

Email

Password | Forgot password? Having trouble logging-in?

SIGN IN

Stay logged in for 7 days

CONNECTING HEALTH & HAPPINESS Take advantage of your health insurance options Call 877-628-5076

ENJOY SPORTS BETTER

WE WELCOME YOU. AULANI A Disney RESORT & SPA. BUNDLING IS BETTER with Auto & Home Insurance

Print Email Comment | View Comments Most Popular Save Post Retweet

Abercrombie bucks trend on judgeships

Openness elsewhere contrasts with his silence on candidates

By Ken Kobayashi

POSTED: 01:30 a.m. HST, Mar 27, 2011 LAST UPDATED: 03:12 a.m. HST, Mar 27, 2011

Recommend Sign Up to see what your friends recommend.

0



STAR-ADVERTISER

After Gov. Neil Abercrombie nominated Judge Sabrina McKenna to the state Supreme Court, he refused to disclose the other contenders for the post.



Table with 2 columns: Name, Party, District, etc.

Gov. Neil Abercrombie's refusal to disclose the names of judicial candidates bucks a recommendation by a panel of prominent members of Hawaii's legal community and a trend here and across the country toward more openness in the process of selecting judges.

An special committee of the American Judicature Society's Hawaii chapter, which included former Chief Justice Ronald Moon and the League of Women Voters of Hawaii, in 2005 recommended disclosure of the names.

Nationally, other states with merit selection panels have been moving toward more transparency, according to the judicature society.

In January, Abercrombie refused to disclose the names of candidates from the Judicial Selection Commission for a vacancy on the Hawaii Supreme Court. When he later announced he was selecting Family Circuit Judge Sabrina McKenna as his first judicial appointment, he defended his decision.

"The public doesn't pick the judge," he said. "I do."

He has remained adamant in his refusal, saying he believes disclosure would discourage potential applicants from seeking judgeships.

"It's clear to me that this is the one area of government where so-called transparency is really an illusion," he told

HOT DEALS HAWAII! 1/2 OFF Stay in Touch BUY NOW

UPGRADE TO KALO CHECKING Plus | Deluxe AMERICAN Savings Bank

Google Custom Search SEARCH Archive Mon | Tue | Wed | Thu | Fri | Sat | Sun

Latest News/Updates Weather, possible lightning strike, cut power to 3,000 on North Shore - 04:54 p.m. 21 dead as bus falls from Manila highway onto van - 04:28 p.m. 'Billy Jack' creator Tom Laughlin dead at age 82 - 04:00 p.m. Kauai man, 29, badly injured in house fire - 03:40 p.m. View All | Breaking News >

ADS BY GOOGLE

Offer: Flights from €40 Find, Compare Prices & Book Your Flight Destination with eDreams!
edreams.com/Flight_Offers

Drága a gyermekvállalás? Nálunk hetente br.140.000 Ft-ot nyerhet egy szerencsés kismama! www.cbc.hu/Nyeremenyjatek

A Wailea Vacation Beach, snorkel, shop, dine, spa... You choose, you're on Maui time!
www.wailearesortassociation.com

Abercrombie should release the names," said Nikki Love, Common Cause Hawaii executive director. "Previous governors were transparent about it, and we think Gov. Abercrombie should continue in that way. Continuing the practice of transparency in this area would be healthy for the system and the public's confidence in the process."

The Star-Advertiser has filed an appeal over Abercrombie's decision with the Office of Information Practices.

But some support the governor, including Honolulu attorney Daniel Case, retired Circuit Judge Eden Elizabeth Hifo and former Gov. Ben Cayetano, who, ironically, was the first to pierce the secrecy by releasing the names after he made his selection.

Hawaii's judicial selection system was created by a constitutional amendment approved by voters in 1978. Under the system, the governor and chief justice must select justices and judges from lists of "qualified candidates" submitted by the Judicial Selection Commission.

The amendment mandated that the commission's deliberations be "confidential," which was interpreted to mean that the panel's list would not be made public. But in 1993, the Hawaii Supreme Court ruled that while the commission could not disclose the names, the governor and chief justice were not barred from releasing them.

Moon went one step further than Cayetano by disclosing the lists and seeking public input. Lingle later followed that practice.

Cayetano, Abercrombie's friend and supporter, told the Star-Advertiser in an email that he agrees with Abercrombie that the appointments are the governor's choice.

The process of selecting judges was "not intended to be subject to popular opinion, which may provoke rumors and unsubstantiated allegations about the nominees," he said.

He released the names "because although I agree that it may discourage some who were not selected, there were others who felt honored they made the final list," Cayetano said.

Lingle's approach "may have been the politically popular thing to do — but that is not the process set forth in the state Constitution," he said.

In its November 2005 report, the special committee of the American Judicature Society's Hawaii chapter recommended that the process of selecting judges should be "as open and transparent as possible."

"Release of the names by the appointing authorities increases transparency because it gives the public a second opportunity to comment on nominees," the panel's report said. "In the past, the only opportunity for public comment was at the Senate confirmation hearing."

In addition to Moon, panel members included Lingle's attorney general, Mark Bennett, former state Sen. Colleen Hanabusa, Hawaii State Bar Association representative Doug Crosier, other judges and several private attorneys.

Jean Aoki of the League of Women Voters of Hawaii said the organization still believes the names should be released.

"Transparency is better," she said. "People know so little about the judiciary. It's a mystery to them."

Seth Andersen, executive director of the American Judicature Society, a nonpartisan group that seeks to uphold the independence of the judiciary, said the Hawaii panel's recommendation is in line with the national organization's policy that "there's not a compelling interest to keep the identity of the nominees secret."

Among the 33 other states with a merit selection process in some form, the trend has been toward "more transparency, more public access to information, more opportunities for people to have access to information about who is applying, who is nominated, and more opportunities for people to provide input," he said.

He cited Tennessee, where the names of judicial applicants are disclosed, and Iowa, where its commission interviews applicants in public.

Andersen said it's extremely difficult to determine the validity of the contention that releasing the names of the finalists would deter potential applicants who fear repercussions from clients or partners if it's known they are seeking another job.

where so-called transparency is really an illusion, he told the Honolulu Star-Advertiser in an interview this month. "All it does is create false drama."

His position seemed contrary to his campaign last year on the promise of a transparent government, and was a departure from the practices of his predecessor, Republican Gov. Linda Lingle, and Moon, who disclosed the list and sought public comment on the candidates before they made their nominations.

"We believe that Gov.

JUDICIAL SELECTION

Hawaii adopted a merit-based system of selecting judges when voters approved a 1978 constitutional amendment creating the nine-member Judicial Selection Commission. Previously, the governor and chief justice had discretion in appointing justices and judges. The two must now make appointments from lists of candidates by the commission. Under the system

>> The governor, Senate president, House speaker and the Hawaii State Bar Association each select two members. The chief justice picks one. The appointments for six-year terms are not subject to Senate approval.

>> No more than four members can be licensed attorneys.

>> The commission submits four to six names of "qualified" candidates to the governor for vacancies on the Circuit Court, the Hawaii Intermediate Court of Appeals and the Hawaii Supreme Court. The commission submits no fewer than six "qualified" candidate names to the chief justice for District Court vacancies.

>> All appointments are subject to state Senate approval.

>> The commission operates in secrecy under the constitutional amendment that mandates "deliberations of the commission shall be confidential." The commission adopted a rule that keeps confidential its "records, proceedings and business," including the lists of candidates.

>> Commission members are unpaid. The commission has one paid staff member at its offices at the Honolulu District Court building on Alakea Street.

>> The commission is also the sole authority in deciding whether to retain justices and judges for succeeding terms. These proceedings are also confidential. The commission's decisions are not subject to review.

>> A commissioner cannot decide whether to retain a justice or judge if he or she has a "substantive matter" pending before the justice or judge.



Columns

-  **Las Vegas Advisor**
Strip casinos add flair with vivid holiday displays
-  **Volcanic Ash**
Promises and poop spewed from isle politicians in 2013
-  **K-Drama**
Tan's, Eun-sand's relationship

[View All | Columns >](#)

Blogs

-  **Volley Shots**
Round up the usual suspects ...
-  **Warrior Beat**
Free on Christmas eve?
-  **Volley Shots**
BYU-Hawaii swept in national final

[View All | Blogs >](#)

PULSE

 Like  32k

-  **LIVE: 'Kokua for the Philippines'**
-  **PICS: '12 Bars of Christmas'**
-  **PICS: 2013 Billabong Pipe Masters Finals**
-  **PICS: Hot Import Nights 2013**
-  **PICS: Jimmy Buffett at the Waikiki Shell**
-  **PICS: Groundation at The Republik**
-  **PICS: Sasha at The Fix**
-  **PICS: '5 O'Clock on the Beach' at Tiki's**
-  **Grind Time: TASTE closing in January**

[This Week in TGF](#) [Calendar of Events](#)

He said the only way to objectively study the issue is to survey lawyers, but questioned whether senior partners would disclose that they would retaliate or whether lawyers would acknowledge that they fear reprisals.

Lingle could not be reached for comment. But Moon, a staunch advocate for the release of the names, said he decided to publicize the names after the high court's 1993 decision.

"I realized the public had very little understanding as to how we in Hawaii select our judges, and it was important to me to get the public involved in order to raise their trust and confidence in our system," he said.

He said in all the years he tried to recruit lawyers for the bench, he has never heard those attorneys tell him they are "unwilling to apply because they don't want their clients or partners to know that they are thinking of changing jobs."

Moon said he believes if lawyers take that position, they in their own minds aren't ready to make the sacrifices in terms of lower pay or a more scrutinized lifestyle as a judge.

The former chief justice also said he found comments from the public helpful.

He recalled one man saying he saw a District Court judicial candidate illegally dump trash in a gulch. Moon said when he asked the candidate about that report, he appeared exasperated, but admitted to the wrongdoing. Moon said he eliminated him from consideration.

Chief Justice Mark Recktenwald, following Moon's practice, earlier this month released names of candidates from the commission for district judgeships and sought public comment.

Abercrombie, however, did not disclose the candidates when he made his second judicial appointment this month in naming Joseph Wildman as a Maui circuit judge.

The governor will be making more judicial appointments, including replacements for Hawaii Supreme Court Associate Justices James Duffy and Simeon Acoba, who must retire at age 70.

Abercrombie said he had "extensive discussions" over the years with lawyers, judges, people involved in the selection of judges and those concerned about getting the "best possible candidates" for the bench.

"It was made clear to me that there was a concern that not enough people were applying," he said.

Abercrombie said the names of candidates submitted for the high court vacancy he filled with McKenna were all "uniformly excellent."

But he said more and more members of the legal community indicated that potential applicants didn't want to apply because their names might be publicized and "the consequences of that."

Abercrombie said a "parallel example" was trying to pick the attorney general. "I had to walk on eggshells," he said.

Although some wanted to be considered, they indicated they didn't want their names disclosed in case they couldn't get the job, he said.

Abercrombie said disclosure of the judicial candidates would "inevitably cause the public and others to start comparing candidates," but said the Senate rejection last year of Lingle's chief justice nominee, Katherine Leonard, was not a factor in his decision.

The governor also said public comment on the judicial candidates would not help him.

"If somebody else wants to run on that for governor, they can," he said.

"But I think the integrity of the judiciary is paramount" and the choices for the bench will be "maximized by doing it the way I'm doing it," he said.

Retired state Chief Justice Ronald Moon is a staunch advocate for disclosure of judicial candidates' names. "It was important to me to get the public involved in order to raise their trust and confidence in our system," he says.



New! Hot Import Nights 2013 Special



PICS: Black Friday



Tats & Tanlines: 12/13/13



PICS: Dream



PICS: All The Goods



STREETPULSE Available on the go!

DOWNLOAD THE APP

Kiköltözne Floridába?

bric-investment.hu/USA-Ingatlan

Akár 70%-kal a piaci ár alatt vehet ingatlanokat a Napfény Államában!



M O R E F R O M T H E S T A R - A D V E R T I S E R

'Iron Chef' host named new 'Five-o' villain

Big Isle coffee farm wins international honors

'Hawaii Five-o' still behind 'Castle'

Hearing set on suit seeking release of judicial nominee names

Obama's citizenship distraction for Republicans, chairman says

Philippine leader: no hero's burial for dictator

High court hopefuls list is Abercrombie's secret

TV producer Al Masini dies

Panel releases names of Maui judicial nominees

Official who called for disclosure of judge nominees being replaced

Print Email Comment | View Comments Most Popular Save Post Retweet

Web2PDF

converted by Web2PDFConvert.com

More Articles and Offers

ADVERTISEMENT



Texas Will this stock explode? Can you turn \$1,000 into \$100,000?



The 15 Most Beautiful Women in Sports



Surprisingly simple solution to help your joints. See why these ingredients are flying off shelves



Former Baltimore cheerleader Stacy Keibler has turned many male fans into Raven maniacs.



Houston arrest records. Who do you know?



Current & former NFL players are notorious for their hot wives & girlfriends. Here's 20 of them.



Chris Matthews has no limits. See what he said about Chris Christie and his innocent wife.



These family photos set new standards for awkwardness.

COMMENTS

You must be subscribed to participate in discussions

By participating in online discussions you acknowledge that you have read and agreed to the **TERMS OF SERVICE**. Any violations of these terms may result in account suspension or deactivation. Please keep your comments civil and in good taste. To report a comment, email commentfeedback@staradvertiser.com

Leave a comment

Please login to leave a comment.

IN OTHER NEWS



HOME <ul style="list-style-type: none"> Back Issues Corrections e-Edition TV Week Movie Showtimes Weather and Surf RSS Twitter Facebook Place My Ad Terms of Service Privacy Policy Contact Us About Us 	NEWS <ul style="list-style-type: none"> Newswatch Police and Fire Obituaries Vital Statistics Island Images Facts of the Matter fiASHback Incidental Lives Kokua Line Lee Cataluna Ocean Watch Volcanic Ash New York Times Special Projects 	SPORTS <ul style="list-style-type: none"> Ferd's Words Further Review Hawaii Prep World Hawaii Beat Hawaii Grown Report Scoreboards TV and Radio 	BUSINESS <ul style="list-style-type: none"> The Buzz Buy Local Akamai Money Wealth of Health Tech View Business Briefs Real Estate Sales EDITORIALS <ul style="list-style-type: none"> Our View Insight Guest Columns Off the News Letters to the Editor Name in the News On Politics Under the Sun Kauaūkahale 	FEATURES <ul style="list-style-type: none"> By Request K-Drama Outtakes Show Biz Health Options Be Well Tryouts Health Scene Training Day The Green Leaf By the Glass Looking Back Electric Kitchen Urban Gardener Woodcraft CALENDARS	PULSE <ul style="list-style-type: none"> includes TGIF Photo galleries HAWAII FIVE-0 <ul style="list-style-type: none"> Video MULTIMEDIA <ul style="list-style-type: none"> Video TRAVEL <ul style="list-style-type: none"> Hawaii's Back Yard Isle Hopping Staycation DINING OUT	GAMES	HOMES <ul style="list-style-type: none"> Hawaii Renovation Place My Ad Listings Rentals Foreclosures Find an Agent Homes JOBS <ul style="list-style-type: none"> Place My Ad Monster.com CARS <ul style="list-style-type: none"> Place My Ad Hawaii's Cars AutoTrader.com 	CLASSIFIEDS <ul style="list-style-type: none"> Place My Ad Obituaries Cars Jobs Foreclosures Homes MEMBER SERVICES <ul style="list-style-type: none"> Log In Log Out Change Password Forgot Password Manage Online Account ADVERTISING MEDIA KIT
--	--	--	---	---	---	--------------	--	--

News | Jobs | Cars for Sale | Hawaii Rentals | Customer Service

MidWeek

THE GARDEN ISLAND

PULSE

STREET

HI LUXURY

HAWAII.COM

101 Subscribe to the 101

Star Advertiser

Copyright © 2013 staradvertiser.com. All rights reserved.
500 Ala Moana Boulevard. #7-210, Honolulu, HI 96813 Telephone (808) 529-4747