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June 18, 2012

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MEMORANDUM

To: Larry Okinaga  
American Judicature Society, Hawaii Chapter

Fr: Jack Tonaki  
Member

Re: Mandatory retirement age of Hawaii's judges

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In light of this year's mandatory retirement of Associate Justice James Duffy from the Supreme Court of Hawai'i, the state's controversial mandatory retirement age for judges of 70 years old is once again placed in the spotlight. **Hawai'i Constitution, Article VI, § 3.** An editorial in the Honolulu Star-Advertiser on June 8, 2012 advocated for the lifting of the mandatory retirement requirement noting that "depth and breadth of experience" of jurists is needed.

The 2006 Legislature did pass a proposed constitutional amendment to repeal the mandatory retirement age. That measure was rejected by voters in the ensuing election. The 2006 measure was marred by claims of partisan politics. The Republican Party believed that the Democrat-controlled legislature was attempting to limit the number of judicial appointments that Republican Governor Linda Lingle would have due to the mandatory retirement clause.

Therefore, with renewed public interest in the topic, the issue for the A.J.S. Board of Directors to decide is whether a special committee should be formed to examine the following issue:

**Should the mandatory retirement age of 70 years old for state judges be repealed?**

Some of the historical arguments for and against repeal are as follows.

**Arguments in favor of repealing the mandatory retirement age**

- Retains high performing judges on the bench
- Encourages attorneys of an advanced age to apply for service on the bench
- Encourages the appointment of experienced judges to the upper levels of the Judiciary (i.e. the appellate courts)
- It is the right thing to do – Hawai'ian culture places great value in the wisdom of our Kupuna
- Advancements in health care have resulted in greater life expectancy

**Arguments against repealing the mandatory retirement age**

- Promotes periodic change in the Judiciary
- Prevents a Judiciary dominated by septo and octo-generians who might be resistant to change and innovation
- Health problems inevitably affect everyone in advanced age groups
- Prevents judges from “overstaying” their effective years
- Prevents one political philosophy from dominating the court for extended periods of time

An alternative is that the mandatory retirement age be raised. That was the approach taken by S.B. No. 2206, a bill heard in the 2012 Legislature which would have proposed a constitutional amendment to raise the mandatory retirement age for judges from 70 to 80. While this measure did not pass, it is illustrative of the continuing interest in this subject.