

STAND. COM. REP. NO. |

Honolulu, Hawaii

AUG 05 2013

RE: JUD. COM. NO. 1

Honorable Donna Mercado Kim  
President of the Senate  
Twenty-Seventh State Legislature  
First Special Session of 2013  
State of Hawaii

Madam:

Your Committee on Judiciary 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 H. ASHFORD,  
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 H. Ashford 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. Ashford was submitted by the King Kamehameha V Judiciary History Center, Retired Judge Eden Elizabeth Hifo, and thirty-five individuals. Testimony in opposition was received from one individual. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

The Hawaii State Bar Association Board of Directors found the appointee to be qualified for the position of District Court Judge, First Circuit, 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 ability to perform the 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".

Mr. Ashford earned his Bachelor of Arts degree in Political Science from Claremont McKenna College where he was a member of the school's wrestling team from 1981 to 1984 and was twice recognized as Most Inspirational Team Member. He later obtained his Doctorate of Jurisprudence from Loyola Law School where he earned Dean's List honors during his first two years of law school.

Mr. Ashford currently is a Partner in the Litigation Department of Cades Schutte, LLP, where he focuses his practice on commercial litigation, including real estate transactions, employment, fraudulent transfers, condominiums, trusts and estates, and commercial landlord and tenant matters. He also represents private schools in disputes concerning employee termination, accommodations, tenure, discipline, expulsion, or tuition and performs a variety of transactional work, such as employment documentation, pre-termination counseling, real estate transactions, and leases. He has tried more than twenty cases in state and federal court and regularly represents his clients in arbitrations, mediations, and agency investigations. He previously served as an Associate at Moon, O'Connor, Tam & Yuen after graduating from law school and then as a paralegal in Washington, D.C. before moving back to Hawaii in 1990 to join Cades Schutte, LLP.

Mr. Ashford is licensed to practice law in Hawaii and is a member of the American Bar Association and the Hawaii State Bar Association where he served as a Director of the Association's Young Lawyers Division for one term. He is an active legal volunteer in the community by serving as a moot court judge for Loyola Law School's annual moot court competitions and as a speech and debate judge and moot court judge for various high school competitions in the State. He previously served as a Court Annexed Arbitration Program (CAAP) arbitrator several times. Since August 2012, he has volunteered his time at the Access to Justice Room at the District Court of the First Circuit providing advice to pro se parties concerning collection law, landlord and tenant issues, and temporary restraining orders. Mr. Ashford also



served as a Director for the Friends of the Judiciary History Center from 2006 to 2012.

Mr. Ashford has been a member of the Employers Counsel Network since approximately 2004 and has spoken at the annual Advanced Employment Issues Symposium on various employment law topics, such as retaliation and the federal Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA). He has also spoken at many legal seminars in Honolulu and conducted numerous presentations to various human resource groups and private employers. Lastly, he serves as the Co-Editor of the Hawaii Employment Law Letter, which is a monthly newsletter designed for employers and human resource professionals.

Testimony in support of Mr. Ashford's appointment indicates that he is a knowledgeable and skilled trial attorney. He is described as a quick study who is able to quickly grasp the facts and law that are relevant to any presented dispute. He is described as a passionate, committed, and decisive attorney who is able to make fair decisions based on his exceptional analytical skills. He is appreciated by his peers for his ability to articulate different viewpoints and to provide an informed opinion based on cogent logic and sound legal principles. Through his legal professional experience and volunteer work, he is intimately familiar with the burdens and expenses placed on parties who seek justice through the court system, and he is resourceful at appropriately addressing and resolving disputes in a fair manner.

Your Committee notes two concerns that were raised during the course of the hearing. The first concern relates to Mr. Ashford reporting in his application to the Hawaii Supreme Court zero hours of pro bono public legal service activities within the past three years despite indicating in the application his volunteer work at the Access for Justice Room at District Court and as a Director for the Friends of the Judiciary History Center. Mr. Ashford testified that reporting zero hours of pro bono service was a cautious decision on his part because pro bono activities are not mandated and also due to the lack of a clear definition of the activities that constitute pro bono services. The Administrative Director of the Courts responded to questions regarding the pro bono provisions under Rule 6.1 of the Hawaii Rules of Professional Conduct. Your Committee appreciates the thoughtful discussion regarding Rule 6.1 and believes that the need to more clearly define pro bono service merits further discussion in the future.



The second concern relates to the testimony submitted in opposition to the appointment which pertained to an affidavit of service by certified mail that was filed by Mr. Ashford in the Circuit Court of the First Circuit in 2007. Mr. Ashford represented the plaintiff in the case. The testimony claims that the defendant in the case was not properly served the lawsuit complaint and summons because the defendant did not sign the certified mail restricted delivery receipt. Mr. Ashford was notified prior to the filing of the affidavit that the defendant's office manager, rather than the defendant, signed the return receipt. However, the affidavit was subsequently filed with an attached copy of the certified mail receipt with a signature that did not match the name of the addressee. Mr. Ashford testified that he made a second attempt to provide service of process subsequent to the filing of the affidavit, which failed for reasons beyond Mr. Ashford's control. With a third attempt to provide service of process Mr. Ashford provided proper service of process to the defendant's attorney.

Your Committee engaged in a careful and thoughtful discussion with Mr. Ashford regarding this matter and appreciated his candor and honesty. Although he could not recall all of the details of this incident or his mindset during this incident, he admitted to your Committee that he was wrong. In hindsight, he testified that he should have adopted a more prudent course of action. Your Committee further notes that a disciplinary complaint was not filed against Mr. Ashford on this matter.

As such, your Committee finds that, based on testimony submitted on his behalf, James H. Ashford 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.



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



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CLAYTON HEE, Chair



The Senate  
 Twenty-Seventh 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>08/05/13</b>		
<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 S.L. (VC)	✓			
GABBARD, Mike	✓			
GALUTERIA, Brickwood	✓			
IHARA, Jr., Les		✓		
SOLOMON, Malama	✓			
SLOM, Sam	✓			
<b>TOTAL</b>	<b>6</b>	<b>1</b>		
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 Message/Communication per Record of Votes