

THE ISSUE

Mitch Kahle and Holly Huber filed a False Claims Act law suit against the churches claiming the rental being paid for use of public school facilities was not the amount required by law and was not the proper amount based on the number of hours of actual use. The churches asked the court to dismiss the claim because neither Mitch Kahle nor Holly Huber qualified as a “whistle blower” to use the statute on which they based their claims because they are not “insiders” with information that is not publicly available. The trial court denied the motion. The questions on appeal relate to whether or not the trial judge was correct. Specifically those questions are:

1. The public disclosure bar of H.R.S. § 661-31 as amended in 2012 states that a court “shall dismiss an action or claim under this part” if certain requirements are present. Is this mandatory language a jurisdictional bar or is it an affirmative defense?
2. The Hawai‘i Legislature amended the public disclosure bar of H.R.S. § 661-31 in 2012, specifically stating that the amendments should be applied prospectively. Plaintiffs allege false claims in transactions by the Defendants beginning in 2007. See e.g. First Amended Complaint, Doc. 26, ROA 257 at ¶45. Does the amendment language apply to transactions prior to the 2012 amendment?
3. The material that forms the basis of Relators’ allegations of false claims comes entirely from public records requests and public websites. Is Relators’ action foreclosed by the public disclosure bar of H.R.S. § 661-31(b) that prohibits allegations or transactions substantially the same as those disclosed in state reports or the news media?
4. Do Relators meet the definition of an “original source” of information under the public disclosure bar when they do not have direct and independent knowledge that forms the basis or the catalyst for publicly disclosed information, and when they do not have any information that is independent of and that materially adds to the information already publicly disclosed in public records requests and public websites?

THE JUDGES

Chief Judge Craig H. Nakamura
September 16, 2009 – September 15, 2019

Craig H. Nakamura was sworn in as Chief Judge of the Intermediate Court of Appeals on September 16, 2009. He graduated from ‘Iolani School in 1974 and received his bachelor’s degree from the University of Hawai‘i in 1978. Judge Nakamura graduated cum laude from Harvard Law School in 1981.

After law school, Judge Nakamura was a law clerk for U.S. Circuit Judge Herbert Choy and an associate with the firm of Goodsill, Anderson, Quinn & Stifel. In 1986, he became an Assistant U.S. Attorney, a position he held until his appointment to the Intermediate Court of Appeals as an Associate Judge on April 8, 2004.

Judge Nakamura previously taught Appellate Advocacy as an adjunct professor at the William S. Richardson School of Law and served as a director of the Hawai‘i State Bar Association.

Associate Judge Lawrence M. Reifurth
March 11, 2010 – March 10, 2020

Lawrence M. Reifurth was sworn in as an Associate Judge of the Intermediate Court of Appeals on March 11, 2010. He graduated from Marquette University (B.S., Economics) in 1979, J.L. Kellogg Graduate School of Management (MM/MBA) in 1981, and Northwestern University School of Law (J.D.) in 1983.

After law school, Judge Reifurth worked in private practice in San Francisco and Marin Counties in California. After moving to Hawaii in 1989, Judge Reifurth worked as a deputy attorney general until 1994, when he was appointed by Governor John Waihee to serve as the State Insurance Commissioner.

Thereafter, Judge Reifurth worked in private practice at Oshima Chun Fong & Chung. In 2003, he was appointed by Governor Linda Lingle to serve as Deputy Director of the Department of Commerce and Consumer Affairs. In 2007, he was appointed as Director of the Department, where he served until his appointment to the Intermediate Court of Appeals.

Associate Judge Derrick H.M. Chan

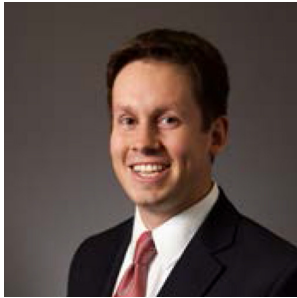
Derrick H.M. Chan was appointed as Associate Judge of the Hawaii Intermediate Court of Appeals on April 13, 2017.

He was first appointed as a Circuit Court Judge of the First Circuit (Oahu) in August 2000 and served as the Deputy Chief Judge and Administrative Judge of the Criminal Division from January 2005 through July 2009. On December 31, 2009, he became Chief Judge of the First Circuit. In 2016, Judge Chan was named Hawaii’s Jurist of the Year.

Chan was appointed to the Hawaii Intermediate Court of Appeals by Governor David Y. Ige to fill the vacancy created by the retirement of former Associate Judge Daniel R. Foley in December 2016.

As Associate Judge of the State of Hawaii Intermediate Court of Appeals, Chan will serve for a term of ten years, from April 13, 2017 to April 12, 2027.

THE LAWYERS



Jeremiah Galus

Jeremiah Galus, Esq., serves as legal counsel for Alliance Defending Freedom, where he is a key member of the Center for Christian Ministries.

Since joining ADF in 2015, Galus has focused on protecting the freedom of Christian ministries, schools, and churches to exercise their faith without government interference.

Prior to joining ADF, Galus worked as an attorney for Wiley Rein, LLP, in Washington, D.C., where he focused on complex civil litigation before state and federal trial and appellate courts. Galus also served as a prosecutor for the Maricopa County Attorney's Office in Arizona, where he prosecuted a wide variety of misdemeanor cases and represented the state in the pre-trial phase of criminal felony cases.

Galus earned his J.D. at the University of Pittsburgh School of Law in 2009. While in law school, he served as senior research editor of the University of Pittsburgh Law Review and was a teaching assistant for first-year legal research and writing courses. He obtained a B.A. in government and political affairs from Millersville University in 2006. Galus also completed the ADF leadership development program to become a Blackstone Fellow in 2007.

Galus is a member of the bar in Arizona, Pennsylvania, and the District of Columbia.



Erik W. Stanley

Erik W. Stanley, Esq., serves with Alliance Defending Freedom as senior counsel and director of the Center for Christian Ministries. He oversees all litigation efforts to maintain the autonomy of the church and to ensure its freedoms are protected under the First Amendment.

Since joining ADF in 2007, Stanley has focused on religious liberty and constitutional law. During the election year of 2008, he received extensive media coverage as spokesperson for the Alliance Defending Freedom Pulpit Initiative, which challenges the Johnson Amendment, a federal law that restricts pastors and churches from speaking about church teaching in relation to political candidates for office. Under Stanley's leadership, Pulpit Freedom Sunday, the primary event related to the Pulpit Initiative, has grown to include thousands of pastors throughout the nation.

Stanley received his Masters of Divinity from Liberty Baptist Theological Seminary in 2013. He earned his J.D. in 1999 from Temple University School of Law, where he graduated cum laude in the top five percent of his class. He is a member of the bar in Florida, Kansas, Arizona, the District of Columbia, the U.S. Supreme Court, and numerous federal district and appellate courts.



Jim Hochberg

With a Juris Doctorate from the William S. Richardson School of Law, University of Hawaii at Manoa, in 1984 and all of the intervening years of experience as a professional attorney, James Hochberg offers clients a broad based technical knowledge of the real estate industry. The use of advanced industry specific computer software enables the firm to maintain quality control, providing the ability to track all files in progress and provide up to date reports based on the client's specific needs. Our firm is a member of the National Lawyers Association, and the Alliance Defense Fund National Litigation Academy Honor Corps.

Admitted to the practice of law in the State of Hawaii and in the United States District Court for the District of Hawaii in 1984. Admitted and qualified as an Attorney and Counselor of the Supreme Court of the United States of America in June, 2000. Graduate Fellowship, Bayerisches Julius Maximilians Universität Würzburg, West Germany, Rotary International, 1982-1983. Bachelor of Arts in Journalism/Political Science, University of Hawaii at Manoa, graduating in 1980.

Worships at OLM with wife Janet Grace Hochberg. Licensed to practice law in Hawaii since 1984. Has been working with ADF since 1997.

THE HEARING

Friday, May 19th, 9:00 a.m. (if you plan to be there in person in the court room, there is a security process so be there by 8:30. The Supreme Court is in the building behind the King Kamehameha statue on King Street. The court room is up the stairs on the second floor to the left. Please note and adhere to the posted rules while in the court room. The three judges are not expected to issue any ruling after the argument. Typically that won't come for months.