

PERKIN & FARIA, LLLC
JOHN F. PERKIN
Davies Pacific Center
841 Bishop Street, Suite 2000
Honolulu, Hawaii 96813
Telephone: (808) 523-2300
Facsimile: (808) 531-8898

1673

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2009 SEP 10 PM 3:21

F. OTAKE
CLERK

Attorney for Plaintiff
JAMES J. BICKERTON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JAMES J. BICKERTON,

Plaintiff,

v.

SHERI SAKAMOTO,

Defendant.

CIVIL NO. 09-1-2104-09 DHMC
(Non-Vehicular Tort)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND/OR
WRIT OF MANDAMUS AND/OR
PROHIBITION; SUMMONS**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND/OR A WRIT OF MANDAMUS AND/OR PROHIBITION**

Come now, Plaintiff JAMES J. BICKERTON, pro se, and for a Complaint against Defendants Sheri Sakamoto; alleges as follows:

1. Plaintiff James J. Bickerton ("Plaintiff") is a Citizen of the United States and the State of Hawaii, residing in the City and County of Honolulu.
2. Defendant Sheri Sakamoto is a Citizen of the United States and the State of Hawaii, residing in the City and County of Honolulu. She currently serves as the Chairperson of the Judicial Selection Commission of the State of Hawaii ("Judicial Selection Commission" or "JSC") and is sued here solely in her official capacity as Chairperson.

**SUMMONS
DENIED**

LEGAL DOCUMENTS BY

3. Plaintiff is a member of the JSC, having been elected to that position by the membership of the Hawaii State Bar Association for a term from April 1, 2009 to March 31, 2015.

4. The Constitution of the State of Hawaii provides in Article VI, Section 4 that “No act of the judicial selection commission shall be valid except by concurrence of the majority of its voting members.”

5. This provision requires that the JSC may only act after a vote by its members and then only in accordance with the vote by a majority of the voting members.

6. The Rules of the JSC provide that:

Upon notification or knowledge that a vacancy has occurred or will occur, the chair shall inform the other members of the commission of the vacancy. **The commission** shall publicize a vacancy.

Judicial Selection Commission Rule 7. This provision has the force of law and makes clear that the publication of the vacancy is an act of the Commission, not the prerogative of the Chairperson.

7. Defendant Sakamoto has been acting contrary to the foregoing provision by purporting to direct the executive director of the JSC to act on behalf of the JSC, without a vote by the members on the act first having been taken. Specifically, sometime on before September 7, 2009 Defendant Sakamoto made a unilateral decision and instructed the executive director, without a meeting or vote by the members of the JSC on the following acts having occurred, to (1) announce and publicize an anticipated vacancy for the position of the Chief Justice of the Supreme Court of Hawaii that is expected to arise on September 4, 2010 when the current Chief Justice reaches the age of 70, (2) advertise on behalf of the JSC and in the name of the JSC on the internet and in the daily newspapers, commencing on Sunday September 13, 2009, for applications to fill the vacancy, (3) set and advertise a deadline for

those applications of October 5, 2009, 11 months before the vacancy arises and only 16 business days after the first newspaper advertisements for the vacancy, and (4) accept and process applications for such vacancy during said period. No meeting of the Commission has been scheduled until September 29, 2009, after all of said advertising is complete and only four days before the unilaterally imposed deadline for applications for the Chief Justice position.

8. Pursuant to the aforesaid unilateral decision and action without a member vote, Defendant Sakamoto has purported to instruct the executive director to issue the aforementioned public announcement and place the aforementioned advertisements on the internet and in the newspapers. Believing she is required to follow the instructions of the Chairperson as part of her employment duties, the executive director has commenced carrying out the instructions.

9. Under JSC Rules, the Chairperson has the power and duty to schedule meetings of the Commission and specifically the power and duty to schedule a meeting of the members to vote on the questions of (1) the timing of the announcement of the vacancy for the Chief Justice position and (2) the amount of time available for applicants to prepare and submit the applications *prior to* the JSC act of setting those dates and times

10. Plaintiff believes that these are substantive matters and that the current schedule being implemented unilaterally by Defendant without a vote of the members will (a) place an unknown number of potential applicants at a disadvantage with respect to applicants who already have applications in the system for another position and thus need less time to prepare an application for the Chief Justice position and (b) provide insufficient time for many applicants to do the groundwork and preparation with friends, family, colleagues and business associates necessary to submit their name for this vital public service position given that there

has been no prior warning to the public that applications would be taken a year before the vacancy actually occurs and only during a window of less than four weeks.

11. The actions of Defendants described above in setting deadlines and announcing vacancies and application periods for a vacancy are “acts” within the meaning of Article VI, Section 4 of the Hawaii Constitution, and require the vote of the majority of the voting members of the JSC to be valid.

12. Despite being advised of the foregoing premises and requested first to hold a meeting of the voting members of the JSC, Defendant is proceeding with her plan.

13. By virtue of the foregoing, there is a genuine controversy between Plaintiff and Defendant on an issue of public concern.

14. The legal right of Plaintiff as a duly elected and sworn member of the Commission to participate in a meeting and vote on whether the JSC should undertake these acts is being denied, as is the right of the public to (a) have the JSC operate in accordance with law and (b) have the votes of all its duly appointed or elected members on acts of public concern, and Plaintiff and the public are both therefore sustaining irreparable harm.

15. Plaintiff is entitled to a declaratory judgment declaring that the Judicial Selection Commission and its Chairperson may not, without a vote of the majority of the voting members (i) announce a judicial vacancy, (ii) advertise for applications for a vacancy, or (iii) set deadlines for applications for such vacancy

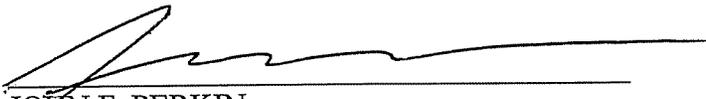
16. Plaintiff is entitled to a preliminary and permanent injunction prohibiting Defendant, or anyone acting at her direction or on her behalf, from doing any of the following unless first authorized by a vote of the majority of the voting members of the Commission: (i)

announcing a vacancy, (ii) advertising for applications for a vacancy, or (iii) setting deadlines for applications for such vacancy.

17. Based on all of the foregoing, Plaintiff is entitled to writ of mandamus and/or prohibition against defendant requiring her to (a) perform her job duty of scheduling and holding a meeting of the JSC to address the publication of the anticipated Chief Justice vacancy, the timing thereof, and the deadline for applications for that position and (b) refrain from invalid acts on behalf of the JSC with respect to said publication, timing and deadline until said votes of the members have been taken and the acts duly authorized.

WHEREFORE, Plaintiff prays that judgment be entered in favor of Plaintiff and against Defendant after a hearing, granting Plaintiff the declaratory, injunctive and writ relief described above and such other and further relief as may be deemed just and proper by the Court.

DATED: Honolulu, Hawaii, September 10, 2009.



JOHN F. PERKIN

Attorney for Plaintiff
JAMES J. BICKERTON