

STAND. COM. REP. NO. 2

Honolulu, Hawaii

SEP 01 2010

RE: GOV. MSG. NO. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Second Special Session of 2010
State of Hawaii

Madam:

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

CHIEF JUSTICE, SUPREME COURT, STATE OF HAWAII

G.M. No. 1 MARK E. RECKTENWALD,
 for a term to expire in ten years,

begs leave to report as follows:

Testimony in support of the appointee was submitted by the Senior Policy Advisor to the Governor; Representative Robert N. Herkes, Representative Chris Lee, and Representative Blake K. Oshiro, State House of Representatives; the State Attorney General; the State Public Defender; the Director, Department of Human Services; the Acting Director, Department of Commerce and Consumer Affairs; the Director, Department of Human Resources Development; one private organization; and fifty-six individuals. Testimony in opposition to the appointment was submitted by one individual. Comments were submitted by the Board of Directors of the Hawaii State Bar Association and one individual. The appointee also submitted a statement.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of Chief Justice of the Hawaii Supreme Court, based upon a modified version of the American Bar Association Guidelines for Reviewing

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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, public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Mark E. Recktenwald received his "artium baccalaureus" (Bachelor of Arts) degree, magna cum laude with the highest honors, in anthropology from Harvard College and his Juris Doctor degree, with honors, from the University of Chicago Law School, where he was a member of the Order of the Coif legal honor society and a Comment Editor of the University of Chicago Law Review. He was admitted to the Hawaii Bar in 1986 and clerked for Chief United States District Judge Harold M. Fong for one year. Between 1988 and 1991, Justice Recktenwald worked at the law firm of Goodsill, Anderson, Quinn & Stifel as a litigation associate. He then went to work at the United States Attorney's Office in Honolulu as a prosecutor in the criminal division from 1991 to 1997. In 1997, Justice Recktenwald became a partner in the law firm of Marr Jones & Wang, specializing in labor and employment litigation. In 1999, Justice Recktenwald went back to the United States Attorney's Office in Honolulu as an Assistant United States Attorney and served in both the civil and criminal divisions of that office until 2003. During that time, he prosecuted wildlife crimes, fraud on financial institutions, tax fraud, investment scams, and other fraud cases. In the civil division, Justice Recktenwald handled cases in which the government sought and negotiated settlements for a number of health care fraud cases. Justice Recktenwald was appointed the Director of Commerce and Consumer Affairs (DCCA) in 2003 and stayed in that position until his appointment to the position of Chief Judge of the Intermediate Court of Appeals (ICA) in 2007. In 2009, he was elevated to his present position of Associate Justice of the Hawaii Supreme Court.

Justice Recktenwald has also been active in the community. Among other things, he is on the Board of Directors of the Hawaii Chapter of the American Judicature Society. He has also served as a judge in the High School Mock Trial Tournament and as a guest speaker for Volunteer Legal Services Hawaii's annual volunteer recognition luncheon. He was also a trustee of Le Jardin Academy, a private, non-profit school.

The role of the Chief Justice of the Hawaii Supreme Court is a special one, requiring not only exceptional legal skills, but



also administrative and leadership qualities that are necessary to head one of the three co-equal branches of state government. It is when all three branches of government are strong and capable that our state government is able to perform at its peak and serve its people well. Your Committee is mindful of its substantial responsibility in ensuring that a candidate for this important position amply demonstrates not only superior legal abilities, but also the ability to lead and administer the Judiciary effectively and dynamically. It is within this context that your Committee reviewed the testimony and evaluated Justice Recktenwald's qualifications for the position of Chief Justice.

Testimony in support of the appointee praised his intelligence, integrity, fairness, sound judgment, and high ethical standards. Justice Recktenwald has a reputation in the community as a courteous, humble, even-tempered, and hard-working person who is generous with his time and appreciation for others and is easy to work with. Former colleagues submitted testimony telling of his patience in taking the time to teach others, his compassion for his clients and others involved in the litigation process, and his work ethic which assured that anything he was responsible for was done thoroughly and completely. Testifiers also commended his intelligence, analytical skills, preparation and attention to detail, and thorough understanding of the law. He is committed to excellence and inspires others to do so as well.

Testimony reflects that his opinions, both on the ICA and as an Associate Justice of the Supreme Court, have been scholarly, fair, respectful of opposing viewpoints, clear, and concise. While some testifiers indicated that they did not always agree with the results reached by Justice Recktenwald in specific cases, it was evident to them that he had carefully considered the arguments of the parties and that the resulting decision was intellectually honest, fair, and well-reasoned. Testifiers praised his broad legal background, stating that experience in such diverse areas as criminal matters and civil litigation with the United States Attorney's Office and in private practice, have given him a firm legal foundation to deal with the scope of appeals that are handled by the appellate courts.

Many testifiers also praised Justice Recktenwald's administrative and leadership qualities, referring to his able and exceptional management and leadership of the DCCA. Testimony characterized the DCCA as the best run executive department in the



State, and attributed this characterization to Justice Recktenwald's leadership. Justice Recktenwald significantly improved the efficiency of the DCCA by eliminating backlogs, removing unnecessary impediments to public access, and cultivating community outreach. These achievements were accomplished by working with DCCA staff, allowing change and efficiency to work from inside the organization and not from the top down. In his statement to your Committee, Justice Recktenwald explained that it is important to work with employees to effectuate improvements within an organization. Employees may be concerned about change and support for employees is critical in order for them to thrive within a changing work environment. By ensuring that employees are involved in the improvements, the employees take ownership of the changes and end up being the biggest proponents of increased efficiency. Your Committee is hopeful that as Chief Justice, Justice Recktenwald will continue to bring these same management skills and respect for employees to the Judiciary.

Given the significant impact of the economy on the Judiciary's budget, your Committee also closely questioned Justice Recktenwald regarding his ability to advocate for the Judiciary in the legislative budget process, to ensure that budgetary considerations would not result in a degradation of justice. Based upon his responses and other testimony submitted to your Committee, your Committee believes that Justice Recktenwald possesses the requisite abilities, as well as the vision, foresight, and leadership to head one of the three co-equal branches of state government.

Your Committee also notes that one individual submitted testimony in opposition to the appointment, expressing concern over Justice Recktenwald's decisions in several recent cases and her perception that Justice Recktenwald has a limiting view of the Hawaii State Constitution and constitutional rights, which may result in a trend towards constricting these constitutional rights. Justice Recktenwald testified that, indeed, he does recognize and embrace the range of protections available under the Hawaii State Constitution, which is wider than the protections available under the United States Constitution. Accordingly, your Committee believes that Justice Recktenwald is mindful of the unique nature of Hawaii constitutional law and that fears of Justice Recktenwald's taking the Supreme Court in a completely new direction are unfounded.



Your Committee believes that a new Chief Justice must bring to bear all of his or her individual strengths in furthering the mission of the Judiciary. However, substantial course changes may be detrimental to the stability of that branch of government by reversing gains already achieved. This is particularly the case when the prior executive, Chief Justice Ronald T.Y. Moon, has performed so commendably in that role and helmed the Judiciary so expertly. As such, your Committee is encouraged that, in Justice Recktenwald's written statement and in his oral comments during the hearing, Justice Recktenwald discussed several areas in which he would continue projects instituted or traditions kept by Chief Justice Moon. These include the online legal document filing system instituted under Chief Justice Moon, the jurisprudence noted above regarding expanded rights under the Hawaii Constitution continued and nurtured by Chief Justice Moon, and the tradition of obtaining comments from the public regarding district court judges kept by Chief Justice Moon. As stated in Justice Recktenwald's statement to your Committee, "Chief Justice Moon has left a sound foundation for the new chief justice to build upon, and there are many opportunities to find ways to be more efficient and effective in fulfilling our mission: to provide equal justice for all who come before the courts, and to do so in a manner that is fair, prompt, respectful and transparent." By recommending that the Senate consent to this appointment, your Committee is entrusting the Judiciary to the hands of Justice Recktenwald and is hopeful that, should he be confirmed by the Senate, he will build upon this foundation and will continue to seek guidance and input from the community in his decision making.

Your Committee finds that, based on the testimony submitted on his behalf, Mark E. Recktenwald has the experience, temperament, judiciousness, and other competencies to be the Chief 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 the Chief Justice of the Hawaii Supreme Court.

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.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Government Operations,



BRIAN T. TANIGUCHI, Chair



Record of Votes
Committee on Judiciary and Government Operations
JGO
Consent

Gov. Msg./Jud. Comm. No.:* GM No. 1	Committee Referral: JGO	Date: 9/11/10		
<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
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)	✓			
GABBARD, Mike	✓			
NISHIHARA, Clarence K	✓			
SLOM, Sam	✓			
TOTAL	5			
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original File with Committee Report Yellow Clerk's Office Pink Drafting Agency Goldenrod Committee File Copy				

*Only one Judiciary Communication per Record of Votes