

AMERICAN JUDICATURE SOCIETY

NEWSLETTER - OCTOBER 2020

WELCOME

The American Judicature Society (“AJS”) is an independent, non-partisan membership organization working nationally to protect the integrity of the American justice system. Its mission is to secure and promote an independent and qualified judiciary and a fair system of justice.

The AJS has a diverse and broadly based membership, which includes judges, lawyers, and members of the public, and continues its work primarily on judicial diversity, judicial ethics, judicial selection, access to justice, criminal justice reform, and the jury system.

ANNUAL PROGRAM

by Dr. Sylvia Yuen



The impact of COVID-19 on schools, businesses, and the health system has been extensively reported in the media and discussed among community members. However, the effects of the pandemic on the judiciary have received scant attention even as it will result in systemic changes, which will alter the operations and proceedings of the courts. The important and consequential issues of COVID-19 which relate to civil liberties and judicial administration will be the focus of the American Judicature Society’s annual program on December 10, 2020 from 12 noon to 1:30 pm (HST).

Nationally prominent and widely respected lawyer Neal Katyal will present the keynote address.



Currently a partner at Hogan Lovells and the Paul and Patricia Saunders Professor of National Security Law at the Georgetown University Law Center, Mr. Katyal formerly served as the Acting Solicitor General of the United States under President Barack Obama. He was named by American Lawyer magazine as The Litigator of the Year for 2016 and 2017. A panel presentation will follow Mr. Katyal’s address with Mark Recktenwald, Chief Justice of the Hawaii Supreme Court; Camille Nelson, newly appointed Dean of the William S. Richardson School of Law, University of Hawaii; and Mark Bennett, Judge of the United States Court of Appeals for the Ninth Circuit, who will serve as moderator.

The annual program will be conducted virtually via Zoom and will be offered free of charge to all interested individuals in Hawaii and beyond. Registration is required, so be on the lookout for the program announcement and registration form, or visit the AJS website in early November to register. Attendees will be rewarded with an informative and interesting program presented by notable speakers.

ESTABLISHMENT OF A COMMISSION FOR THE PROMOTION AND ADVANCEMENT OF CIVIC EDUCATION

by Judge Lisa M. Ginoza and Ted N. Pettit

The Committee for Judicial Administration (“Committee”)¹ is one of several standing committees for the Hawai’i chapter of the American Judicature Society. This article describes the recent history and current status of an ongoing project of the Committee to establish a Commission for the Promotion and Advancement of Civic Education (the “PACE Commission”).

Background

In 2018, one of the original goals for the Committee set out by the Board of Directors of the AJS was to revisit a report by an AJS Special Committee On Public Knowledge, Understanding and Confidence In The Courts (“AJS Special Committee”), issued over ten years ago, that addressed civic education in Hawai’i. The AJS Special Committee was created after a speech in 2006 by former Chief Justice Ronald T.Y. Moon, in which he addressed the need for civic education in our community. He emphasized the legal community’s responsibility to improve the public’s knowledge and understanding of how government works, including the justice system, and to encourage the public’s participation. One of the key recommendations in the AJS Special Committee’s report was to create a Hawai’i Institute for Civics Education (“HICE”) and to establish funding to hire a director of the HICE. Unfortunately, there were funding challenges, and the HICE was not created. As a side note, the report generated sufficient interest to create the Civic Education Committee of the Hawai’i State Bar Association (“HSBA”). The Civic Education Committee continues to be an important part of the Bar’s multiple organizations and activities promoting the rights, roles and responsibilities of citizens in a democracy, although funding can be a challenge.

Given this history and in view of the potential lack of funding, the Committee proposed that the PACE Commission be created by Hawai’i Supreme Court rule.

Creation of the PACE Commission

In the past two years, as the Committee took up the issue of civic education, the Committee members recognized that 2020 would be a year of widespread national, state and local political campaigns and elections. The Committee focused on the importance of promoting civic education in our various communities, organizations and groups. Members of the Committee met with individuals and groups already involved with civic education projects in Hawai’i, such as the Judiciary History Center, the HSBA’s Civic Education Committee, and individuals at the Department of Education and at independent, private schools. The Committee also reviewed how other states were creating civic education advisory boards or committees. The Committee concluded that the best option for creating a long-lasting civic education structure, coordinating the efforts of those already engaged in civic education in Hawai’i, and building an even broader and more focused statewide effort, is to create a PACE Commission by way of a new rule of the Rules of the Supreme Court. The success of the Supreme Court’s Access to Justice Commission and Rule 21 creating that commission, served as an inspiration and template for a proposed new Rule 23, Commission to Promote and Advance Civic Education.

The Committee's Proposal to the Hawai'i Supreme Court

By letter dated June 15, 2020, the proposed Rule 23 was submitted by the Committee to Chief Justice Mark Recktenwald for consideration by the Hawai'i Supreme Court. Among other things, the proposed Rule 23 provides for the following:

- (a) The creation of the PACE Commission.
- (b) The purpose of the PACE Commission is to promote and advance civic education for students and citizens of Hawai'i by:
 - providing leadership, oversight and initiatives in the community and in the schools;
 - providing educational resources for the public through collaboration with the media, statewide conferences, recognition awards and other means;
 - maximizing the efficient use of available resources for civic education;
 - encouraging attorneys, judges, government officials and others to take leadership roles in expanding civic education in Hawai'i;
 - reducing barriers to civic education by developing resources to overcome language, cultural and other barriers; and
 - increasing pro bono contributions by Hawai'i attorneys to civic education.

(c) The PACE Commission will consist of no more than 14 members. In general, the members of the Commission are to be appointed by authorities that appoint individuals to serve on the Commission for three-year terms, with no more than three consecutive terms. The proposed rule calls for community-wide representation and members who are residents of different islands in Hawai'i and who reflect the diverse ethnic, ancestral, economic, urban and rural communities in the Hawaiian Islands.

Under the proposed rule, twelve members will be appointed by the following appointing authorities: the Chief Justice, the Governor, the Senate President, the Speaker of the House, the Office of Hawaiian Affairs, the Superintendent of the Department of Education, the Chief Judge of the U.S. District Court for the District of Hawai'i, the President of the University of Hawai'i, the Dean of William S. Richardson School of Law, the HSBA, and the Hawai'i Association of Independent Schools. Two additional members can be appointed by those members of the Commission already appointed by the appointing authorities.

(d) The Chief Justice of the Supreme Court will designate from the members of the PACE Commission a chair and vice chair as officers of the Commission.

The proposed Rule 23 also provides for administrative procedures to implement the work of the PACE Commission.

During 2019 and 2020 the co-chairs and other members of the Committee have either met in person or had telephone conversations with the current proposed appointing authorities listed out below, or with their respective representative(s). The proposed Rule 23 was discussed with them, and the Committee sought their input and requested their participation in a new PACE Commission, if it is created. These initial meetings resulted in consistently favorable, and often enthusiastic, responses from all of the proposed appointing authorities or their representatives. In short, the Committee believes that if a new Supreme Court rule is adopted creating a PACE Commission, it will have the support of the anticipated appointing authorities.

The Committee reached out to the following proposed appointing authorities or their representatives.

APPOINTING AUTHORITY	CURRENT REPRESENTATIVE
HAWAI'I SUPREME COURT	The Honorable Chief Justice Mark E. Recktenwald
GOVERNOR OF THE STATE OF HAWAI'I	The Honorable David Ige
PRESIDENT OF THE SENATE	The Honorable Ronald D. Kouchi
SPEAKER OF THE HOUSE	The Honorable Scott K. Saiki
SUPERINTENDENT, BOARD OF EDUCATION	Dr. Christina M. Kishimoto
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAI'I	The Honorable Chief Judge J. Michael Seabright
UNIVERSITY OF HAWAI'I	Dr. David Lassner, President
WILLIAM S. RICHARDSON SCHOOL OF LAW	Dean Camille Nelson / Dean Avi Soifer
HAWAI'I STATE BAR ASSOCIATION	Patricia Mau-Shimizu, Esq., Executive Director P. Gregory Frey, Esq. – Current President
HAWAI'I ASSOCIATION OF INDEPENDENT SCHOOLS	Philip J. Bossert, Ph.D., Executive Director
OFFICE OF HAWAIIAN AFFAIRS	Sylvia Hussey, Chief Executive Officer (Ka Pouhana)

The Hawai'i Supreme Court has requested public comment on the proposal to promulgate a new Rule 23 to create the PACE Commission. The proposed rule is noted below. Comments about the new Rule 23 should be submitted, in writing, no later than Monday, November 9, 2020 to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website.

The Committee looks forward to the establishment of the new Rule 23 and support of the PACE Commission by the Hawai'i Judiciary, the American Judicature Society, the Hawai'i State Bar Association and all of the appointing authorities for the Commission. All citizens of Hawai'i are encouraged to promote and sustain civic education at every level for a more informed citizenry concerning the rights and responsibilities of self-government. The PACE Commission will be an important step in keeping citizens of Hawai'i involved in their own governance.

¹ The Committee members are: Hon. Lisa M. Ginoza and Ted N. Pettit (co-chairs), Troy Andrade, David Louie, Hon. Kenneth Mansfield, Randy Perreira, Pat Mau-Shimizu, and Steven Uejio. Previous committee members who also contributed their time in recent years are: Rodney Maile, Anton Krucky, and Meredith Burns.

PROPOSED NEW RULE 23 TO THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII

**Rule 23. COMMISSION TO PROMOTE AND ADVANCE CIVIC
EDUCATION**

(a) **Creation.** There shall be a commission to be known as the Commission to Promote and Advance Civic Education ("PACE Commission").

(b) **Purpose.** The purpose of the PACE Commission shall be to promote and advance civic education for students and citizens throughout Hawai'i. The PACE Commission shall, along with such other actions it deems appropriate, endeavor to:

(1) Provide leadership, oversight, and initiatives to increase civic education in the community and at schools, to increase citizens' knowledge about government, and to promote informed participation in government and democracy in Hawai'i.

(2) Provide educational resources for the public about the importance of civic education through collaboration with the media, communication campaigns, statewide conferences, recognition awards for those successfully promoting and advancing civic education in Hawai'i, and by other means.

(3) Maximize the efficient use of available resources by improving collaboration and coordination among various entities seeking to promote and advance civic education in Hawai'i.

(4) Encourage attorneys, judges, government officials, and other public and private leaders in Hawai'i to take leadership roles in expanding civic education in Hawai'i.

(5) Reduce barriers to civic education by developing resources to overcome language, cultural, and other barriers.

(6) Increase *pro bono* contributions by Hawai'i attorneys to civic education through such things as recruitment campaigns, increased involvement by the judiciary, and increased recognition for contributors.

(c) **Membership.**

(1) **NUMBER OF MEMBERS AND TERMS OF OFFICE.** The PACE Commission shall consist of no more than 14 members. Each member may serve 1 or more, but no more than 3 consecutive, 3-year terms, except that a member may continue to serve following the end of the member's last term, until the member's successor is duly appointed. The appointing authority (except with respect to PACE Commission members appointed under provision (c)(2)(xii) of this Rule), may, in its sole discretion, appoint a successor to a member, during the term of such member, with the new appointment to take effect 30 days after the appointing authority has provided notice in writing to the PACE Commission of such appointment.

(2) **APPOINTMENT OF MEMBERS.** Members of the PACE Commission shall be appointed as follows:

(i) The Chief Justice of the Supreme Court shall be entitled to appoint 2 members to the PACE Commission, including a current or retired

judge and a representative of the King Kamehameha V Judiciary History Center.

(ii) The Governor of Hawai'i shall be entitled to appoint 1 member from the Executive branch.

(iii) The President of the Hawai'i Senate shall be entitled to appoint 1 member from the state Senate.

(iv) The Speaker of the Hawai'i House of Representatives shall be entitled to appoint 1 member from the state House of Representatives.

(v) The Office of Hawaiian Affairs (OHA) shall be entitled to appoint 1 member from OHA

(vi) The Superintendent of the Department of Education shall be entitled to appoint 1 member from the Department of Education.

(vii) The Chief Judge of the United States District Court for the District of Hawai'i shall be entitled to appoint 1 member whom shall be a U.S. District Court Judge or Magistrate Judge.

(viii) The President of the University of Hawai'i shall be entitled to appoint 1 member who shall be a faculty member at the University of Hawai'i who has a background or expertise in civic education.

(ix) The Dean of the University of Hawai'i William S. Richardson School of Law shall be entitled to appoint 1 member from the faculty or staff at the Law School.

(x) The Hawai'i State Bar Association (HSBA) shall be entitled to appoint 1 member who shall be an HSBA member with a demonstrated interest and familiarity with civic education.

(xi) The Hawai'i Association of Independent Schools (HAIS) shall be entitled to appoint 1 member from HAIS.

(xii) Members of the PACE Commission appointed as set forth above shall have the discretion, by a vote of the majority, to appoint up to 2 additional members to the commission. Any such appointee shall have a background or expertise in communications, public media, broadcasting, journalism, business, education, or non-profit organizations.

(3) **COMMUNITY-WIDE REPRESENTATION.** In making appointments, the appointing authorities shall take into account the effect of their appointments on achieving a PACE Commission composed of members who are residents of different islands in Hawai'i and who reflect the diverse ethnic, ancestral, economic, urban, and rural communities in the Hawaiian Islands.

(4) **VACANCIES.** A vacancy in the office of a member shall occur upon

(i) the written resignation, death, or permanent incapacity of such member;

(ii) the determination by the applicable appointing authority that there has been a termination of a position held by such member that was the basis of such member's appointment to the PACE Commission and that the appointing authority wishes to replace such member with a new appointee; or

(iii) for such other cause as shall be specified in the bylaws, rules, or written procedures of the PACE Commission. Upon the occurrence of a

vacancy, the appropriate appointing authority shall appoint a successor member to serve the remainder of the term of the vacating member.

(d) Officers. The Chief Justice of the Supreme Court shall designate from among the members of the PACE Commission a chair and a vice chair. The chair shall serve an initial term of 1 year and thereafter shall be designated at such times as the Chief Justice shall determine. The vice chair shall be designated for a term of 2 years, provided that such term shall expire at any earlier date when the term of the vice chair as a member of the PACE Commission shall expire or be terminated. The PACE Commission shall select such other officers as it deems useful. Terms of all officers shall run on a calendar year basis, except that an officer shall continue in office until the officer's successor is duly designated or selected.

(e) Bylaws, Rules, and Procedures. The PACE Commission may adopt bylaws, rules, or operational procedures as it deems necessary.

(f) Committees and Task Forces. The PACE Commission may create such committees and task forces, and appoint such committee and task force members, as it deems desirable to facilitate the work of the PACE Commission. The PACE Commission shall designate a chair of the committee or task force. The PACE Commission may appoint to the committee or task force persons who are not members of the PACE Commission. The role of committees and task forces shall be advisory, and they shall make such recommendations to the PACE Commission as the members of such committees and task forces deem appropriate.

(g) Meetings, Quorum, and Voting. The PACE Commission shall meet at least quarterly and shall have additional meetings at the call of the chair or at least 5 commission members. A quorum consisting of not less than one-third of the members of the PACE Commission then in office shall be necessary to transact business and make decisions at a meeting of the PACE Commission. On any votes taken at a meeting of the PACE Commission, the chair shall vote only in the event of a tie.

(h) Staff and Funding Support. While it is anticipated that the Commission will remain an all-volunteer organization with minimal administrative overhead, staff and funding support for the PACE Commission may be provided by a combination of private and public sources of financial and in-kind support.

(i) Recommendations. Any recommendations by the PACE Commission shall be made in the name of the PACE Commission only, and not in the name of the individual members or of the institutions or entities from which the members were drawn.

(1) Reports and Review.

(1) ANNUAL REPORTS. The PACE Commission shall submit to the Supreme Court an annual report describing its activities during the prior 12-month period.

(2) THREE-YEAR REVIEW. Three years after the PACE Commission holds its first meeting, the Supreme Court shall evaluate the progress made by the PACE Commission toward the goal of promoting and advancing civic education for citizens and students throughout Hawai'i.

JOIN AJS

The AJS Membership Committee encourages you to become a member of AJS. The AJS is a not-for-profit entity and relies heavily on the dues and donations. The annual membership fee of \$50 may be paid via the AJS website or by mail to AJS, Finance Factors Center, Suite 618, 1164 Bishop Street, Honolulu, HI 96813.



AJS is committed to securing and promoting an independent and qualified judiciary and a fair system of justice. AJS works tirelessly to ensure that the American justice system continues to be the standard by which others in the world are measured. You will enjoy the following benefits as an AJS member:

- Serve on and promote judicial reform by participating on an AJS committee
- Enhance judicial reform and administration by participating in national and state efforts to support and better the judiciaries
- Receive email notifications of upcoming AJS events
- Enjoy networking opportunities with AJS members and other organizations.

SHARE NEWS

If you see or hear of any news that may be of interest to AJS or if you have a suggestion about our newsletter, please email Susan Asato at susan.ajs2020@gmail.com



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