

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Leslie Emi Kobayashi (legal name); Leslie Pacarro (married name)

2. **Position**: State the position for which you have been nominated.

United States District Judge for the District of Hawaii.

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: United States District Court
300 Ala Moana Blvd., Room C-353
Honolulu, Hawaii 96850

Residence: [REDACTED]

4. **Birthplace**: State year and place of birth.

1957; Mount Holly, New Jersey

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1979-1983, Boston College School of Law; J.D., 1983

1982-1983, University of Hawaii, William S. Richardson School of Law; no degree

1977-1979, Wellesley College, B.A., 1979

1975-1977, University of Hawaii at Manoa, no degree

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1999-Present

United States District Court for the District of Hawaii
300 Ala Moana Blvd, Room C-353
Honolulu, Hawaii 96850
United States Magistrate Judge

2000, 2001

William S. Richardson School of Law, University of Hawaii at Manoa
2525 Dole Street
Honolulu, Hawaii 96822
Adjunct Professor

1984-1999

Fujiyama, Duffy & Fujiyama
2700 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Partner (1991-1999)
Associate (1984-1991)

1983-1984

Office of the Prosecuting Attorney, City and County of Honolulu
1164 Bishop Street
Honolulu, Hawaii 96813
Deputy Prosecuting Attorney

Other Affiliations (uncompensated)

2007-2008

Hahaione School, Parent Teacher and Student Association
595 Pepeekeo Street
Honolulu, Hawaii 96825
Secretary and Board Member (2007-2008)

1999-2001

Volunteer Legal Services of Hawaii
545 Queen Street, Suite 100
Honolulu, Hawaii 96813-6206
Board Member

1996-1998

Friends of Judicial History Center
417 S. King Street
Honolulu, Hawaii 96813
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I have not registered for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Outstanding Volunteer Award, Hawaii State Bar Association (1999)

Outstanding Adjunct Professor Award, William S. Richardson School of Law,
University of Hawaii (2001)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

American Inn of Court IV (Aloha Inn)

Barrister (1989-1991)

Bench (1996-2005)

American Judicature Society

Judicial Independence and Accountability Committee (2007-2008)

Judicial Selection, Retention and Accountability Standing Committee (2009)

Federal Magistrate Judges Association (1999-present)

First Circuit Court, State of Hawaii Court-Annexed Arbitration Program

Volunteer Arbitrator (1992-1999)

Hawaii Medical Association

Committee on Courtesy Agreement between Physicians and Attorneys (1990-1997)

Hawaii State Bar Association

Committee on Hawaii Rules of Evidence (1991-1992)

Subcommittee on Judicial Administration, (1995-1996) Co-Chairperson (1996-1998)

Bench/Bar Conference, Chairperson (1997, 1998)

Joint Judiciary-Bar Professionalism and Ethics Committee (2000-2002)

Magistrate Judges Executive Committee for the Ninth Circuit (2006-2008)

Vice-Chair (2007-2008)

National Asian and Pacific American Bar Association

National Asian Pacific American Law Student Association

Ninth Circuit ADR Committee (2010)

Ninth Circuit Conference Executive Committee (2008-2011)

Phi Delta Phi International Legal Fraternity, Student member (1982-1983)

Volunteer Legal Services of Hawaii (formerly, Hawaii Lawyers Care)

Volunteer Lawyer (1992-1999)

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Hawaii, 1983

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1995
United States District Court for the District of Hawaii, 1983
Courts of the State of Hawaii, 1983

There has been no lapse in any membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

AYSO Kailua, parent member (2005-present)
Bishop Museum (2006-present)
Hahaione School Parent Teacher and Student Association (2004-present)
 Secretary & Board Member (2007-2008)
 Fun Fair sub-committee co-chair (2005, 2006)
 Fun Run, Chair (2008, 2009)
 Make A Difference Day, Chair (2008)
 Teachers Appreciation Lunch, Chair (2008)
Hawaii Medical Association, committee member (1990 - 1997)
Hawaii Public Radio (1999-present)
Hawaii Public Television (1999-2005)
Honolulu Academy of Arts (2000-present)
Honolulu Zoo Society (1999-present)
Judiciary History Center of Hawaii (1995-2000)
 Board Member (1996-1998)
Jazzercise Hawaii (2007-present)
Kailua Basketball Association, parent member (2005-present)

Ninth Circuit Judicial Historical Society (2003-present)
Oahu Country Club, member spouse (2005-present)
Olomana Community Association (1991-present)
 Chair, Christmas Parade (2002-present)
Suzuki Talent Education of Hawaii (2003-present)
Wellesley College Alumnae Association (1979-present)
Wellesley College, Class of 1979, Class officer (2009-2012)
Wellesley College Alumnae Association, Hawaii Chapter (1979-present)
Windward YMCA (2005-present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I am a graduate of Wellesley College and currently serve as a class officer for the Class of 1979. Wellesley is a women's college and admits and graduates women only. I am a member of Oahu Country Club which was established over 100 years ago. It had a men-only membership practice until the 1970's when that policy was changed. In the past 35 years, it has admitted women members. Otherwise, I am not, nor have I ever been, a member of any organization that discriminates on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

“In Memoriam Note: Gayle Yoshida,” HAWAII B.J. (Sept. 2001)

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Report of the Special Committee on Judicial Independence and Accountability to the Board of Directors of the Hawaii Chapter for the American Judicature Society, March 25, 2008. Copy supplied.

“Celebrating Pro Bono: Volunteer Legal Services of Hawaii’s 2001 Pro Bono Summit,” Hawaii Bar Journal (Dec. 2001). Copy supplied.

“Hawaii State Bar Association 1998 Annual Report: Standing Committees’ Judicial Administration Committee,” Hawaii Bar Journal (May 1999). Copy supplied.

Hawaii Bar Association 1997 Annual Report: Standing Committees: Judicial Administration Committee, Hawaii Bar Journal (May 1998). Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Testimony in support of David Z. Arakawa to serve as the corporation counsel of the City and County of Honolulu. I have no notes, recording or transcript.

Reference is available at

<http://www.co.honolulu.hi.us/refs/bill/status/1997/r18.htm> (last visited Apr. 21, 2010).

Testimony in support of a resolution to retain the services of a private attorney, as special counsel, to represent Will R. Cluney in a criminal case. I have no notes, recording or transcript. Record of the resolution is available at

<http://www.co.honolulu.hi.us/refs/bill/status/1995/r362.htm> (last visited Apr. 21, 2010).

Letter in support of Mark Recktenwald’s judicial nomination to serve as associate justice for the Hawaii Supreme Court. Copy supplied.

Letter in support of Craig T. Nakamura’s judicial nomination to serve as chief judge of the Intermediate Court of Appeals for the State of Hawaii. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have made it my practice to speak frequently at continuing legal education and

other bar association programs, especially since my appointment as a magistrate judge in 1999. I have identified the following presentations that I have made, although there may be others for which I have been unable to locate a record:

Continuing Legal Education Presentation on Amendments to the Federal Rules of Civil Procedure and Federal Rules of Evidence, Hawaii State Bar Association, Honolulu, Hawaii held on November 2, 2000. Outline and notes for the presentation are supplied.

Remarks to the Hawaii Chapter, Federal Bar Association, November 6, 2000. Notes from the informal talk are supplied.

Brown Bag Seminar for Court Staff regarding recent amendments to the Federal Rules of Evidence, November 16, 2000. Notes from the informal talk are supplied.

Continuing Legal Education presentation on federal motions practice, Hawaii State Bar Association, Honolulu, Hawaii, December 1, 2000. Written material is supplied.

ALI-ABA presentation on federal practice, Honolulu, Hawaii, February 28, 2001. I have no notes, recordings or transcripts.

Award presenter, Tenth Annual VLSH Niu Awards, June 22, 2001. I have no notes, recordings or transcripts.

Continuing Legal Education presentation on mediation and alternative dispute resolution, Hawaii State Bar Association, Honolulu, Hawaii, September 27, 2001. I have no notes, recordings or transcripts.

Remarks to recently admitted lawyers at the Hawaii State Bar Association, Mandatory Course on Professionalism, November 2001. I have no notes, recordings or transcripts.

Federal Court Procedures, Young Lawyers Division of the Hawaii State Bar Association, 2002. I have no notes, recordings or transcripts.

Continuing Legal Education presentation on employment practices and expert witnesses, Hawaii State Bar Association, Honolulu, Hawaii, October 7, 2002. I have no notes, recordings or transcripts.

Moderator, "Hot Topics in Litigation" Panel, Hawaii State Bar Association Annual Convention, Oct. 17, 2002. I also sat on panels discussing expert witnesses, employment law practice tips, and attorneys' fees at the same event. I have no notes, recordings or transcripts.

Remarks to newly admitted lawyers at the Hawaii State Bar Association, Mandatory Course on Professionalism regarding the importance for lawyers to do pro bono work, November 16, 2002. I have no notes, recordings or transcripts.

Trial Academy, Hawaii State Bar Association, William S. Richardson School of Law, 2004 & 2005. I have no notes, recordings or transcripts.

Hawaii Women Lawyers, Annual Awards Reception, Introduction of Thalia Murphy, Esq., Hawaii Women Lawyers' Outstanding Woman Lawyer of the Year, 2005. A copy of the speech is supplied.

Continuing Legal Education presentation on federal practice for Hawaii State Bar Association's Nuts and Bolts seminar, Honolulu, Hawaii, 2005, 2006, February 7, 2007. Copy of the outline for the presentation and draft of the PowerPoint slides are supplied.

Continuing Legal Education presentation on trial skills, Hawaii State Bar Association, Honolulu, Hawaii, 2004, 2005. I have no notes, recordings or transcripts.

12th Annual Sidebar Program, American Judicature Society, Hawaii Chapter, July 29, 2004. I have no notes, recordings or transcripts.

13th Annual Sidebar Program, American Judicature Society, Hawaii Chapter, Aug. 4, 2005. I have no notes, recordings or transcripts.

Special court session to commemorate the passing of Lori Okenko Cuomo, a member of the Clerk's Office, 2005. Copy is supplied.

Continuing Legal Education presentation, "E-Discovery in Practice: Mock Deposition of 30(b)(6) Electronic Discovery Custodian," American Bar Association Annual Meeting, Honolulu, Hawaii, August 5, 2006. I have no notes, recordings or transcripts. Materials for the presentation are available at http://www.abanet.org/litigation/prog_materials/2006_aba.html (last visited Apr. 21, 2010).

Continuing Legal Education presentation, "Preparing Clients for Mediation," American Bar Association Annual Meeting, Honolulu, Hawaii, August 6, 2006. I have no notes, recordings or transcripts. A description of the panel discussion can be found at <http://www.abanet.org/litigation/committees/businessstorts/docs/minutes080606.pdf> (last visited Apr. 21, 2010). The online program book for this program is available at [new.abanet.org/annual/pastevents/2006/cle_program_book.pdf](http://www.abanet.org/annual/pastevents/2006/cle_program_book.pdf) (last visited Apr. 21, 2010).

Continuing Legal Education presentation, "Successful Strategies to Achieve Diversity in Your Organization," American Bar Association Annual Meeting, Honolulu, Hawaii, August 6, 2006. I have no notes, recordings or transcripts. The program is described at http://www.abanet.org/litigation/committees/newsletter_gratis/business_torts_journal.pdf (last visited Apr. 21, 2010).

Continuing Legal Education presentation, "Plenary Session: Putting Your Best Case Forward," American Bar Association Annual Meeting, Honolulu, Hawaii, August 7, 2006. I have no notes, recordings or transcripts. Materials are available at <http://www.abanet.org/labor/lel-aba-annual/papers/2006/2006.shtml> (last visited Apr. 21, 2010).

Continuing Legal Education presentation, "Private Employment & Labor Law Issues and Litigation Workshop," Hawaii State Bar Association Seminar, October 26, 2007. I have no notes, recordings or transcripts. Audio is available through the Hawaii Bar Association at <http://www.hsba.org/resources/1/CLE%20Flyers/Pub%20%20list%20December%209,%202009.pdf> (last visited Apr. 21, 2010).

Brown Bag Session entitled "Practical Tips to Make Life Simpler," MAMA Honolulu, February 4, 2008. I have no notes, recordings or transcripts. The event was reported by Nancy Arcayna, "Help me, MAMA!" HONOLULU STAR-BULLETIN, Feb. 25, 2008 (copy supplied).

Continuing Legal Education presentation to judges on electronic discovery and protective orders, Ninth Circuit Conference, Honolulu, Hawaii, July 17, 2008. Copy of outline is supplied.

Presenter, General Session III, Medical, Competency and Transportation Issues, Pretrial and Misdemeanor Sentencing Institute, San Diego, California, November 5, 2008. No notes or transcripts are available. An outline of the program, and notes of planning meetings dated May 12 and July 15, 2008 are supplied.

Moderator, General Session VI, the Risk of Cognitive Error in Decisions about Pretrial Detention and Misdemeanor Sentencing, Pretrial and Misdemeanor Sentencing Institute, San Diego, California, November 7, 2008. No notes or transcripts are available. An outline of the program is supplied.

Presenter, Aina Haina Public Library Health Fair, Honolulu, Hawaii, November 15, 2008. No notes or transcripts are available.

Native American Law Students Association's National Moot Court Competition, William S. Richardson Law School, University of Hawaii Moot Court Team preparation, April 2009. I have no notes, recordings or transcripts. Copy of William S. Richardson Law School Alumni Newsletter, May 1, 2009 is supplied.

Continuing Legal Education presentation on electronic discovery for lawyers at the American Conference Institute, Boston, Massachusetts, June 24, 2009. No notes or transcript are available. An announcement for the event is available at <http://www.crowell.com/documents/Aviation%20Litigation%202009%20-%20Draft%20Agenda%202-18.pdf> (last visited Apr. 21, 2010).

Speech at the Admission to the Bar Ceremony, Honolulu, Hawaii, November 9, 2009. I have no notes, recordings or transcripts.

Remarks about federal court practice and given to pre-litigation skills class, William S. Richardson School of Law, University of Hawaii, October 19, 2009. Copy supplied.

Remarks given at the hearing on applications to become naturalized American citizens, 1999-2009. Copy supplied.

2009 Ninth Circuit Judicial Conference, Opening Program introduction for "Conversation with President Abraham Lincoln and General Ulysses S. Grant", Monterey, California, July 20, 2009. I have no notes, recordings or transcripts. An announcement for the event is available at <http://www.ce9.uscourts.gov/jc2009/promo/speakers.html> (last visited Apr. 21, 2010).

2010 District Conference for the District of Hawaii, Introduction of Dinner Speaker, David Lat on April 8, 2010. Copy supplied.

Moderator, Panel on the District of Hawaii's Re-Entry Court Pilot Program, April 9, 2010. I have no notes, recordings or transcripts. A copy of the Conference Program with a description of the Re-Entry Court program is supplied.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have searched my files and numerous electronic databases in an effort to locate each time I have spoken on the record to a reporter. It has not been my practice to give interviews on a regular basis, but it is possible others exist that I have not been able to locate.

Linda McCrerey, "Win-win Partners: Partnering Is a New Approach to an Old Concept of Problem Solving Outside the Courtroom," HAWAII BUSINESS, Sept. 1996

Peter Wagner, "Ala Moana Balks Over Liberty House Rescue Terms," HONOLULU STAR-BULLETIN, Apr. 2, 1998

Peter Wagner, "Liberty House Has 'Sweet' Deal on Rent," HONOLULU STAR-BULLETIN, Apr. 9, 1998

Linda Dela Cruz, "From the Hui Back Home," MIDWEEK, Oct. 12, 2005

"2006 Olomana Christmas Parade," MIDWEEK, Dec. 27, 2006

Elizabeth Kent, "From the Bench: Judge Leslie Kobayashi," 13 HAWAII B.J. 12 (2009)

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On August 2, 1999, I was appointed as a United States Magistrate Judge for the District of Hawaii. I was re-appointed to the same position in 2007. My term of appointment expires on August 2, 2015. As a judicial officer of the district court, I exercise jurisdiction over matters assigned by statute as well as those delegated by the district judges including misdemeanor criminal and traffic matters, pretrial felony criminal proceedings, and pretrial motions and matters (such as discovery and settlement conferences), as well as jury and non-jury trials (if the parties consent to jurisdiction) in civil cases.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over approximately 25 trials to verdict or judgment (civil jury and non-jury as well as criminal jury and non-jury misdemeanor cases punishable by up to one year of incarceration. In addition, I have presided over approximately 70 non-jury trials in traffic and petty misdemeanor cases.

- i. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%
civil proceedings:	92%
criminal proceedings:	8%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of cases.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Flowers v. Sause Bros., Inc.*, Civ. No. 02-00149 LEK; affirmed on appeal, 167 Fed. Appx. 689 (9th Cir. 2006). Case Description: Plaintiff James Flowers was a seaman who worked for Defendant Sause Brothers, Inc. He was injured while at sea and on a barge operated by Sause Brothers. Mr. Flowers contended that Sause Brothers improperly required him to retrieve the slack from a rope that was used to secure the barge and, as a result, he suffered a personal injury.

I found that Sause Brothers provided Mr. Flowers with a safe work environment and that the barge was seaworthy; specifically that the procedure that Sause Brothers used in retrieving the slack from the rope was a customary and safe procedure to use.

Counsel for Plaintiff was Preston Easley, Jr., Law Firm of Preston Easley, Jr., 2500 Via Cabrillo Marina, Suite 106, San Pedro, CA 90731-7724, Tel 301-832-5315. Counsel for Defendant was Robert Frame, Frame & Nakano, Four Waterfront Plaza, Suite 575, 500 Ala Moana Boulevard, Honolulu, HI 96813, Tel 808-545-3043.

2. *Carter v. University of Hawaii*, Civ. No. 01-00517 LEK. Plaintiff Gregory Lee Carter had applied for a position as an instructor in Hawaiian language with the University of Hawaii. He was not hired for the position and another applicant, who was female and of Hawaiian descent, was hired. Mr. Carter alleged that he was the most qualified candidate, that the university discriminated against him on the basis of his gender and race, and that the university was impermissibly biased on their hiring by giving preference to the candidate who was female and non-Caucasian.

The jury found that the university did not discriminate against Mr. Carter.

Plaintiff was pro se. Counsel for Defendant was Ryan Akamine, University General Counsel's Office, 2444 Dole Street, Bachman Hall 110, Honolulu, HI 96822-2246, Tel 808-956-2211.

3. *Jane Mother v. State of Hawaii*, Civ. No. 00-00446 LEK; affirmed on appeal, 283 Fed. Appx. 514 (9th Cir. 2008). Plaintiff Jane Mother filed an action on behalf of her son who attended public elementary school and had been determined to qualify for special education needs. She claimed that the school failed to follow their obligations under the Americans with Disabilities Act and the Rehabilitation Act, and failed to provide her son

with an appropriate education plan, and retaliated against her for challenging this plan by reporting her to social services authorities and filing a petition that questioned whether the mother was endangering the child's welfare.

I granted Defendant State of Hawaii's Fed. R. Civ. P. 52(d) motion and directed judgment in its favor on the grounds that the school established that it had a legitimate, non-retaliatory reason for reporting the mother to social services authorities and filing the petition.

Counsel for Plaintiff was Carl Varady, American Savings Bank Tower, 1001 Bishop Street, Suite 2870, Honolulu, HI 96813, Tel 808-523-8447. Counsel for Defendant were Cindy S. Inouye, Holly T. Shikada, & Nancy Albano, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-546-1255.

4. *Toro v. United States*, Civ. No. 03-00030 LEK; affirmed on appeal, 284 Fed. Appx. 514 (9th Cir. 2008). This case involved claims by Plaintiff Nidia I. Toro that Army physicians had committed medical malpractice by failing to diagnose traumatic brain injury in a timely manner and failed to obtain her informed consent to surgery. As a result, Plaintiff contended that she was denied proper treatment and care, and developed post-traumatic stress disorder. The Army contended that Ms. Toro's claims were barred by the *Feres* doctrine and the statute of limitations.

I rejected the Army's argument that the *Feres* doctrine and the statute of limitations barred Ms. Toro's entire claims. I found that the *Feres* doctrine did bar her medical negligence claims for organic brain injury during the time that she was injured from activities that were incidental to her military service, both on active duty and in the Army Reserves but did not bar her claims as to injuries that occurred after her discharge from the Army Reserves.

The outcome of the case was that I found that the Army's physicians did not breach the standard of care and that the surgery was done after first obtaining her informed consent.

Counsel for Plaintiff were Joseph J. Mellon, Shugart Thomson & Kilroy, 1050, 17th Street, Suite 2300, Denver, Colorado 80265, Tel 303-572-9300 and William Copulos, Copulos Fisher & Roylo, American Savings Bank Tower, 1001 Bishop Street, Suite 1510, Honolulu, HI 96813, Tel 808-536-0500. Counsel for Defendant was Thomas A. Helper, U.S. Attorney's Office, 300 Ala Moana Blvd; Suite 6100, Honolulu, HI 96850, Tel 808-541-2850.

5. *Leaeno v. Pistor, et al*, Civ. No. 05-00781. Plaintiffs are part of an extended family that lives together in a house. Plaintiff Jerry Leaeno is the son of Plaintiffs Suevale Leaeno and Faauiila Leaeno. Jerry Leaeno was arrested in Suevale and Faauiila's house by police officers. The plaintiffs alleged that their civil rights were violated by the police officers' entry into and search of the house without first obtaining a search warrant.

Based on the jury's factual findings in the special jury verdict forms, I granted summary judgment and judgment as a matter of law in favor of the police officers and found that the police officers did not violate Suevale and Faauiila's civil rights by walking to their entry door without consent, and that Faauiila gave consent to have the police officers enter the house to search for Jerry.

Counsel for Plaintiff were Rory S. Toomey, 1164 Bishop Street, Suite 1501, Honolulu, HI 96813, Tel 808-533-7161 and Scott S. Brower, 1088 Bishop Street, Suite 803, Honolulu, HI 96813, 808-522-0053. Counsel for Defendant were Kate S. Matzger, Kyle K. Chang, & Marie Gavigan, Office of Corporation Counsel, 530 S. King Street, Suite 110, Honolulu, HI 96813, Tel 808-768-5120.

6. *Obrey v. England*, Civ. No. 02-00033 LEK. Plaintiff Ronald Obrey is a project superintendent at the Pearl Harbor Naval Shipyard and had applied for a promotion at work. Mr. Obrey was not promoted and alleged that the Navy discriminated against him on the basis of his race and national origin when another candidate was promoted. In one of his motions in limine, Mr. Obrey sought to admit statistical evidence of the race and national origins of senior managers hired at Naval Shipyards.

I granted the motion and ruled that statistical data is relevant and the methodology used to interpret the data was subject to cross-examination. The outcome of the case is that the jury found that the Navy had not discriminated against Mr. Obrey.

Counsel for Plaintiff were Clayton C. Ikei & Jerry Chang, Office of Clayton Ikei, 1440 Kapiolani Blvd., Suite 1203, Honolulu, HI 96814, Tel 808-533-3777. Counsel for Defendant were Edric Ching & Thomas A. Helper, U.S. Attorney's Office, 300 Ala Moana Blvd., Suite 6100, Honolulu, HI 96850, Tel 808-541-2850.

7. *Kanae v. Hodson*, Civ. No. 02-00399 LEK. Plaintiff and another person had stopped an automobile at gunpoint and forced the elderly couple driving the automobile to take them as passengers. When the automobile was stopped by the police, Plaintiff attempted to exit the automobile and was shot. He sued the police officer for using deadly force in a manner

that consciously disregarded existing law on the use of deadly force and violated Plaintiff's civil rights.

The jury found that Plaintiff's civil rights had been violated.

Counsel for Plaintiff were Eric A. Seitz & Lawrence I. Kawasaki, 20 Mililani Street, Suite 714, Honolulu, HI 96813, Tel 808-533-7434.

Counsel for Defendant were Harry Freitas & Joseph Kamelamela, Office of Corporation Counsel, Hilo Lagoon Centre, 101 Aupuni Street, Suite 325, Hilo, HI 96720, Tel 808-961-8251.

8. *Rivers v. City and County of Honolulu*, Civ. No. 08-00508 LEK. Plaintiff Alan Rivers is a police officer who sued his employer for retaliating against him because he made a report of sexual harassment by a fellow officer.

The jury found that the police department did not retaliate against Mr. Rivers.

Counsel for Plaintiff was Venetia Carpenter Asui, 820 Mililani St., Suite 812, Honolulu, HI 96813, Tel 808-523-6446. Counsel for Defendant was Tracy Fukui, Office of Corporation Counsel, 530 S. King Street, Suite 110, Honolulu, HI 96813, Tel 808-768-5120.

9. *Alhofen v. Monteilh*, Civ. No. 01-00660 LEK; affirmed on appeal, 118 Fed. Appx. 170 (9th Cir. 2004). Plaintiff Michael Alhofen was a suspect in a terroristic threatening case. Defendant Gene Monteilh was a police officer who arrested Mr. Alhofen. After trial testimony was concluded, I found that Officer Monteilh had conducted an objectively reasonable investigation before arresting Mr. Alhofen and therefore was entitled to qualified immunity.

Counsel for Plaintiff was Rory S. Toomey, 1164 Bishop Street, Suite 1501, Honolulu, HI 96813, Tel 808-533-7161. Counsel for Defendant were Carolyn Yu & Marie Maunele Gavigan, Office of Corporation Counsel, 530 S. King Street, Suite 110, Honolulu, HI 96813, Tel 808-768-5120.

10. *Captain Andy's Sailing v. Johns, et al.*; Civ. No. 00-00051 LEK. Plaintiff Captain Andy's Sailing operated a commercial sailing business along with Na Pali Coast on the island of Kauai. The State of Hawaii instituted a fee that it instituted to recover the costs of regulating the Na Pali Coast ocean waters. Plaintiff challenged the constitutional permissibility of the fee. I found that the United States Constitution prohibits states from laying a "duty of tonnage" without the consent of Congress, and that this fee

assessed against Plaintiff's vessel was an impermissible tax in violation of the prohibition against tonnage duties.

Counsel for Plaintiff was Dennis Nile, Park Johnson Park & Niles, P.O. Box 870, Wailuku, HI 96793, Tel 808-242-6644. Counsel for Defendants were Edsel M. Yamada, Josephine L. Chang, Lane T. Ishida, Lynne M. Otaguro, & Michael Q.Y. Lau, Office of the Attorney General, State of Hawaii, Kekuanao`a Building, 465 S. King Street, Room 300, Honolulu, HI 96813, Tel 808-587-2985.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Kamakana v. City of Honolulu*, Civ. No. 00-729, 2002 WL 32255355 (D. Haw. Nov. 25, 2002), *aff'd*, 447 F.3d 1172 (9th Cir. 2006)

Counsel for Intervenor were Jeffrey S. Portnoy, Peter W. Olson, & Elijah Yip, Cades Schutte, 1000 Bishop Street, Suite 1200, Honolulu, HI 96813, Tel 808-521-9221. Counsel for Defendant were Jerold T. Matayoshi & Lois H. Yamaguchi, Fukunaga, Matayoshi, Hershey & Ching, 841 Bishop Street, Suite 1200, Honolulu, HI 96813, Tel 808-533-4300.

2. *Survivor Media, Inc. v. Survivor Productions*, Civ. No. 01-00509 LEK, *aff'd* 406 F.3d 625 (9th Cir. 2005)

Counsel for Plaintiff was Paul Maki, Law Office of Paul Maki, 1100 Alakea Street, 23rd Floor, Honolulu, HI 96813, Tel 808-545-1122. Counsel for Defendant was John Komeiji, Hawaiian Telcom Inc., 1177 Bishop Street, Honolulu, HI 96813, Tel 808-546-7879.

3. *Matsuura v. E.I. du Pont De Nemours and Company*, Civ. No. 96-01180 SOM-LEK (consolidated cases), 2007 WL 30600 (D. Haw. January 4, 2007)

Counsel for Plaintiffs were A. Camden Lewis, Mary G. Lewis, & Thomas A. Pendarvis, Lewis Babcock & Hawkins, 1513 Hampton Street, PO Box 11208, Columbia, SC 29211, Tel 803-771-8000; Carl H. Osaki, 225 Queen Street, Suite 17G, Honolulu, HI 96813, Tel 808-528-4666; David W. Moyer, John C. Hentschel, Peter N. Molligan, Scott J. Allen, & Stephen T. Cox, Cox & Moyer, 1000 Marina Village Parkway, Suite 120, Alameda, CA 94501-6457, Tel 510-522-1200; and Kris A. Laguire, 162 Kinoole Street, Suite 101, Hilo, HI 96720, Tel 808- 961-1082. Counsel for Defendant were Warren Price III, Kenneth Okamoto, Susan C. Wilson, Robert Marks, Terrance Yamamoto, 707 Richards Street, Suite 728,

Honolulu, HI 96813, Tel 808-538-1133; Eileen L. Tilghman, Paul T. Reid, Shook Hardy & Bacon, 201 South Biscayne Blvd., Suite 2400, Miami, FL 33131, Tel 305-358-5171; and Lisa W. Munger, Goodsill Anderson Quinn & Stifel, 1099 Alakea Street, Suite 1800, Honolulu, HI 96813, Tel 808-547-5600.

4. *American Savings Bank v. UBS Painewebber, et al.*, Civ. No. 01-00158 ER-LEK, 210 F.R.D. 721 (D. Haw. 2001)

Counsel for Plaintiff were Paul Alston, David Nakashima, David M. Forman, Alston Hunt Floyd & Ing, American Savings Bank Tower, 1001 Bishop Street, Suite 1800, Honolulu, HI 96813, Tel 808-524-1800; Robert T. Sullwold, Sullwold & Hughes, 235 Montgomery Street, Suite 703, San Francisco, CA 94104, Tel 415-263-1850; and Nancye L. Bethurem, 6312 Valley View Road, Rogers, AR 72758, Tel 479-203-9985. Counsel for Defendant were Mark J. Bennett, Attorney General, State of Hawaii, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-546-1255; William C. McCorrison & Nadine Ando, McCorrison Miller Mukai MacKinnon, Five Waterfront Plaza, Suite 400, 500 Ala Moana Blvd., Honolulu, HI 96813, Tel 808-529-7300; and Roni R. Reed & David M. Jolley, Covington & Burling, One Front Street, San Francisco, CA 94111, Tel 415-591-6000.

5. *Untalan v Kapiolani Medical Center*, Civ. No. 99-00635 LEK, aff'd on appeal, 68 Fed. Appx. 781 (9th Cir. 2003), cert denied, 540 U.S. 1005 (2003)

Counsel for Plaintiff were Ronald Fujiwara, 888 Mililani St., PH 2, Honolulu, HI 96813-2941, Tel 808-526-9887 and Barry W. Marr, Sarah O. Wang, Marr Jones & Wang, 1003 Bishop St., Suite 1500, Honolulu, HI 96813, Tel 808-536-6700.

6. *Christian v. Bissen*, Civ. No. 04-00743 DAE-LEK, 2008 WL 4055817 (D. Haw. Aug. 28, 2008), adopted as modified by, *Christian v. White*, 2008 WL 4483766 (D. Haw. Sept. 30, 2008), rev'd, *Christian v. Frank*, No. 08-17236, – F.3d –, 2010 WL 572735

Counsel for Petitioner were Keith S. Shigetomi, 711 Kapiolani Blvd, Suite 1440, Honolulu, HI 96813, Tel 808-596-0880 and Mark Barrett, PO Box 896, Norman, Oklahoma 73070, Tel 405-366-8329. Counsel for Respondent were Davelynn M. Tengan, Peter A. Hanano, Benjamin M. Acob, Richard K. Minatoya, Dept. of the Prosecuting Attorney, County of Maui, 150 S. High Street, Wailuku, HI 96793, Tel 808-270-7777.

7. *Metzler Contracting Co., LLC v. Stephens*, Civ No. 07-00261 LEK, 2007 WL 1977732 (D. Haw. Jul. 3, 2007)

Counsel for Plaintiff were Jerry M. Hiatt & David Harada-Stone, Law Office of Jerry Hiatt, 204 Parker Square, 65-1279 Kawaihae Road, Kamuela, HI 96743, Tel 808-885-3400. Counsel for Defendant were James McWhinnie, Anna Oshiro, Kenneth Kupchak, Damon Key Leong Kupchak Hastert, 1003 Bishop Street, Suite 1600, Honolulu, HI 96813, Tel 808-533-8031; and Melvin Miyagi, Watanabe & Ing, Suite 2300, 999 Bishop Street, Suite 2300, Honolulu, HI 96813, Tel 808-544-8300.

8. *Grant v. Kamehameha Schools/Bernice Pauahi Bishop Estate*, Civ. No. 08-00555 DAE-LEK, 2009 WL 855831 (D. Haw. Mar. 30, 2009)

Counsel for Plaintiff were Eric Grant, Hicks Thomas LLP, 8001 Folsom Blvd., Suite 100, Sacramento, CA 95826, Tel 916-388-0833; James Joseph Banks, Banks & Watson, 813 Sixth Street, Suite 400, Sacramento, CA 95814, Tel 916-325-100 x203; and Mark M. Murakami & Robert H. Thomas, Damon Key Leong Kupchak Hastert, 1003 Bishop Street, Suite 1600, Honolulu, HI 96813, Tel 808-533-8031. Counsel for Defendant were Charlene S. Shimada, Bingham McCutchen LLP, 3 Embarcadero Center, Suite 1800, San Francisco, CA 94111-4067, Tel 415-393-2000; and Paul Alston, Louise K. Y. Ing, & Clyde J. Wadsworth, Alston Hunt Floyd & Ing, American Savings Bank Tower, 1001 Bishop Street, Suite 1800, Honolulu, HI 96813, Tel 808-524-1800.

9. *Finazzo v. Hawaiian Airlines*, Civ. No. 05-00524 JMS/LEK, 2007 WL 954306 (D. Haw. Mar. 28, 2007), 2007 WL 1080095 (D. Haw. April 6, 2007), 2007 WL 1201694 (D. Haw. April 23, 2007), 2007 WL 1425241 (D. Haw. May 10, 2007), 2007 WL 2106187 (D. Haw. July 13, 2007), 2008 WL 678562 (D. Haw. Mar. 12, 2008)

Counsel for Plaintiff were Michael J. Green & Glen H. Uesugi, 345 Queen Street, 2nd Floor, Honolulu, HI 96813, Tel 808-521-3336; Brandee J. Faria & John F. Perkin, Perkin & Faria, 841 Bishop Street, Suite 2000, Honolulu, HI 96813, Tel 808-523-2300; and David Breskin & John E. Wallace, Short Cressman & Burgess, 999 Third Avenue, Suite 3000, Seattle, WA 98104-4088, Tel 206-682-3333. Counsel for Defendant were Lynne T. Toyofuku & Jan Boivin, Marr Jones & Wang LLP, Pauahi Tower, 1003 Bishop Street, Suite 1500, Honolulu, HI 96813, Tel 808-536-4900.

10. *Chapman v. Krutonog*, Civ. 08-00579 HG-LEK, 2009 WL 4798127 (D. Haw. Dec. 11, 2009)

Counsel for Plaintiff were Philip R. Brown, Effie Ann Steiger, 1003 Bishop Street, Suite 2005, Honolulu, HI 96813, 808-523-5900; and Martin Singer & Paul N. Sorrell, Lavelly & Singer, 2049 Century Park East, Suite

2400, Los Angeles, CA 90067, Tel 310-556-3501. Counsel for Intervenor was Howard Glickstein, 345 Queen Street, 2nd Fl., Honolulu, HI 96813, Tel 808-521-3336. Counsel for Defendant were Evan R. Shirley, 1615 Davies Pacific Center, 841 Bishop Street, Honolulu, HI 96813, Tel 808-528-2875 and Michael A. Okazaki, 370 Kawaihae Street, Apt E, Honolulu, HI 96813, Tel 808-222-1859.

- e. Provide a list of all cases in which certiorari was requested or granted.

Untalan v Kapiolani Medical Center, Civ. No. 99-00635 LEK, affirmed on appeal, 68 Fed. Appx. 781 (9th Cir. 2003), *cert denied*, 540 US 1005 (2003)

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

United States v. Leonti, 326 F.3d 1111 (9th Cir. 2003), involved a 28 U.S.C. § 2255 petition, alleging ineffective assistance of counsel. I denied the motion without an evidentiary hearing. The Ninth Circuit reversed my denial and remanded for an evidentiary hearing as to whether the petitioner's attorney rendered ineffective assistance by delaying his guilty plea and failed to effectively assist him during the time he was cooperating with federal agents. This was a case of first impression for the Ninth Circuit as to whether a viable ineffective assistance of counsel claim can arise out of an attorney's failure to assist a defendant while awaiting sentencing in his efforts to provide cooperation to governmental agents.

In *MacDonald v. Kahikolu Ltd.*, 442 F.3d 1199 (9th Cir. 2006), the Ninth Circuit vacated my decision in a non-jury trial in favor of the defendant, and remanded for a new trial with instructions to determine whether the defendant's failure to comply with Coast Guard regulations played any part in producing the plaintiff's injuries. My amended decision, following the remand, can be found at *MacDonald v. Kahikolu Ltd.*, 2007 WL 4547552 (D. Haw. Dec. 26, 2007).

In *Christian v. Bissen*, Civ. No. 04-00743 DAE-LEK, 2008 WL 4055817 (D. Haw. Aug. 28, 2008), adopted as modified by, *Christian v. White*, 2008 WL 4483766 (D. Haw. Sept. 30, 2008), rev'd, *Christian v. Frank*, No. 08-17236, - F.3d -, 2010 WL 572735, the Ninth Circuit reversed the district judge's adoption of my recommendation to grant the petitioner's habeas petition for a new criminal trial.

As a magistrate judge, there are hundreds of cases in which I have filed a findings and recommendation to the district judge. Although my findings and recommendations are largely affirmed, there are occasions where the findings and

recommendations have been vacated, reversed or modified by the district judge. These rulings are located in the court's electronic filings for each of the cases. I have conducted a Westlaw search to locate any decisions that vacate, reverse or modify my findings and recommendations or other rulings that have been appealed to a district judge. This search resulted in locating 426 documents and I have provided the descriptions and Westlaw citations for those decisions that have vacated, reversed or modified my findings and recommendations, or other rulings that I have made and that have been appealed to a district judge.

1. In *Christian v. Bissen*, 2007 WL 461303 (D. Haw. Feb. 6, 2007), the district judge vacated my order granting discovery to a habeas petitioner and remanded the matter for me to determine whether the claims have been exhausted. The district judge vacated my order because it ruled that I should have first made a finding as to whether the petition involved any unexhausted claims before deciding whether discovery should be permitted.

I subsequently issued an order granting the petitioner's motion for leave to conduct discovery and findings and recommendation regarding petition for habeas corpus which can be found at 2007 WL 1494422 (D. Haw. Feb. 6, 2007). The respondents appealed and the district judge affirmed my decision concerning counts three and seven, vacated the decision regarding count eight, affirmed as to the granting of discovery and confirmed the recommendation that an evidentiary hearing should be held following discovery. This order can be found at 2007 WL 2712923 (D. Haw. Sept. 12, 2007). An evidentiary hearing was held. I issued my findings and recommendation to grant in part and deny in part petition for writ of habeas corpus which is reported at 2008 WL 4055817 (D. Haw. Aug. 29, 2008). The district court adopted the findings and recommendation to allow petitioner to choose between dismissal of the entire petition or amending petition to delete the two unexhausted claims, 2008 WL 4369330 (D. Haw. Sept. 25, 2008), and adopted in part and modified in part my findings and recommendations to grant in part and deny in part the petition for writ of habeas corpus, and to deny the objections to my findings and recommendation and is found at 2008 WL 4483766 (D. Haw. Sept. 30, 2008). The district judge modified my findings and recommendation to deny as to count three to include that the denial was also based on petitioner failure to demonstrate that his counsel's assistance fell below the objective standard of reasonableness or caused prejudice. On appeal, the Ninth Circuit reversed and this decision can be found at *Christian v. Frank*, No. 08-17236, B F.3d B , 2010 WL 572735 (9th Cir. Feb. 19, 2010).

2. In *Kitazato v. Black Diamond Hospitality Investments, LLC*, 2009 WL 3824851 (D. Haw. Nov. 13, 2009), the district judge adopted in part and modified in part my findings and recommendation to grant Plaintiff's motion to remand to state court, and granted in part and denied in part removing Defendants' Objection to my findings and recommendations. Specifically, the district judge modified my findings and recommendation only with respect to the award of attorneys' fees, which he felt was unwarranted.
3. In *Rossetto v. Oaktree Capital Management, LLC*, 664 F.Supp. 1122 (D.Haw. 2009), the district judge adopted, as modified, my findings and recommendation, and stated that he reached the same conclusions as I had, but with a different analysis. The district judge agreed that it was true that Defendants had independent knowledge that Plaintiff was a member of a union, or that a collective bargaining agreement existed governing the payment of service charges but that information was not included in the Complaint which the district judge felt was the only relevant question.
4. In *re Oliver*, 2009 WL 2851830 (D. Haw. Aug. 26 2009), the district judge adopted in part and reject in part my findings and recommendation. Specifically, the district judge rejected my findings and recommendation to the extent that it suggests that Eric Lighter, one of the two petitioners, had joined the other petitioner, Mahealani V. Oliver, in filing the letter that I had construed as a petition for relief, and otherwise adopted my findings and recommendations in all other respects.
5. In *Na Pali Haweo Community Ass'n v. Grande*, 252 FRD 672 (D. Haw. 2008), the district judge partially vacated a prior order in which I had granted Defendants' motion to set aside default but had awarded Plaintiff fees and costs incurred in defending the motion. The district judge remanded the sanctions to me for a hearing on the sanctions issue. In the subsequent appeal of my ruling following that hearing, he granted the appeal and dismissed the sanctions award as being overly harsh.
6. In *United States v. Gaitan-Ayala*, 2008 WL 1752678 (D. Haw. April 17, 2008), the district judge granted an appeal of my order finding that the attorney representing Defendant had no actual or potential conflict. The district judge disqualified the defense attorney from representing Defendant and found that, under the clearly erroneous standard, there was a serious potential conflict of interest.

7. In *International Longshore & Warehouse Union, Local 142 v. C. Brewer*, 2007 WL 2300716 (D. Haw. July 30, 2007), the district judge reversed and remanded my order denying leave to file an amended complaint, and found that my finding that Plaintiffs failed to satisfy the good cause requirement of Fed. R. Civ. P. 16(b) was clearly erroneous and contrary to law, and remanded for consideration as to whether the amendment as proper under Fed. R. Civ. P. 15(a).
8. In *Berry v. Hawaii Exp. Service, Inc.*, 2007 WL 689474 (D.Haw. March 2, 2007), the district judge adopted and modified my findings and recommendation regarding an award of attorney's fees and costs. The district judge modified my recommendation to the extent that she increased the deduction for block billing, lowered the hourly rate for one of the paralegals from \$80 to \$70, and replaced my fifteen percent allocation with a twelve percent allocation of fees incurred in connection with Count IV.
9. In *Elizares v. Parker*, 2007 WL 2048832 (D. Haw. Jul. 12, 2007), the district judge adopted my amended findings and recommendations but modified my findings with certain stylistic changes.
10. In *Matsuura v. E.I. du Pont De Nemours and Co.*, 2006 WL 2734291 (D. Haw. Sept. 22, 2006), the district court affirmed in part and reversed in part regarding numerous motions in limine that I had ruled upon. The district judge reversed my ruling that post-1994 settlements were barred by Rule 408 of the Federal Rules of Civil Procedure, and that evidence of post-1994 settlements and verdicts was barred by Rule 403 of the Federal Rules of Civil Procedure and found that these rulings were contrary to law. The district judge affirmed most of my rulings as to the testimony of J. Anderson Berly, expert witness, except as to my ruling precluding his opinion based on the post-1994 settlements and verdicts which the district judge reversed. The district judge affirmed most of my rulings as to the testimony of James Venture, expert witness, except as to my ruling precluding his opinion about the settlement value of Plaintiffs' cases on the date of the settlements which the district judge reversed. The district judge similarly reversed my rulings as to Richard Constand and Thomas Ueno, both economic expert witnesses.
11. In *Opuna, LLC v. Sabbagh*, 2006 WL 2374750 (Aug. 15, 2006), the district judge vacated my order granting Defendant's motion to disqualify Jerry A. Ruthruff as counsel for Opuna, LLC without reviewing its merits because she remanded the case to state court

and did not want to foreclose consideration by the state court of this issue.

12. In *re Examination of Kayak Kauai*, 2004 WL 1199170 (D. Haw. April 19, 2004), I recommended that the petition to quash the summons should be denied, except as to one paragraph of the summons. The district judge sustained the government's objections to strike the one paragraph as violating the privacy rights of other entities and reversed as to that finding.

In addition, there are motions or decisions concerning discovery or other matters that I have ruled upon and that a party has appealed to the district judge. I estimate the number of these motions that possibly have been appealed to be 50-70, the majority of which resulted in my decisions being sustained. These decisions are, for the most part, not officially reported but would be maintained in the court's electronic filing system. An example would be: in *United States v. Williams*, Cr. No. 06-00079 DAE, I had ruled that certain sections contained in paragraph 8 of a defendant's plea agreement would be sealed until she took the stand to testify at trial. My order denying reconsideration of the motion to seal can be found at 2007 WL 1294519 (D. Haw. Apr. 30, 2007). The defendant appealed this decision, and the district judge affirmed in part and reversed in part; specifically reversing my decision that certain sections would not be sealed, and ordered that the entire paragraph would be sealed until the defendant completed her testimony, and counsel the court had been consulted. A copy of the district court's order is supplied.

13. In *White v. Sabatino*, 526 F.Supp.2d 1134 (D. Haw. 2007), the district judge rejected my findings and recommendation to grant Defendant's petition for determination of good faith settlement. He found that the settlement was governed by admiralty law and thus a determination of good faith settlement pursuant to state law was not necessary or appropriate.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a Magistrate Judge in the District of Hawaii, all pretrial matters in civil cases, except for motions that will disposed of the case (such as motions for summary judgment) or involve injunctive relief (such as preliminary injunction motions) are automatically referred to me. In addition, there are civil cases where the parties have consented to my jurisdiction:

For the consent cases, most of the decisions have been published, either in a published reporter or through an electronic publication.

For those matters that have been referred to me, many but not all have been published through an electronic publication. I estimate that I have issued decisions in matters referred to me in the range of 300-400 orders over the past ten years. All of these orders starting from 2006 are available through the electronic court filing system for the District of Hawaii. I have never designated any of my decisions for publication in any reporter system. Our Court does not issue unpublished decisions, although not every opinion is selected for publication in a published report or through electronic publication.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
 1. *Christian v. Bissen*, Civ. No. 04-00743 DAE-LEK, 2008 WL 4055817 (D. Haw. Aug. 28, 2008), adopted as modified by, *Christian v. White*, 2008 WL 4483766 (D. Haw. Sept. 30, 2008), rev'd, *Christian v. Frank*, No. 08-17236, – F.3d –, 2010 WL 572735.
 2. *Kamakana v. City of Honolulu*, Civ. No. 00-729, 2002 WL 32255355 (D. Haw. Nov. 25, 2002), aff'd, 447 F.3d 1172 (9th Cir. 2006).
 3. *United States v. Williams*, 586 F.Supp.2d 1145 (D. Haw. 2008).
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an “automatic” recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
 - a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I was requested to recuse in the case known as *Na Pali Haweo Community Association v. Grande*, Civ. No. 04-99413. I had conducted several settlement conferences in this matter and the parties had agreed in concept to a settlement. Counsel for defendants took issue with the settlement and apparently came to the conclusion that I could not be impartial regarding the remaining issue, which was the attorney's fees and costs that his clients would pay to plaintiff. He filed a motion to have me recused or disqualified to serve as the magistrate judge in the case. I chose to recuse myself while the motion was pending before the district judge. I did not agree with his assertion but concluded that, because he believed that I was predisposed against his clients on the issue of the attorney's fee award, the litigants would be better served by having another magistrate judge handle the remaining issue in this matter.

In *Thames v. Miller*, Civ. No. 04-0644, the pro se Plaintiff filed a motion to have the district judge remove and disqualify me as the magistrate judge in this case, alleging that I was biased against him. The district judge denied the motion. Plaintiff also alleged that he had sought my recusal and that I had declined to recuse, though I have no recollection of and have found no record of being asked to recuse myself in this case.

In *United States v. Williams*, Cr. No. 06-00079, there was no motion filed seeking to recuse or disqualify. It is my understanding that some of the attorneys, while in a conference with the district judge, asked to replace me as the magistrate judge. Following that conference, the district judge ordered that another magistrate judge be assigned to the case but did not state any reason.

For all other recusals, the District of Hawaii has a case report system that provides regular reports regarding a search for conflict of interest based on names of persons or entities that I list on my conflicts list. I maintain a standing recusal list of individuals and entities consistent with the Code of Conduct for United States Judges. The entities consist of companies in which I own stock, have any ownership interest, or have obtained a mortgage, and close friends and family who are lawyers. For the first five years that I was a judge, I also included lawyers from my former law firm but I no longer do so. I also review the parties and counsel in each case to make sure that I do not have a close relationship to any of the counsel, parties or identified witnesses that may give rise to the appearance of impropriety.

I recused myself from the following cases because of a personal relationship with a party or attorney:

United States v. Morton, Cr. No. 03-00179 (neighbor was defendant)
Dubin v. Real, Civ. No. 03-00058 (fellow judge was defendant)
Focus Entertainment International, Inc. v. Sofos Realty Corp., Civ. No. 99-00626 (lead counsel was associated with my former firm)
Jacob Doe v. Kamehameha Schools, Civ. No. 08-00359 (counsel served with me on parent-teacher-student association)
Knox v. City & County of Honolulu, Civ. No. 04-00260 (friendship with lead counsel)
Johrei Hawaii v. Sekai Kyusei Kyo Izunome, Civ. No. 07-00252 (parties and entities were associated with the church I attend)
Lee v. Chang, Civ. No. 04-00299 (fellow judge was defendant)
Morgan Stanley & Co. v. Choy, Civ. No. 08-00467 (related to key witness)
Peabody ex rel United States v. Gillmor; Civ. No. 07-00148 (district judges were defendants)

I recused myself from the following cases because of financial interest in Safeway, Inc.:

Safeway, Inc. v. Ace American Insurance Co., Civ. No. 09-00528
Galacgac v. Safeway, Inc., Civ. No. 02-00624
Equal Employment Opportunity Commission v. Safeway, Inc., Civ. No. 99-00593

I recused myself from the following cases because all of the judges of our district recused from the case in light of the identity of a party or witness:

Schulze v. Maglasang, Civ. No. 06-00490 (AUSA was a defendant)
Aiu v. Alm, Civ. No. 99-00677 (US Attorney was defendant)
Alibang v. Tesoro Hawaii Corp, Civ. No. 08-00130
Arakaki v. Conseco Life Insurance Co., Civ. No. 05-00026

I recused myself from the following cases because I represented a party to the case (or a related party) when I was in private practice:

U.S. Automobile Assoc. v. Sears, Roebuck and Co., Civ. No. 99-00868
Dale Requarth v. Hawaii Health Systems Corp., Civ. No. 02-00392
Lindsey v. Hee, Civ. No. 00-00138
Cockett v. Ray, Civ. No. 99-00873
Jarog v. The Harford Insurance Co., Civ. No. 99-00632
Federal Election Commission v. Friends for Fasi, Civ. No. 00-00024
Aarona v. Unity House, Inc., Civ. No. 05-00197

American Promotional Events, Inc. v. Asia Pacific Trading Group, Inc.,
Civ. No. 02-00018
Kazi Restaurants of Hawaii, Inc. v. Royal Products, Inc., Civ. No. 05-
00053
Lino v. American Home Products Corp., Civ. No. 99-00833
United States, ex rel. James Lockyer, M.D. v. Hawaii Pacific Health, Civ.
No. 04-00596
Wagner v. American Home Products Corp, Civ. No. 99-00473

I recused myself from the following cases because an attorney on the case had been appointed to serve on the committee evaluating me for re-appointment as a magistrate judge:

Silva v. Allstate Ins. Co., Civ. No. 06-00617
UMG Recordings, Inc. v. Armstrong, Civ. No. 07-00017
Sony BMG Music Entertainment v. Chenoweth., Civ. No. 07-00051
Reece v. Island Treasurer Art Gallery, Civ. No. 06-00489
Reece v. Iervilino, Civ. No. 05-00638
Patricia N. v. Lemahieu, Civ. No. 00-00252
Kowalski v. Asiana Management Group, Inc., Civ. No. 04-00080
Tokashiki v. Freitas, Civ. No. 03-00065
Aloha Airlines, Inc. v. Mesa Air Group, Inc., Civ. No. 07-00007
Virgin Records America, Inc. v. Damo, Civ. No. 07-00018
Wendell E. v. Department of Education, State of Hawaii,
Civ. No. 07-00103

I had particular reasons for recusal in the following cases:

General Star National Insurance Co. v. Bordner, Civ. No. 06-00091. I recused myself because I could be construed as having a financial interest in the outcome of the case.

In the Matter of the Complaint of the University of Hawaii, etc., Civ. No. 05-00584. I recused myself from this case because one of the party's key expert witness was a person whom I had defended a lawsuit against on behalf of a client and subsequently sued to recover costs.

Munguia v. Grelyn of Maui, Civ. No. 09-00058. I recused from this case because the defendant was represented by an attorney who was a member of the Hawaii Federal Judicial Selection Commission and I had just submitted my application to that commission.

Reliance Insurance v. The Doctors Co., Civ. No. 02-00159. I recused myself because the defendant was an insurance company for most of the physicians that I represented in private practice and lead counsel was an attorney with whom I had worked on cases representing these clients.

United States v. Curtis Takemoto-Gentile; MC No. 05-00096 DAE-LEK.
I recused myself from this case because one of the respondent's lead counsel was an attorney that I had defended in private practice.

United States v. Trenholm, Civ. No. 05-00131 DAE-LEK. I recused myself from this case because one of the respondent's lead counsel was an attorney that I had defended in private practice.

I have been unable to recall or identify the reasons for my recusal in the following cases:

Hanakahi v. United States, Civ. No. 00-00807

United States v. Brown, Cr. No. 99-00296

Cromack v. Hawaii Management Alliance Association, Civ. No. 99-00893

15. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office. I have held no public office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not been a member of or held any office in a political party or election committee. I have not held a paid position or played a role in a political campaign.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge after graduating from law school.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1983-1984

Office of the Prosecuting Attorney, City and County of Honolulu
1164 Bishop Street
Honolulu, Hawaii 96813
Deputy Prosecuting Attorney

1984-1999

Fujiyama, Duffy & Fujiyama
2700 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Partner (1991-1999)
Associate (1984-1991)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have served as a volunteer arbitrator for the Court-Annexed Arbitration Program in state court. All personal injury cases were required to be arbitrated in this non-binding program. I do not recall the names of these cases and estimate that I probably served as an arbitrator in about 5-7 cases. In addition, I served as an arbitrator in less than 10 cases involving uninsured motorists and/or under-insured motorists' benefits but I cannot recall the names of these cases. My former law firm was disbanded in approximately 2001, and I am unable to access these records.

As a magistrate judge, I handle settlement conferences in almost every civil case referred to me. Since my appointment in August 1999, I have probably held hundreds of settlement conferences. Below is a short list of some of the cases in which I have served as settlement judge that resulted in settlement in 2009:

1. *Meztler Contracting Co. LLC v. Stephens*, Civ. No. 07-00261 LEK. This case involved claims for defamation arising out of the construction of a luxury home. Several settlement conferences were held with parties who

were extremely contentious. A settlement was reached on October 23, 2009.

2. *Blake, et al. v. City & County of Honolulu*; Civ. No. 08-00281 LEK. This case involved a class action alleging that Section 8 housing tenants were overcharged for utilities and the case settled on November 30, 2009.

3. *Kalaka Nui, Inc. v. Actus Lend Lease LLC*, Civ. No. 08-00308 SOM-LEK. This case involved contract and other claims arising out of a federal construction contract. The case settled on May 15, 2009 following a settlement conference.

4. *Epifanio Pacquing v. LG Electronics Inc.*, Civ. No. 08-00261 DAE-LEK. This case involved product liability claims for damages incurred as the result of a fire allegedly caused by an air conditioner manufactured by LG Electronics. Settlement was placed on the record on September 29, 2009 after several settlement conferences had been previously held.

5. *Dan v. Albar Precious Metal Refining Inc., et al.*, Civ. No. 08-00150 JMS-LEK. This case involved trademark infringement claims. Settlement was reached on September 21, 2009 following settlement conferences.

6. *Yuting Hu v. University of Hawaii*, Civ. No. 07-00410 SPK-LEK. This case involved claims of sexual harassment and abuse, and discrimination in the workplace. It was extremely contentious. Settlement was reached on October 22, 2009 after many settlement conferences.

7. *Narvaes v. EMC Mortgage Corp.*, Civ. No. 07-00621 DAE-KSC. This case involved claims of unfair trade practices and violation of federal truth in lending statutes. The parties reached a settlement on September 9, 2009 after several settlement conferences.

8. *AAA Hawaii LLC v. Hawaii Insurance Consultants, Inc.*, Civ. No. 08-00299 DAE-LEK. This case involved a contract dispute regarding compensation paid to AAA when their members purchased insurance from the defendant. This case settled following a settlement conference held on February 4, 2009.

9. *Kamaole Point Development v. County of Maui*, Civ. No. 07-00447 DAE-LEK. This case involved a development company that sued the County of Maui over the rights to develop real property that it owned. The County had promulgated an ordinance that required developers to provide residential workforce housing units and the developer alleged that the ordinance was an impermissible taking of its property. Settlement was reached on November 23, 2009 after two settlement conferences.

10. *Ritchie v. Wahiawa General Hospital*, Civ. No. 08-00133 JMS-LEK. This case involved negligence claims against a hospital for disposing of the remains of the plaintiffs' baby without their permission. Settlement was reached on March 16, 2009 following two settlement conferences.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I have served as a magistrate judge for the District of Hawaii since August 1999. From 1983 to 1984, I was a deputy prosecuting attorney for the City and County of Honolulu in the State of Hawaii. From about August to October 1983, I did research and writing for the appellate division. When I was admitted to the Hawaii state bar in October 1983, I was given a caseload of traffic and misdemeanor cases to prosecute. In March 1984, I was promoted to felony prosecutions. In 1984, I joined the law firm of Fujiyama, Duffy & Fujiyama where my practice focused entirely on litigation. From 1984 to 1986, I primarily defended individuals and entities in personal injury lawsuits. From 1986, my practice largely involved product liability defense, professional liability defense, and commercial and complex litigation.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My clients in private practice from 1984 to 1986 typically were persons or entities insured by automobile liability, homeowner liability or commercial liability insurers. From 1986 to 1999, my clients included medical device manufacturers, pharmaceutical companies, physicians, hospitals, lawyers, governmental agencies, and the owner of Ala Moana Center.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My entire practice has been in litigation. When I was a deputy prosecuting attorney, I appeared in court daily. While in private practice, I appeared in court often and would average several court appearances per month. I was involved in a 6-month trial on the island of Maui in 1990, and in a 6-month trial in Honolulu in 1991 and appeared in court almost daily during the entirety of these trials.

i. Indicate the percentage of your practice in:

1. federal courts: 10%
2. state courts of record: 90%
3. other courts:
4. administrative agencies:

ii. Indicate the percentage of your practice in:

1. civil proceedings: 99%
2. criminal proceedings: 1%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried to verdict seventeen cases, 13 as sole counsel, 1 as lead counsel, and 3 as associate counsel.

i. What percentage of these trials were:

1. jury: 82%
2. non-jury: 18%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Office of Hawaiian Affairs v. State of Hawaii*, 96 Haw. 388, 31 P.3d 901 (Haw. 2001). The Office of Hawaiian Affairs sued the State of Hawaii to

recover its share of revenues that the State collected from ceded lands, including land upon which part of the Honolulu International Airport is located. Summary judgment had been granted in favor of the Office of Hawaiian Affairs on October 24, 1996 and was reversed and dismissed by the Hawaii Supreme Court on the basis that the state statute providing for payment of the airport revenues was precluded by federal statute.

I represented the Office of Hawaiian Affairs from approximately 1995 to 1999, when I accepted the appointment as a Magistrate Judge. I headed the team that drafted the motions for summary judgment, and was in charge of conducting discovery. My partner and I argued the motions for summary judgment. On the appeal, I assisted in preparing my partner for oral argument and attended the hearing.

The case was litigated in the First Circuit Court of Hawaii and before Judge Daniel Heely (who granted summary judgment), and on appeal before the Hawaii Supreme Court. At the time of the oral argument, the justices were Chief Justice Ronald Moon, Associate Justice Robert Klein, Associate Justice Stephen Levinson, Associate Justice Paula Nakayama and Associate Justice Mario Ramil.

Counsel for Defendant, Charlene Aina, Dorothy Sellers, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-546-1255. Co-Counsel were Archie T. Ikehara & Ward F.N. Fujimoto, Matsui & Chung, Pacific Guardian Ctr., Mauka Twr., 737 Bishop Street, Suite 1400, Honolulu, HI 96813, Tel 808-536-3711; and James E. Duffy, Supreme Court of Hawaii, Associate Justice, 417 S. King Street, Honolulu, HI 96813, Tel 808-539-4715.

2. *Oliver Pacific Corp. v. Daiei Hawaii Investment, Inc.*, Civ. No. 91-0-003488. I represented Daiei Hawaii Investment, Inc. which was, at the time, a joint owner of the Ala Moana Center, the largest shopping center in Honolulu. A former tenant alleged that Daiei and others were liable for misrepresentation and tortuous interference with her business.

I was the trial counsel for Daiei in a non-jury trial in 1993. The trial resulted in a verdict in favor of the defendants.

The case was litigated in the First Circuit Court of Hawaii and before Judge Karen Blondin.

Counsel for Plaintiff was David Schutter (deceased) & Gary Leavitt (no known address). Counsel for Co-Defendant were Gary Grimmer, Carlsmith Ball, American Savings Bank Tower, 1001 Bishop Street, Suite 2200, Honolulu, HI 96813, Tel 808-523-2500.

3. *Dutro v. Sterling Drug, Inc.*, Civ. No. 85-0-003016. Mrs. Dutro experienced cardiac arrest while giving birth to her son and after she was administered a local anesthetic agent known as Marcaine. Mrs. Dutro sued Sterling Drug and its affiliates for product liability as well as Maui Memorial Hospital and Blair McIver, M.D. for medical negligence.

I represented Sterling Drug, Inc., the manufacturer of Marcaine, from 1986-1988. I conducted the majority of the discovery and preparation of expert witnesses. Discovery was extensive.

This case was litigated in the Second Circuit Court of Hawaii and before Judge Edwin Honda. A settlement was reached and the case was dismissed.

Counsel for Plaintiff was Jan Weinberg, 1164 Bishop Street, Suite 1200, Honolulu, HI 96813, Tel 808-523-9477. Counsel for Co-Defendant Dr. McIver was Jeffery Sia, Ayabe Chong Nishimoto Sia & Nakamura, Pauahi Tower, Suite 2500, 1001 Bishop Street, Honolulu, HI 96813, Tel 808-537-6119. Counsel for Co-Defendant Maui Memorial Hospital was Phillip Li, Li & Tsukazaki, 753 Bishop St., Suite 1770, Honolulu, HI 96813, Tel 808-524-4888.

4. *Tosei Shoji Co., Ltd v. Stewart Title Guaranty Co.*, Civ. 94-00663 HG-FIY. From 1994-1996, I represented Gary Shigemura, an attorney, who had informally assisted Plaintiff Tosei Shoji Co. in the purchase of real property in Hawaii. After the purchase, Tosei was less than satisfied with the property and problems were discovered regarding information provided by the title company. I drafted a motion for summary judgment, conducted all discovery, reviewed documents for privilege and prepared them for production, and participated in settlement discussions with the parties and the magistrate judge.

This case was litigated in federal court in the District of Hawaii and before District Judge Helen Gillmor. A settlement was reached and the case was dismissed.

Counsel for Plaintiff was Susan Ichinose, P.O. Box 24749, Honolulu, HI 96813, Tel 808-377-8800. Counsel for Co-Defendant Stewart Title Company was Neil F. Hulbert, Alston Hunt Floyd & Ing, ASB Tower, 1001 Bishop St., Suite 1800, Honolulu, HI 96813, Tel 808-524-1800. Counsel for Co-Defendant Island Title Company was James T. Wong, 810 Richards St., Suite 748, Honolulu, HI 96813, Tel 808-526-9664. Counsel for Third-Party ESPO Hawaii was Elizabeth Kane, P.O. Box 27145, Honolulu, HI 96827, Tel 808-525-6301.

5. *Naftel v. Arthur Anderson Co.*, Civ. No. 87-0-001075. This case involved claims of negligence and fraud against individuals employed by Arthur Anderson Co. Plaintiff Naftel had consulted with partners in the Honolulu office for Arthur Anderson Co. regarding his plans to start a commercial fishing operation for shrimp in the Northwest Pacific Islands. This venture failed badly.

I was part of the trial team for Arthur Anderson Co., and represented it from 1990-1991. In pretrial, I conducted discovery, including numerous depositions, pretrial motions practice and witness preparation. At trial, I assisted in jury selection, and preparing and examining witnesses, including cross-examination.

This case was litigated in the First Circuit Court of Hawaii and went to trial for six months before Judge Leland Spencer, and resulted in a jury verdict in favor of Arthur Anderson Co.

Counsel for Plaintiff were George W. Ashford, 1050 Auloa Road, Kailua, HI 96734, Tel 808-528-0444 and Jacqueline Earle, Goodsill Anderson Quinn & Stifel, 1099 Alakea St., Suite 1800, Honolulu, HI 96813, Tel 808-547-5600. Co-Counsel were Glenn K. Sato, 888 Mililani St., PH 1, Honolulu, HI 96813, Tel 808-537-1625 and Ross N. Taosaka, Hughes & LaFountaine, Pauahi Tower, Suite 2525, 1001 Bishop Street, Honolulu, HI 96813, 808-526-9744.

6. *Taylor v. Hamilton*, Civ. No 94-0-003545. From 1995-1999, I represented Defendant Hamilton, a family law attorney, who was sued by a former client for legal malpractice. Plaintiff Taylor had been represented by Mr. Hamilton in her divorce proceeding and trial. The marital estate included a substantial land holding of undeveloped land on Kauai, as well as significant liquid assets. Property division was highly contested in the divorce trial. A few years after the trial and property division decision, Mrs. Taylor became dissatisfied with the outcome and sued Mr. Hamilton.

The case was initially filed in the First Circuit Court of Hawaii. I believe the judge assigned to the case was Judge Gail Nakatani. Extensive discovery was undertaken. A jury trial was scheduled in this case but the parties agreed to submit the matter to a three-panel arbitration. The arbitrators were Edward King, a part-time Magistrate Judge, Charles Kleintop, a family law attorney in the State of Hawaii, and a third person who, I believe, was an attorney or retired judge from the West Coast and whose name I cannot now recall. The arbitration took place in 1999 and in Honolulu. The proceeding took several days and included extensive testimony by expert witnesses. It resulted in a decision in favor of Mr. Hamilton. The state court action was subsequently dismissed on October 18, 1999.

Counsel for Plaintiff was Charles J. Ferrera, 735 Bishop Street, Suite 422, Honolulu, HI 96813, Tel 808-599-5220.

7. *Otis Elevator Co. v. Furusho*, Civ. No. 91-00526 DAE-BMK. From 1992 to 1993, I represented Defendant Furusho and his law firm, Hisaka Furusho & Ayabe, who were sued by their former client, Otis Elevator Co., for legal malpractice. Mr. Furusho had represented Otis Elevator Co. in a state court lawsuit in which a child had been injured while riding an escalator. During the state court action, Otis Elevator Co. was significantly sanctioned for failing to produce discovery. Mr. Furusho was replaced as trial counsel and the lawsuit was settled. Otis Elevator then sued him and his law firm.

This action was filed in the federal court of the District of Hawaii, and the judges assigned to this case were District Judge David A. Ezra and Magistrate Judge Barry M. Kurren.

I handled the discovery, motions practice and settlement negotiations in this case. A settlement was reached and the case was dismissed on February 25, 1993.

Counsel for Plaintiff were Sharon A. Merkle & William S. Hunt, Alston Hunt Floyd & Ing, ASB Tower, 1001 Bishop St., Suite 1800, Honolulu, HI 96813, Tel 808-524-1800. Co-Counsel were Ward F.N. Fujimoto, Matsui & Chung, Pacific Guardian Ctr., Mauka Tower, 737 Bishop Street Suite 1400, Honolulu, HI 96813, Tel 808-536-3711 and James E. Duffy, Supreme Court of Hawaii, Associate Justice, 417 S. King Street, Honolulu, HI 96813, Tel 808-539-4715.

8. *State of Hawaii v. De Morales*, Cr. No. 88-0-221. From 1988-1989, I defended Francis De Morales and other police officers with the Hawaii County Police Department on gambling charges brought against them allegedly in retaliation by Police Chief Guy Paul. This action was filed in the Third Circuit Court of Hawaii, and the presiding judge was Judge Shunichi Kimura.

I conducted discovery and filed several substantive motions. Ultimately, the parties reached an agreement and the State withdrew the charges *nolle prosequi*.

Counsel for Plaintiff was Ricky Dammerville, Office of the Prosecuting Attorney, 655 Kilauea Ave., Hilo, HI 96720, Tel 808-934-3403.

9. *Pedrina v. Han Kuk Chun*, Civ. No. 89-00439 ACK. This multiple party action arose out of the sale and development of agricultural land.

Numerous claims were alleged, including civil RICO claims. From 1994 to 1999, I represented Frank F. Fasi, former mayor of the City and County of Honolulu, in this action. The allegations against him generally involved claims that his misuse of public office resulted in zoning changes which caused the purchaser of the agricultural lands in issue to be able to develop the property for commercial use and to evict farmers from property that they had leased for years.

I conducted discovery and very extensive motions practice. Summary judgment was entered in favor of Mr. Fasi and he was dismissed from the case.

Counsel for Plaintiff was Anthony P. Locricchio, 908 Mauanwili Circle, Kailua, HI 96734, Tel 808-261-7733. Counsel for Co-Defendant was Mei Nakamoto, Davies Pacific Center, 841 Bishop Street, Suite 1020, Honolulu, HI 96813, Tel 808-695-6254. My co-counsel were Archie T. Ikehara & Ward F.N. Fujimoto, Matsui & Chung, Pacific Guardian Ctr., Mauka Tower, Suite 1400, 737 Bishop Street, Honolulu, HI 96813, Tel 808-536-3711.

10. *Tom v. Wyeth Laboratories*, Civ. No. 1CC86-0-001634. I represented Wyeth Laboratories from 1986-1989 in a lawsuit alleging claims of product liability and medical negligence. Wyeth manufactures vaccines including the Diphtheria Pertussis and Tetanus vaccine (commonly referred to as ADTP) that is recommended to be given to infants and children. Plaintiff Tom was given the DTP vaccine series when he was an infant by his pediatrician, Dr. Ho. His parents contended that his seizure disorder was caused by this vaccine.

This case was filed in the First Circuit Court of Hawaii, and the presiding judge was Judge Robert Klein.

I conducted discovery and motions practice in this case which ultimately was dismissed without prejudice as to Manchester's claims which were submitted by stipulation to the national vaccine claims program, and with prejudice as to his parents' claims.

Counsel for Plaintiffs were David Schutter (deceased) & Priscilla Mills, Northern Arizona University, P.O. Box 4083, Flagstaff, AZ 86011, Tel 928-523-7855. Co-counsel was Archie T. Ikehara, Matsui & Chung, Pacific Guardian Ctr., Mauka Tower, 737 Bishop Street, Suite 1400, Honolulu, HI 96813, Tel 808-536-3711. Counsel for Co-Defendants were Brian Aburano, Office of the Attorney General, 425 Queen Street, Honolulu, HI 96813, Tel 808-586-0618 and Edmund Burke, Burke McPheeters Bordner & Estes, Pacific Guardian Center, Mauka Tower, 737 Bishop Street, Suite 3100, Honolulu, HI 96813, Tel 808-523-9833.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In the latter part of my private practice, I defended lawyers, physicians, nurses and medical personnel in matters involving malpractice claims. These were sensitive cases in that the professionals who had been sued were typically devastated and often outraged by the claims. I was required to develop counseling and evaluation skills in addition to litigating these cases. One particular lawsuit involved a partner in a law firm who was sued by a former associate for sexual harassment. I was ultimately able to resolve the case relatively swiftly and discretely but only after spending considerable time with the attorney and his partners. Representing people in the medical field was quite interesting and challenging as well. Most physicians were distrustful of lawyers and highly suspicious of the legal system. Any settlement usually required the physician's consent and most often resulted in the doctor being adversely reported in the national physician reporting system. Getting these clients to work cooperatively in a positive manner often required a lot of communication and detailed medical knowledge about the particular case.

I have not performed lobbying activities on behalf of any client.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught Pretrial Litigation in 2001 and 2002 as an adjunct professor at the William S. Richardson School of Law, University of Hawaii. This course covered pretrial matters such as discovery and motions practice. Syllabus supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

As a Magistrate Judge, I maintain a conflict of interest system through the district court and address any potential conflicts in this manner. I do not anticipate any special or additional conflicts in the event I am confirmed and appointed as a United States District Judge.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would continue to use the automatic recusal system of our court. I would examine lists of counsel, parties and potential witnesses in all cases assigned to me to ensure that my involvement would not raise an appearance of impropriety. At all times, I would continue to follow the recusal statutes and the Code of Conduct for United States Judges.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

When I was in private practice, I accepted pro bono cases involving uncontested divorces from Volunteer Legal Services Hawaii (VLASH) and would work monthly doing consultations on a Saturday at its downtown walk-in clinic as well as follow up. The amount of time involved was approximately 25-30 hours a year. I also served on the VLASH Board of Directors.

Since I have been appointed as a magistrate judge, I can no longer practice law and cannot take pro bono cases. Instead, I taught a pre-trial litigation class at the law school for two years, and I volunteer my time to the Hawaii Bar Association, and to continuing education matters. I also take on college and law students as externs in my chambers, speak to students at the law school, and serve on district court and Ninth Circuit committees. I estimate these matters taking up about 50-60 hours a year.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On September 2, 2009, I submitted an application to Lawrence Okinaga, Chair of the Hawaii Federal Judicial Selection Commission. I was interviewed in October by the members of this commission in Honolulu, Hawaii. On January 5, 2010, I was interviewed by Senator Daniel K. Inouye and Senator Daniel K. Akaka in Senator Inouye's office in Honolulu, Hawaii.

On January 15, 2010, I was contacted by staff from the Department of Justice regarding the preparation of nomination paperwork. I have had subsequent conversations with Department of Justice staff regarding that paperwork and the nomination process. On February 25, 2010, I interviewed in Washington, DC, with attorneys from the White House Counsel's Office and the Department of Justice. The President submitted my nomination to the Senate on April 21, 2010.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Leslie E. Kobayashi, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 19, 2010
(DATE)

Leslie E. Kobayashi
(NAME)



Shirley Y. Kinoshita
(NOTARY) Shirley Y. Kinoshita



NOTARY PUBLIC CERTIFICATION
Name: Shirley Y. Kinoshita 1st Circuit
Doc. Description: United States Senate
Committee on the Judiciary Questionnaire
For Judicial Nominations
No. of Pages: 64 Date of Doc. 4/11/10
Shirley Y. Kinoshita 4/19/2010
Notary Signature Date

SHIRLEY Y. KINOSHITA, NOTARY PUBLIC
STATE OF HAWAII
My Commission Expires: 7/9/2010