

STAND. COM. REP. NO. **3**

Honolulu, Hawaii

NOV - 5 2015

RE: JUD. COM. NO. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Eighth State Legislature  
First Special Session of 2015  
State of Hawaii

Sir:

Your Committee on Judicial and Labor, to which was referred Judiciary Communication No. 1, submitting for study and consideration the appointment of:

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

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

begs leave to report as follows:

Your Committee has reviewed the resume and statements submitted by the appointee and finds James C. McWhinnie 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. McWhinnie was submitted by the Honorable Leslie E. Kobayashi, United States District Court of Hawaii; Retired Associate Justice James E. Duffy, Jr., Supreme Court of the State of Hawaii; Retired Judge "Bambi" Eden Elizabeth Hifo, Circuit Court of the First Circuit; and twenty-six individuals. Comments regarding the appointee were submitted by the Hawaii State Bar Association.

The Hawaii State Bar Association (HSBA) Board of Directors found the appointee to be qualified for the position of District Court Judge, First Circuit, based on all categories of the HSBA criteria that includes: integrity, diligence, legal knowledge and ability, professional experience, temperament, financial responsibility, public service, health, and ability to fulfill the responsibilities and duties of the position.



Mr. McWhinnie graduated Cum Laude and obtained his Bachelor of Arts degree in Psychology and Political Science from St. Mary's University of Minnesota. During his undergraduate studies, he was a member of Pi Gamma Mu - International Honor Society in Social Sciences and Psi Chi - International Honor Society in Psychology. He also served as a member of the Student Development Staff and was a Resident Advisor. Prior to attending law school, he attended the Master's in Business Administration program at the University of Hawaii at Manoa while managing several restaurants in Waikiki. He graduated Cum Laude and obtained his Doctorate of Jurisprudence from DePaul University College of Law. While in law school, he served as a DePaul Legal Clinic Student Attorney.

Since 1989, Mr. McWhinnie has served as a Director and Attorney at Damon Key Leong Kupchak Hastert where he emphasizes his legal practice in civil litigation and chairs the firm's practice management committee and litigation practice group. As a Director of the firm, he is responsible for substantial commercial, product liability, construction, environmental, and personal injury cases. He also has extensive experience in all aspects of alternative dispute resolution, having acted as an advocate, arbitrator, and mediator. Furthermore, in addition to chairing the firm's practice management committee, he has also served on its executive, compensation, marketing, and other committees for a number of years. Mr. McWhinnie previously was an Associate Attorney, and later a Litigation Partner, at Rother, Bybee, Chang and Rulon.

Since 2006, Mr. McWhinnie has been selected by his peers to be included in The Best Lawyers in America in the areas of commercial litigation, real estate litigation, insurance litigation, and personal defense litigation and is recognized as a Super Lawyer in the areas of business litigation and civil litigation. He has held a Martindale-Hubbell rating of "AV" for the past twenty years and is a member of The Million Dollar Advocates Forum for attorneys who have been successful in million and multi-million dollar cases.

Mr. McWhinnie has extensive service and participation in the legal community, including serving as a volunteer in the Access to Justice Room at District Court of the First Circuit and providing pro bono services to various nonprofit organizations. Mr. McWhinnie also served as Secretary and as a Director of the HSBA in 2004. Prior to that Mr. McWhinnie was a member of HSBA's



Judicial Administration Committee, including serving as its co-chairperson for four years, the Fee Dispute Committee, and the Alternative Dispute Resolution Section. Of particular note, since 1998, Mr. McWhinnie continues to serve on the Hawaii Supreme Court's Special Committee on Judicial Performance, which was created pursuant to Hawaii Supreme Court Rule 19. The purposes of the "Rule 19 Committee" include improving individual judges' performance, providing a source of information for application and retention decisions by the Judicial Selection Commission, facilitating the Chief Justice's assignment and use of judges, improving the design and content of judicial education programs, and assisting the Chief Justice in administering the judiciary.

Testimony in support of Mr. McWhinnie's appointment uniformly asserts his tremendous integrity, intelligence, legal knowledge, and ability to listen mindfully to both sides and to relate well with people. Of particular note, his commitment to the practice and professional enhancement of law is illustrated by co-founding HSBA's Lawyer Kokua Program, which is a mentorship program that assigns experienced practicing attorneys to be mentors to new members of the Hawaii Bar. While he has extensive civil litigation experience, he expresses the desire and commitment to enhance his criminal law and evidentiary rules and procedure knowledge in addition to keeping abreast with civil case law and procedure to become an effective District Court Judge.

As such, your Committee finds that, based on testimony submitted on his behalf, James C. McWhinnie 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.



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

  
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GILBERT S.C. KEITH-AGARAN, Chair



The Senate  
 Twenty-Eighth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**  
**Consent**

Gov. Msg./Jud. Comm. No.:* <b>JC 1</b>	Committee Referral: <b>JDL</b>	Date: <b>11/05/15</b>		
<input type="checkbox"/> The Committee is reconsidering its decision				
The Recommendation is:				
<input checked="" type="checkbox"/> Consent 2347 <span style="margin-left: 200px;"><input type="checkbox"/> Not Consent 2349</span>				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
KAHELE, Gilbert	✓			
KIM, Donna Mercado				✓
THIELEN, Laura H.	✓			
SLOM, Sam	✓			
<b>TOTAL</b>	<b>6</b>			<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <span style="margin-left: 200px;"><input type="checkbox"/> Not Adopted</span>				
Chair's or Designee's Signature:				
<b>Distribution:</b> <span style="margin-left: 20px;">Original File with Committee Report</span> <span style="margin-left: 100px;">Yellow Clerk's Office</span> <span style="margin-left: 100px;">Pink Drafting Agency</span> <span style="margin-left: 100px;">Goldenrod Committee File Copy</span>				

\*Only one Message/Communication per Record of Votes