

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


Second Special Session of 2017

Convened Monday, September 25, 2017
Adjourned Tuesday, September 26, 2017

CERTIFICATE

We hereby certify that the minutes for each day's session as
appears in this Senate Journal are true and correct and that a copy
is on file in the Archives of the State of Hawai'i.


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Clerk of the Senate

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THE
 TWENTY-NINTH LEGISLATURE
 STATE OF HAWAII
 SECOND SPECIAL SESSION OF 2017
 JOURNAL OF THE SENATE
 FIRST DAY

Monday, September 25, 2017

The Senate of the Twenty-Ninth Legislature of the State of Hawai'i, Second Special Session of 2017, was called to order at 10:03 a.m., by Senator Michelle N. Kidani, Vice President of the Senate, in accordance with the following Proclamation, which was read by the Clerk and was placed on file:

"Proclamation

September 19, 2017

I, Ronald D. Kouchi, President of the Senate of the Twenty-Ninth Legislature of the State of Hawaii, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawaii, 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 as sought in the petition at 10:00 o'clock a.m. on Monday, September 25, 2017, in the State Capitol Senate Chambers, for the purpose of carrying out its responsibilities established by Section 3, Article VI of the Constitution of the State of Hawaii.

/s/ Ronald D. Kouchi
 Ronald D. Kouchi
 President of the Senate"

The Roll was called showing all Senators present with the exception of Senators Chang, Dela Cruz, Gabbard, Inouye, Kouchi, Nishihara, Ruderman, Thielen, Tokuda, and Wakai who were excused.

At this time, Senator Baker welcomed Lily Baker from Lahaina, who was present in the gallery with office manager Mary Kate Murray.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1 and 2) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 1, submitting for consideration and confirmation, the nomination of HENRY T. NAKAMOTO to the State of Hawai'i Third Circuit Court, for a term of ten years, was referred to the Committee on Judiciary.

Gov. Msg. No. 2, submitting for consideration and confirmation, the nomination of ROBERT D. S. KIM to the State of Hawai'i Third Circuit Court, for a term of ten years, was referred to the Committee on Judiciary.

At this time, Senator Taniguchi announced that the Committee on Judiciary would be holding a public hearing on Gov. Msg. Nos. 1 and 2 at 11:00 a.m. in Conference Room 016.

STANDING COMMITTEE REPORTS

On motion by Senator Espero, seconded by Senator English and carried unanimously, the Clerk was authorized to receive standing committee reports on Gov. Msg. Nos. 1 and 2. In

consequence thereof, and subsequent to its recessing at 10:07 a.m., the Senate took the following actions:

Senator Taniguchi, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate consent to the nomination of HENRY T. NAKAMOTO to the Circuit Court of the Third Circuit, 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 Tuesday, September 26, 2017.

Senator Taniguchi, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 2) recommending that the Senate consent to the nomination of ROBERT D.S. KIM to the Circuit Court of the Third Circuit, State of Hawaii, in accordance with Gov. Msg. No. 2.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2 and Gov. Msg. No. 2 was deferred until Tuesday, September 26, 2017.

ADJOURNMENT

At 4:30 p.m., the Senate adjourned until 10:00 a.m., Tuesday, September 26, 2017.

SECOND DAY

Tuesday, September 26, 2017

The Senate of the Twenty-Ninth Legislature of the State of Hawai'i, Second Special Session of 2017, convened at 10:05 a.m. with the Vice President in the Chair.

The Roll was called showing all Senators present with the exception of Senators Dela Cruz, Gabbard, Inouye, Kouchi, and Wakai who were excused.

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

At this time, Senator Taniguchi welcomed a group of 18 eleventh-grade students from Mid-Pacific Institute, who were accompanied in the gallery by their International Baccalaureate Global Politics program instructor, Natasha Schultz.

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 1 (Gov. Msg. No. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Rhoads and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of HENRY T. NAKAMOTO to the Circuit Court of the Third Circuit, State of Hawaii, for a term of ten years, seconded by Senator Rhoads.

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

"Governor's Message 1 nominates Henry T. Nakamoto to the Circuit Court of the Third Circuit.

"Mr. Nakamoto received his Bachelor of Arts degree in Economics from Cornell University, and earned his Juris Doctorate from the University of California, Hastings College of the Law. He has been licensed to practice law in Hawai'i since 1989, and was in private practice until 2014 in Hilo.

"In 2014, Mr. Nakamoto was appointed as a District Family Court Judge for the Third Circuit, and since June 2016, Judge Nakamoto has served as Deputy Chief Judge of the Circuit Court of the Third Circuit and Administrative Judge of the District Court of the Third Circuit.

"The testimony received by your Committee on Judiciary indicated that Judge Nakamoto has a first-rate reputation for integrity, judicial temperament, exceptional knowledge of the law and issues, and a strong ability to relate and explain things to those who appear before him in court.

"Your Committee finds that Judge Nakamoto is well-qualified to serve as a Circuit Court Judge of the Third Circuit, and recommends that the Senate consent to the appointment."

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

Ayes, 20. Noes, none. Excused, 5 (Dela Cruz, Gabbard, Inouye, Kouchi, Wakai).

Senator Taniguchi then introduced Judge Henry T. Nakamoto, who was present in the gallery with his wife, Joyce; sons Timothy and Jordan; brother Ed Nakamoto and his wife, Audrey; aunt Lillian Torigoe; and cousin Lori Chun and her husband, Barry.

Stand. Com. Rep. No. 2 (Gov. Msg. No. 2):

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

Senator Taniguchi then moved that the Senate consent to the nomination of ROBERT D.S. KIM to the Circuit Court of the Third Circuit, State of Hawaii, for a term of ten years, seconded by Senator Rhoads.

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

"Thank you; this is for the judicial nominee for the Circuit Court of the Third Circuit, for Mr. Robert Kim.

"Mr. Kim received his Bachelor of Arts degree in Political Science from the University of Hawai'i at Hilo, and earned his Juris Doctorate from the William S. Richardson School of Law at the University of Hawai'i. He has been licensed to practice law in Hawai'i since 1986, and has been an active participant in his community for many years. He has been engaged in the private practice of law and developed expertise in a variety of fields, especially as a trial lawyer. He has also accepted numerous court appointments to serve as defense counsel in criminal cases.

"The testimony received by your Committee on Judiciary indicated that Mr. Kim has a strong reputation for integrity and fairness, works hard and prepares diligently, and has broad experience in both civil and criminal law. He is also familiar with and sensitive to the considerable diversity in social status, education, and legal needs present in the population of the Third Circuit, especially in West Hawai'i.

"Your Committee finds that Mr. Kim is well-qualified to serve as a Circuit Court Judge of the Third Circuit, and recommends that the Senate consent to the appointment."

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

Ayes, 20. Noes, none. Excused, 5 (Dela Cruz, Gabbard, Inouye, Kouchi, Wakai).

Senator Taniguchi then introduced Judge Robert D.S. Kim, who was accompanied in the gallery with his wife, Susan Komo Kim; his father-in-law, retired Circuit Court Judge Richard Komo, of Maui; his uncle, David Komo; and staff members from his law firm in Kona: Leana Medeiros, Cheryl Waahila, and Ruth Nakasone.

Senator Taniguchi also recognized the Honorable Mark E. Recktenwald, Chief Justice, Supreme Court, State of Hawai'i; Rod Maile, administrative director of the courts; and Iris Murayama, deputy administrative director of the courts.

Senator Galuteria welcomed Mike McCartney, chief of staff for the Honorable David Y. Ige, Governor of the State of Hawai'i, who was also present in the gallery.

At 10:14 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:26 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 THE

SENATE ON THIS FINAL DAY OF THE SECOND SPECIAL SESSION OF 2017.”

Offered by: Senator English.

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

ADJOURNMENT

Senator Espero moved that the Senate of the Twenty-Ninth Legislature of the State of Hawai‘i, Second Special Session of 2017, adjourn Sine Die, seconded by Senator English and carried.

At 10:28 a.m., the Vice President rapped her gavel and declared the Senate of the Twenty-Ninth Legislature of the State of Hawai‘i, Second Special Session of 2017, adjourned Sine Die.

STANDING COMMITTEE REPORTS

SCRep. 1 Judiciary on Gov. Msg. No. 1

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

CIRCUIT COURT OF THE THIRD CIRCUIT, STATE OF HAWAII

G.M. No. 1 HENRY T. NAKAMOTO, for a term to expire in ten years

Your Committee has reviewed the resume and statements submitted by the appointee and finds Henry T. Nakamoto to possess the requisite qualifications to be considered for appointment to the Circuit Court of the Third Circuit, State of Hawaii.

Testimony in support of the appointment of Judge Nakamoto was submitted by the Office of the Prosecuting Attorney, County of Hawaii; Hawaii State Bar Association Board of Directors; and thirty-one individuals.

Judge Nakamoto received his Bachelor of Arts degree in Economics from Cornell University. He subsequently obtained his Doctorate of Jurisprudence from the University of California, Hastings College of the Law, where he served as president of the Hawaii Law Caucus and as a teaching assistant in the area of criminal law.

Since June, 2016, Judge Nakamoto has served as Deputy Chief Judge of the Circuit Court of the Third Circuit and Administrative Judge of the District Court of the Third Circuit, where he has presided over numerous traffic and criminal law cases. Between 2014 and 2016, Judge Nakamoto served as a District Family Court Judge. Since 2014, he has presided over many juvenile law violation cases on the Island of Hawaii, and has become part of the ongoing collaborative effort between lawmakers, service providers, and the courts to develop alternatives to detention for youth offenders who do not present a danger to the community or to themselves. Judge Nakamoto also serves on numerous committees, including the Big Island Multi-Agency Committee on 704 (Mental Health) as Chair; Environmental Court Working Group as Vice Chair; and Hawaii Trial Lawyers Bench Bar Committee, Third Circuit Committee to Evaluate Per Diem Judges, and Hawaii Supreme Court Commission on Professionalism as a member.

Prior to his appointment to the District Family Court bench, Judge Nakamoto was a Partner and Director in the law firm of Nakamoto, Okamoto, & Yamamoto, after practicing as an associate at the firm between 1991 and 1996. Prior to his work at Nakamoto, Okamoto, & Yamamoto, he practiced as an associate at the law firm of Goodsill Anderson Quinn & Stifel between 1989 and 1991. Over the course of his legal practice, Judge Nakamoto tried over forty cases as lead counsel involving a wide range of issues in the areas of family, contract, and property law. He represented more than twenty-five parties in divorce cases pro bono between 2000 and 2014 and conducted three divorce law clinics between 2007 and 2012 through Volunteer Legal Services. Judge Nakamoto also served as Grand Jury counsel from 1995 to 1996.

Judge Nakamoto has been licensed to practice law in Hawaii since 1989 and has been an active participant in his community for many years. He was a member, and served as the chair of numerous committees, for the Lehua Jaycees between 1992 and 2004. He served as the President and a member of the Board of Directors for the Hawaii Island Humane Society from 2002 to 2004, and was President of the Waiakea High School Foundation from 2004 to 2014.

Testimony in support of Judge Nakamoto's appointment indicates that he has a first-rate reputation for judicial temperament as well as tremendous skill in relating to those who appear before him in court. He is also highly regarded for his extensive knowledge of the issues that have come before him in his judicial capacity.

The Hawaii State Bar Association (HSBA) Board of Directors found the appointee to be qualified for the position of Circuit Court Judge, Third Circuit, based on all categories of the HSBA's 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.

Accordingly, your Committee finds that Judge Nakamoto has the experience, temperament, judiciousness, and other competencies to be a Circuit Court Judge of the Third Circuit.

As affirmed by the record of votes of the members of your Committee on Judiciary 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, 3. Noes, none. Excused, 2 (Gabbard, Thielen).

SCRep. 2 Judiciary on Gov. Msg. No. 2

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

CIRCUIT COURT OF THE THIRD CIRCUIT, STATE OF HAWAII

G.M. No. 2 ROBERT D.S. KIM, for a term to expire in ten years

Your Committee has reviewed the resume and statements submitted by the appointee and finds Robert D.S. Kim to possess the requisite qualifications to be considered for appointment to the Circuit Court of the Third Circuit, State of Hawaii.

Testimony in support of the appointment of Mr. Kim was submitted by the Office of the Mayor, County of Hawaii; Office of the Prosecuting Attorney, County of Hawaii; Office of the State Public Defender, Kona Office; Hawaii State Bar Association Board of Directors; and twenty-five individuals.

Mr. Kim received his Bachelor of Arts degree in Political Science from the University of Hawaii at Hilo. He later received his Doctorate of Jurisprudence from the William S. Richardson School of Law at the University of Hawaii at Manoa, where he was a member of the University of Hawaii Law Review and was recognized in the Who's Who in American Law Schools 1985.

Mr. Kim is currently the president of Robert D.S. Kim, Inc., a Hawaii Law Corporation, focusing on civil litigation; commercial, civil, real estate, environmental, family, and criminal law in state and federal courts; as well as public interest litigation. He was previously a partner at the law firm of Kim & Powell and also practiced as a sole practitioner. Mr. Kim has tried thirty-four cases as lead counsel, including civil and criminal cases, and has also acted as appellate counsel in sixteen appellate cases. Of particular note, he was co-counsel on brief at the Appellate Court and Supreme Court in *Kapa'akai O Ka'ina v. Land Use Commission*, in which the Supreme Court of Hawaii addressed the constitutional obligation of the State to preserve and protect customary and traditional rights of Native Hawaiians, and was lead counsel for the plaintiffs at the Land Use Commission hearings and Circuit Court proceedings.

Mr. Kim has been licensed to practice law in the state and federal courts of Hawaii since 1986, and has previously been licensed to practice law in the United States Tax Court. He is also an active participant in his community. He has served as President of the West Hawaii Bar Association for numerous consecutive terms between 1991 and 1995, and between 2008 and 2015. He also volunteered with the disaster services program of the Hawaii State Chapter of the American Red Cross from 2013 to 2015.

Testimony in support of Mr. Kim's appointment indicates that he has a strong reputation for high integrity and fairness, in addition to his broad professional experience in both criminal and civil law. He is also familiar with and sensitive to the considerable diversity in social status, education, and legal needs present in residents of the circuit that he has been appointed to serve.

The Hawaii State Bar Association (HSBA) Board of Directors found the appointee to be qualified for the position of Circuit Court Judge, Third Circuit, based on all categories of the HSBA's 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.

Accordingly, your Committee finds that Robert D.S. Kim has the experience, temperament, judiciousness, and other competencies to be a Circuit Court Judge of the Third Circuit.

As affirmed by the record of votes of the members of your Committee on Judiciary 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, 3. Noes, none. Excused, 2 (Gabbard, Thielen).

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. No. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THE SENATE ON THIS FINAL DAY OF THE SECOND SPECIAL SESSION OF 2017.	2			3