Circuit, State of Hawaii, for a term of ten years, seconded by Senator Gabbard.

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

"Mr. President and colleagues, the nominee Peter Cahill, as you know, interestingly enough has been nominated twice—once by the Governor and once by the Judicial Selection Commission. So, it is indeed an auspicious occasion for us.

"Mr. Cahill is a private attorney and has worked in Hawai'i on the island of Maui for approximately three decades. He has concentrated most of his legal career in civil litigation and, more specifically, personal injury. He received his law degree from Notre Dame University. We had a rigorous discussion with Mr. Cahill, and based on that discussion, I recommend his confirmation by the entire Senate. Thank you, Mr. President."

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

"On behalf of the Maui Senators, I rise in support of the nomination of Peter Cahill as a Judge for the Circuit Court of the Second Circuit which is Maui.

"Mr. Cahill has been practicing law for almost 30 years. He currently serves as an attorney at Cahill & O'Neill on the island of Maui, concentrating on injury and wrongful death cases. Prior to his partnership of Cahill & O'Neill, he was a lawyer with Krueger & Cahill and the Law Office of James Krueger.

"Mr. Cahill's energy, intelligence, and commitment are well-known throughout the Maui legal community. The degree of respect he has from his peers as a fair-minded and balanced decision maker is clearly shown through the scores of supportive testimony that the Committee on Judiciary and Labor received.

"I believe that the people of Maui will be well-served under his judgeship. Maui Circuit Court judges typically have large, extensive workloads. I believe Mr. Cahill's genuine and sincere character and legal skills will help him make reasoned decisions as a judge of the Second Circuit. His communication skills and humor will aid him in lightening the mood of even the darkest courtroom cases. I believe he's well-qualified to handle the challenges inherent in the position and will live up to the committee's and the community's high expectations.

"I had an opportunity to get to know Mr. Cahill when he was serving as the Vice President on the Board of Directors for the Maui Youth and Family Services, Inc., member of the Board of Directors of Aloha House and Malama Family Recovery. It was in his community volunteer capacity that I first met Mr. Cahill. I found him compassionate with a sincere interest in helping folks who needed a helping hand, especially youth and those who had made bad decisions with alcohol and drugs. This work with these agencies demonstrates to me Mr. Cahill's exceptional character, and I believe the insights he's received from being active in the nonprofit social service arena as well as in his mediation and law practice will be most applicable to his new role as a Circuit Court judge.

"For all of these reasons, I believe he will serve our community and the Judiciary well, and I urge my colleagues to join me in unanimously confirming him to the Circuit Court of the Second Circuit. Mahalo."

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

"I echo the words of the good Senator from Maui, and offer my full support on behalf of the Senate minority for Mr. Cahill.

"I thought the hearing was extremely well done, and there were a lot of questions asked. First of all, it was apparent that the Governor had a really difficult choice. We learned that the Governor, who met with all of the candidates, had a difficult

choice. Then, of course, that was part of the reason, I guess, that the time deadline had slipped by, but he wanted to give them all equal opportunity. But Mr. Cahill was his selection, and Mr. Cahill was the selection of the Judicial Selection Commission. It was an interesting selection because as was brought out in the hearing, there have been other candidates, other nominees, who have had more experience in, say, criminal law or more experience in family law or even in constitutional law. But there can be no doubt about the experience that Mr. Cahill has had in his nearly 30 years, and the benefits that he's brought to the people of Maui. He had a solid qualified endorsement from the Bar Association. There was no opposition to his nomination. In fact, people came and described personal anecdotes about his fairness and about his temperament, how he approached different issues and tried to make sure that even though we operate in an adversarial process that we don't have to have necessarily winners and losers in court proceedings or judicial proceedings.

"The other thing that stands out, I think, about this nominee is the fact that he has spent so much time in alternative dispute resolution—arbitration and mediation—and that is a direction that I think we all would like to see our state go, and he is experienced. In that capacity, he has had experience with criminal matters, family matters, and to an extent even constitutional issues. I think he's going to be an excellent justice for Maui, but also for the entire State of Hawai'i. I'm proud to endorse him. Thank you."

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

Ayes, 24. Noes, none. Excused, 1 (Shimabukuro).

At this time, Senator Hee introduced Judge Peter Cahill and his wife Jessica to the members of the Senate.

At 12:16 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:22 p.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 FIRST SPECIAL SESSION OF 2012."

Offered by: Senators Galuteria, Slom.

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

#### ADJOURNMENT

Senator Espero moved that the Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Special Session of 2012, adjourn Sine Die, seconded by Senator Slom and carried.

At 12:23 p.m., the President rapped his gavel and declared the Senate of the Twenty-Sixth Legislature of the State of Hawai'i, Special Session of 2012, adjourned Sine Die.

## STANDING COMMITTEE REPORTS

## SCRep. 1 Judiciary and Labor on Gov. Msg. No. 1

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

SUPREME COURT, STATE OF HAWAII

G.M. No. 1 RICHARD W. POLLACK, for a term to expire in ten years.

Your Committee received testimony in support of the appointment of Judge Richard W. Pollack to the position of Associate Justice of the Supreme Court of the State of Hawaii from the Honorable Neil Abercrombie, Governor of the State of Hawaii; the Honorable Billy Kenoi, Mayor of the County of Hawaii; Retired Judge Sherman S. Hee, District Court of the First Circuit; Retired Judge Artemio C. Baxa, Circuit Court of the Second Circuit; Retired Judge Colleen K. Hirai, Circuit Court of the First Circuit; Retired Judge Karen N. Blondin, Circuit Court of the First Circuit; Retired Judge Victoria S. Marks, Circuit Court of the First Circuit; Retired Judge Eden Elizabeth Hifo, Circuit Court of the First Circuit; the State of Hawaii Organization of Police Officers; and sixty-six private individuals. Comments were submitted by the Hawaii State Bar Association.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of Associate Justice of the Hawaii Supreme Court, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of “qualified” and “not qualified.”

Judge Pollack graduated with honors and obtained his Bachelor of Arts degree from the University of California, Santa Barbara. He later received his Doctorate of Jurisprudence from the University of California Hastings College of the Law. Since May 2000, he has served as the presiding Circuit Court Judge of the Seventh Division of the First Circuit. On the civil trial calendar, Judge Pollack presided over and mediated cases including personal injury, employment, business, contract and construction claims, and cases involving complex litigation cases. On the criminal trial calendar, he has presided over approximately one hundred fifty jury trials involving the entire range of felony offenses and has placed about six hundred fifty offenders in the Hawaii’s Opportunity Probation with Enforcement (HOPE) program, four hundred cases of which are active and one hundred sixty-five cases of which are closed. He also serves as a Substitute Justice and Substitute Intermediate Court of Appeals Judge to preside over a broad range of cases and all phases of appeals.

Prior to his appointment to the Circuit Court bench, Judge Pollack served as the State Public Defender and managed the statewide office of approximately one hundred attorneys, investigators, and support staff within five branch offices. His administrative duties included budget preparation, fiscal operations, personnel and union matters, technology, and working with the Judiciary, Legislature, and other state agencies. Furthermore, as the head of the Office of the Public Defender’s Appellate Division, he reviewed and revised approximately seven hundred fifty appellate briefs and presented approximately fifty oral arguments in the appellate courts. As a Deputy Public Defender, Judge Pollack handled petty misdemeanor, misdemeanor, and felony cases and represented defendants on appeal in all of these types of cases. He also represented public defender clients in involuntary commitment and status offender cases. Of the defendants he represented during felony jury trials, Judge Pollack prevailed in approximately two-thirds of these cases.

Since 1990, Judge Pollack has served as an Adjunct Professor at the University of Hawaii William S. Richardson School of Law where he has taught Defense Clinic, Evidence, and Criminal Procedure. His course curriculum includes a strong emphasis on the Hawaii State Constitution and Hawaii appellate law and rules. Since 2000, Judge Pollack has continued to serve as a Faculty Presenter for Judicial Education Conferences, Hawaii State Bar Association education courses, National Institute of Trial Advocacy Outreach Program for public sector lawyers, National College of Advocacy for Association of American Trial Lawyers, Professionalism Courses for new lawyers, and Roscoe Pound Institute Regional Judges Forum.

Judge Pollack’s published work includes *Report of the American Judicature Society Special Committee Hawaii Chapter on the ABA Model Code of Judicial Conduct*, which contains many proposed revisions that were adopted as amendments to the Hawaii Revised Code of Judicial Conduct. He also served on the Standing Committee on Pattern Criminal Jury Instructions to assist in drafting more than four hundred pattern jury instructions, including explanatory notes for use of these instructions in *Hawaii Pattern Jury Instructions - Criminal Hawaii Court Rules, Vol. 1 (West)*, which was published in February 2012. As the State Public Defender, Judge Pollack authored or co-authored numerous training manuals relating to criminal trial procedures and practice to guide Deputy Public Defenders. Furthermore, he has served as a member to an extensive list of committees in the legal field. Lastly, Judge Pollack’s service to the community includes serving on the Board of Directors of Temple Emanu-El, Professionals for Drug Free Kids Project, School Community-Based Management Council of Mililani Mauka Elementary School, and Board of Directors of Ho’ala School.

Testimony in support of Judge Pollack’s appointment commends his superlative knowledge and character. He is described as a lawyer’s lawyer, a judge’s judge, and a thoroughly committed member of the community who is a consummate student of the law. For example, since Judge Pollack had extensive criminal law experience when he was assigned to a civil trial calendar for his Circuit Court bench appointment, his judicial colleagues testified that he immersed himself in civil procedure and the myriad of legal theories. He enjoyed the variety of issues litigated in his court while making every effort to effectuate reasonable and fair settlements of civil disputes.

Judge Pollack holds himself to high standards of preparation and performance. He is known among trial lawyers as a judge who rules from the bench, fairly challenges litigators who appear before him, and moves his trial calendar with great efficiency. He possesses the intellect to grasp complex legal issues and the ability to articulate and explain his analysis in a thoughtful, thorough, and intelligent manner. He is a clear thinker and a clear writer. Lastly, he is fair by treating both parties who appear in his courtroom evenly and with respect and makes his decisions according to the constitution and the law while recognizing the practical consequences of his judicial decisions.



Judge Pollack always strives to learn more, analyze more thoroughly, and delve more deeply into issues. His insatiable curiosity for the law parlays into his love of teaching and service as a pro bono Adjunct Professor. As a teacher, he is committed to ensuring that all of his law students graduate from the William S. Richardson School of Law with a solid knowledge of the Hawaii State Constitution and Hawaii case law.

Judge Pollack believes that the Hawaii State Constitution is a remarkable document that provides more specific protections than the United States Constitution, including the protection of traditional and customary rights, public health, natural resources, and agricultural lands. More importantly, the Hawaii State Constitution explicitly recognizes the right to privacy. Judge Pollack displayed to your Committee a deep understanding of and passion for the state constitution and statutes, and the delicate balance between federal and state courts and case law along with the challenges that reconciling the two may present.

Your Committee finds that, based on the testimony submitted on his behalf, Richard W. Pollack has the experience, temperament, judiciousness, and other competencies to be an Associate Justice of the Hawaii Supreme Court, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for an Associate Justice of the Hawaii Supreme Court.

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, 4; Ayes with Reservations (Slom). Noes, none. Excused, 1 (Shimabukuro).

## **SCRep. 2                    Judiciary and Labor on Jud. Com. No. 1**

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

### CIRCUIT COURT OF THE SECOND CIRCUIT, STATE OF HAWAII

J.C. No. 1                    PETER T. CAHILL, for a term to expire in ten years.

Testimony in support of the appointment of Peter T. Cahill was submitted by the Honorable Neil Abercrombie, Governor of the State of Hawaii; Retired Judge Artemio C. Baxa, Circuit Court of the Second Circuit; State of Hawaii Organization of Police Officers; and thirty-seven individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of Circuit Court Judge, Second Circuit, based 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. These Guidelines include the following criteria: integrity and diligence, legal knowledge and ability, professional experience, judicial temperament, financial responsibility, public service, health, and responsibilities and duties required of the position for which the applicant has been nominated. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Mr. Cahill obtained his Bachelor of Arts degree from Seton Hall University and received his Doctorate of Jurisprudence from the University of Notre Dame Law School. He is licensed to practice law in New York, New Jersey, and Hawaii. Upon graduating from law school, he served as an Associate Attorney at private law firms located in Fairfield, New Jersey. In 1989, he moved to Maui to join the Law Offices of James Krueger (later renamed to Krueger and Cahill) where he spent seven and a half years exclusively representing persons injured as a result of the wrongful conduct of another.

Currently, Mr. Cahill is a Partner at Cahill & O'Neill in Wailuku where his principle area of practice has been personal injury litigation. Upon forming this law partnership, he took on different types of matters, primarily litigation that involved personal injury, business, and contract disputes, and similarly related matters. Since 2006, he has also performed services on behalf of Hawaiian Insurance & Guaranty Co., Ltd. Furthermore, he maintains an active role as an arbitrator and mediator and has been appointed as an arbitrator through the Court Annexed Arbitration Program (CAAP) in numerous cases while privately arbitrating dozens of matters. For the last seven years, he has served as a CAAP trainer for the annual seminars held by the Pacific Law Institute and has taught courses on Maui, Kauai, and the Big Island.

Mr. Cahill is an active member in the Maui community. He currently serves as the Vice President on the Board of Directors for Maui Youth and Family Services, Inc., which aims to develop local families and youth into positive contributing members in the community. He also serves on the Board of Directors of Aloha House and Malama Family Recovery.

Testimony in support of Mr. Cahill commends his intelligence, patience, fairness, and open mindedness. He has experience in representing plaintiffs and defendants and possesses litigation as well as alternative dispute resolution skills. Testimony also commends his role as an effective arbitrator who conducts his hearings with the utmost professionalism and fairness and demonstrates his ability to listen, understand legal issues, express to the parties the legal and practical challenges that they have with respect to their cases, suggest possible resolutions, and facilitate an agreement.

Your Committee notes that the appointee's legal experience is predominated by civil law cases, specifically personal injury cases. While your Committee recognizes that experience in all areas of the law is not a prerequisite for becoming an effective jurist, it does acknowledge that an appointee for the Circuit Court bench must have the commitment and desire to expeditiously learn other areas of the law in which the appointee may not have extensive prior experience. Your Committee further notes that Mr. Cahill acknowledged to your Committee his lack of experience or familiarity in other areas of the law, and responded in his submitted questionnaires to the Judicial Selection Commission and the Hawaii State Bar Association that he has "zero" litigation experience in criminal, family, and other law in Hawaii. For example, Mr. Cahill was unaware of a Maui criminal and constitutional law case in which the Hawaii Intermediate Court of Appeals recently upheld the Maui lower court's decision based on the Fourth Amendment of the United States Constitution and privacy rights in the Hawaii State Constitution. Your Committee strongly believes that the public is best served by jurists who possess the requisite skills and experience in all areas of the law, including but not limited to civil, criminal, family, and constitutional law.

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, 4. Noes, none. Excused, (Shimabukuro).

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 2012.	5			5