

STAND. COM. REP. NO. 1

Honolulu, Hawaii

JUN 28 2012

RE: GOV. MSG. NO. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
First Special Session of 2012
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred Governor's Message No. 1, submitting for study and consideration the appointment of:

SUPREME COURT, STATE OF HAWAII

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

begs leave to report as follows:

Your Committee has reviewed the resume, personal history, and experience submitted by the appointee and finds Richard W. Pollack to possess the requisite qualifications to be appointed to the Supreme Court, State of Hawaii.

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



regarding the appointee were submitted by the Hawaii State Bar Association.

The Hawaii State Bar Association Board of Directors found the appointee to be qualified for the position of Associate Justice of the Hawaii Supreme Court, 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 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".

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, Judge 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.

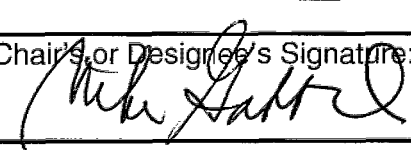
Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



Record of Votes
Committee on Judiciary and Labor
JDL
Consent

Gov. Msg./Jud. Comm. No.:* GM1	Committee Referral: JDL	Date: 28 JUNE 2012		
<input type="checkbox"/> The Committee is reconsidering its decision				
The Recommendation is:				
<input checked="" type="checkbox"/> Consent 2347 <input type="checkbox"/> Not Consent 2349				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)				✓
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam		✓		
TOTAL	3	1	—	1
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original	Yellow	Pink	Goldenrod	
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*Only one Message/Communication per Record of Votes