

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

Special Session of 2013

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

TABLE OF CONTENTS

	PAGE
First Day, Monday, August 5, 2013	1
Second Day, Tuesday, August 6, 2013	2
Appendix:	
Standing Committee Report	4
History:	
Senate Resolutions	6

THE
TWENTY-SEVENTH LEGISLATURE
STATE OF HAWAII
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

to substitute for pro bono hours. The nominee made no such donation.

“One would think that prospective judges would seek to voluntarily comply with the pro bono rule, especially when compliance can be easily achieved by making a nominal donation. I hope the judiciary and bar association will educate attorneys on their own rule. I also urge the chief justice and governor, who select judges, to make sure their nominees voluntarily comply with rule 6.1 before submitting their names to the senate.

“The other more serious matter involves a sworn affidavit the nominee submitted to the court six years ago. The affidavit swore that a return mail receipt was signed by the defendant, but in yesterday’s hearing the nominee said, referring to the defendant’s signature:

There was no level of certainty one way or the other, that is why the affidavit was incorrect by stating as if it was a certainty when it was not. It was an error to say that he [the defendant] signed it, no question about it, but when I submitted the affidavit it was an open question. I don’t know whose signature it was.

“I believe willfully filing a false affidavit to a court is a serious concern. To the nominee’s credit, he has acknowledged his error, rather than give excuses. I believe he has learned a valuable lesson that will hopefully contribute his service in the judiciary.

“If another nominee was involved in the same incident, I may have voted no. But because of the nominee’s outstanding qualifications, reputation, and high praise from well-respected individuals I have spoken with, I am now able to support the nomination.”

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

Ayes, 22; Ayes with Reservations (Ihara). Noes, none. Excused, 3 (English, Shimabukuro, Wakai).

At this time, Senator Hee introduced Judge Ashford, who was accompanied by his mother Beverly Ashford, his wife Lisa Redell, and his daughter Lauren.

At 11:49 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:56 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 FIRST SPECIAL SESSION OF 2013.”

Offered by: Senators Galuteria, Slom.

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

At this time, Senator Taniguchi rose to request that the Senate adjourn on a rising vote to observe a moment of silence for the 68th anniversary of the atomic bombing of Hiroshima, and the Chair so ordered.

ADJOURNMENT

Senator Espero moved that the Senate of the Twenty-Seventh Legislature of the State of Hawai‘i, Special Session of 2013, adjourn Sine Die on a rising vote, observing a moment of

silence for the 68th anniversary of the atomic bombing of Hiroshima, Japan, seconded by Senator Slom and carried.

At 11:58 a.m., the President rapped her gavel and declared the Senate of the Twenty-Seventh Legislature of the State of Hawai‘i, Special Session of 2013, adjourned Sine Die.