

STAND. COM. REP. NO. 3

Honolulu, Hawaii

OCT 22 2014

RE: JUD. COM. NO. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
First Special Session of 2014
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 THIRD CIRCUIT, STATE OF HAWAII

J.C. No. 1 MARGARET K. MASUNAGA,
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 Margaret K. Masunaga to possess the requisite qualifications to be appointed to the District Court of the Third Circuit, State of Hawaii.

Your Committee received testimony in support of the appointment of Margaret K. Masunaga to the position of District Court Judge of the Third Circuit from the Honorable Mazie K. Hirono, member of the United States Senate for the State of Hawaii; Honorable Colleen Hanabusa, member of the United States House of Representatives for the State of Hawaii; Honorable William P. Kenoi, Mayor of the County of Maui; Hawaii State Commission on the Status of Women; and fifty-nine individuals. Testimony in opposition was received by one individual. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.



Ms. Masunaga earned a Bachelor of Arts degree from the University of California at Berkeley, with distinction, and she was the recipient of the Japanese American Citizens League Award. She later obtained her Doctorate of Jurisprudence from the University of the Pacific McGeorge School of Law where she was a recipient of the Asian American Law Students Association (AALSA) Scholarship and served as the President of AALSA and Minority Representative on the Minority Admissions Committee.

After graduating from law school Ms. Masunaga was an Associate at Goodsill Anderson Quinn & Stifel specializing in general practice and litigation representing financial institutions, hotels, hospitals, doctors, and businesses as well as defendants in criminal cases. She later served as a Deputy Attorney General at the Department of the Attorney General in Kealahou, where she handled Family Court cases involving paternity and child support. From 2009 to 2013 Ms. Masunaga served as the Deputy Director for the Planning Department of the County of Hawaii assigned to West Hawaii and represented Mayor Kenoi at community meetings and events. From 1992 to 2007 and again since 2013, Ms. Masunaga has served as the Deputy Corporation Counsel for the Office of the Corporation Counsel for the County of Hawaii. In this capacity, she represents various County of Hawaii departments and offices and is the only county attorney in the West Hawaii Civic Center. She handles contract drafting and agency appeals, and cases involving aging and disability, domestic violence prevention, collections, public access, Native Hawaiian issues, cultural practices, trespass, neighbor disputes, zoning violations, land use, restraining orders, and ethics.

Ms. Masunaga is licensed to practice law in Hawaii and has extensive work with the legal community, including the American Bar Association (ABA), Hawaii State Bar Association (HSBA), and West Hawaii Bar Association. She currently serves as a member of the ABA Commission on Women in the Profession and is the ABA State Delegate for Hawaii. She previously served as the President and Treasurer for the West Hawaii Bar Association, Secretary of the HSBA Young Lawyers Division, and Board Member and Treasurer of the HSBA. She also has served as Chairperson of the Hawaii State Commission on the Status of Women and a member of the Supreme Court's Rule 19 Committee regarding judicial performance and Board of Examiners.



Ms. Masunaga is a published author of various articles for ABA publications and has served as a speaker at numerous events in Hawaii and on the mainland. She has also been the recipient of various awards and recognitions, including the ABA Nelson Award for outstanding contributions to the ABA by a government lawyer, the HSBA Young Lawyers Division Justice Award, and the ABA Family Law Section Pro Bono Service Award.

Testimony in support of Ms. Masunaga's appointment commends her commitment to public service as evident in the numerous positions of leadership and responsibilities she has assumed in the public sector, especially in the County of Hawaii. Testifiers describe her as an enthusiastic, professional, and caring attorney with deep ties to Kona and the Big Island community and who is able to communicate with local community clients, which is essential and befitting of a District Court Judge. District Court is often referred to as the "People's Court", and her legal background coupled with her patience, empathy, and willingness to listen to people who are experiencing the court system for the first time will be valuable assets for the District Court.

Despite the numerous testimony received in support of the appointee, your Committee notes that the HSBA Board of Directors found Ms. Masunaga to be unqualified for the position of District Court Judge of the Third 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 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".

Your Committee notes that the extremely confidential nature and procedures of the process that HSBA uses to rate judicial nominees have been longstanding concerns. Testimony submitted by the HSBA Board of Directors states that the Board "seriously questions the nominee's legal knowledge, diligence, ability to fulfill the responsibilities and duties of the position, and



professional experience in legal practice and in civil and criminal proceedings and trials." However, due to the confidentiality rules and processes of the Board, the HSBA President would not disclose to your Committee how this determination was made or what factors, including any weighting of these factors, were used in this determination. Accordingly, your Committee is unable to determine whether the Board's "unqualified" rating is substantiated.

All of the actors in the appointment process, including the Judicial Selection Commission, HSBA, Governor, and Senate, are essential in assuring that the individual who ultimately assumes the weighty mantle of judicial responsibility has been thoroughly vetted, is qualified for the position, and possesses the requisite qualities to fairly, intelligently, and impartially interpret and apply the law that governs our society. Your Committee notes the letter dated October 20, 2014, submitted by the Chief Justice of the Hawaii Supreme Court that discloses the process he employs and the information he takes into account when selecting nominees for positions as District and District Family Court Judges. Specifically, the Chief Justice states, "I take my authority to select nominees with the utmost seriousness, and strive to select individuals who will excel as judges if they are confirmed by the Senate and have the opportunity to serve." As such, your Committee strongly believes that the Chief Justice used great care in selecting an appointee who will be able to fulfill the responsibilities of the particular judicial vacancy.

Like the Chief Justice, your Committee takes its role in the judicial appointment process seriously. Despite the HSBA Board's finding of Ms. Masunaga as "unqualified", your Committee is not aware of the basis for the HSBA Board's finding. Testimony from the legal community and members of the Kona community reflect the nominee as being multi-faceted, which is an important quality of a jurist.

Accordingly, based on testimony submitted on her behalf, your Committee finds that Margaret K. Masunaga has the experience, temperament, judiciousness, and other competencies to be a District Court Judge. She 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,



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.:* JC 1	Committee Referral: JDL	Date: 10-22-2014		
<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	✓			
TOTAL	7			
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 Message/Communication per Record of Votes