

STAND. COM. REP. NO.

858

Honolulu, Hawaii

MAR 12 2009

RE: GOV. MSG. NO. 439

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred Governor's Message No. 439, submitting for study and consideration the appointment of:

SUPREME COURT JUSTICE

G.M. No. 439 MARK E. RECKTENWALD, for a term of ten
years,

begs leave to report as follows:

Your Committee received testimony in support of Mark E. Recktenwald from the United States Attorney, District of Hawaii, United States Department of Justice; the State Attorney General; Director of Labor and Industrial Relations; Honolulu Prosecuting Attorney; Hawaii Government Employees Association; Hawaii Financial Services Association; Kailua Neighborhood Board; and numerous individuals. Chief Judge Helen Gillmor, United States District Court; Judge Susan Oki Mollway, United States District Court; Judge J. Michael Seabright, United States District Court; Judge Alan Kay, United States District Court; Judge Leslie Kobayashi, United States District Court submitted favorable comments in response to your Committee's request for comments. Comments were also received from the Board of Directors of the Hawaii State Bar Association. Testimony in opposition was received from two individuals.

The Board of Directors of the Hawaii State Bar Association found the nominee to be qualified for the position of Supreme Court Justice, based upon the criteria of integrity, legal

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knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, public service, collegiality, and writing ability.

Mark E. Recktenwald received an AB degree, magna cum laude with the highest honors in anthropology from Harvard University and a JD degree from the University of Chicago Law School. He was admitted to the Hawaii Bar in 1986 and clerked for Chief United States District Judge Harold M. Fong for one year. In 1988-1991, the nominee worked at the law firm of Goodsill Anderson Quinn and Stifel as a litigation associate. The nominee then went to work at the United States Attorney's Office in Honolulu as a prosecutor in the criminal division from 1991-1997. In 1997, the nominee became a partner in the law firm of Marr Hipp Jones and Wang and specialized in labor and employment litigation. In 1999, the nominee went back to the United States Attorney's Office in Honolulu as an Assistant U.S. Attorney and served in both the civil and criminal divisions of that office until 2003. The nominee prosecuted wildlife crimes, fraud on financial institutions, tax fraud, investment scams, and other fraud cases. In the civil division, the nominee handled cases in which the government sought and negotiated settlements a number of health care fraud cases. The nominee became the Director of the Department of Commerce and Consumer Affairs in 2003.

Judge Recktenwald was appointed in 2007 to the Intermediate Court of Appeals in which he currently serves as Chief Judge. Judge Recktenwald has written ten published opinions, and participated in the decision on the merits of more than two hundred cases. He has also considered hundreds of procedural and substantive motions as part of a three-judge motions panel.

Judge Recktenwald decides appeals involving civil, criminal, family court, and administrative agency matters. The issues on appeal include the suppression or sufficiency of evidence in criminal cases, evidentiary rulings, insurance coverage disputes, statutory interpretation, child custody disputes, and termination of parental rights. In particular, Judge Recktenwald authored three published opinions in which certiorari was subsequently denied: *Inoue v. Inoue*, 118 Hawaii 86 (App. 2008); *State v. Yamada*, 116 Hawaii 422 (App. 2007); and *State v. Mars*, 116 Hawaii 125 (App. 2007).

Your Committee notes that as Chief Judge of the Intermediate Court of Appeals, Judge Recktenwald worked with his colleagues to



move forward with the restructuring of the appellate system which began in 2006, under which appeals now come first to the Intermediate Court of Appeals. He has emphasized deciding cases more promptly, without sacrificing the quality of the decisions. He has also emphasized making the court more open and accessible. Judge Recktenwald has also sought opportunities to meet with the legal community, including neighbor island bar associations, to get input on how the Intermediate Court of Appeals is doing.

In particular, your Committee notes the testimony of Judge Recktenwald that his goal as an appellate judge has been to decide cases fairly and promptly, respect the parties who come before the court, and write opinions that are clear, well-reasoned, and fairly apply the law. He wants every litigant, whatever the outcome of their case, to feel that they were treated fairly.

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 a Supreme Court Justice, and has a good sense of where the equities, rights, and responsibilities lie in a case which is essential for a Supreme Court Justice.

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



The Senate
 Twenty-Fifth Legislature
 State of Hawaii

Record of Votes
Committee on Judiciary and Government Operations
JGO
Consent

Gov. Msg./Jud. Comm. No.:* GM 439	Committee Referral: JGO	Date: 3/6/09		
<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)	✓			
BUNDA, Robert	✓			
GABBARD, Mike	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	6	0	0	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one Judiciary Communication per Record of Votes