

**GM580**



March 12, 2014

HAWAII STATE BAR ASSOCIATION  
**Relating to the Nomination of  
MICHAEL D. WILSON  
Associate Justice for the Hawaii Supreme Court**

To: Senate Committee on Judiciary and Labor  
From: Gregory K. Markham, President-Elect, Hawaii State Bar Association

Chair Hee, Vice Chair Shimabukuro and Members of the Committee on Judiciary and Labor:

**Additional testimony** approved by the Board of Directors on Governor's Message 580 relating to the nomination of Judge Michael D. Wilson of the First Circuit as Associate Justice of the Hawaii Supreme Court is being submitted for your consideration.

After receipt of the Chair's inquiry received yesterday, prior to the Senate Floor session, by the HSBA Executive Director as to the testimony presented at the March 3rd Committee hearing and the relationship of a Star Advertiser news article posted on January 18, 2011, it is my understanding the Executive Director responded yesterday afternoon as follows:

A review of the HSBA Board minutes indicates a discussion of the policy as a whole was undertaken in the timeframe noted. However the Board minutes (unlike the legislative Floor Session discussions which are transcribed verbatim) do not reflect specific Board action specifically modifying that Board policy. I did reach out to a couple of Board members sitting at the time. Recollection from one Board member contacted indicated that there was discussion undertaken to allow the President to issue a statement if a nominee was deemed "unqualified." However from the minutes, that proposition was never put to a vote and incorporated in the Board policy.

After this response was transmitted further research was conducted. Noted in a Hawaii Bar Journal article was the following passage:

Since HSBA Board deliberations regarding the rating of judicial nominees and executive appointments take place in executive session, officers and/or directors may only reveal the position of the board (e.g. qualified or not qualified) but not the substance or specifics of any discussion or the vote of any individual director or the breakdown of the Board's vote. *The HSBA President or his/her designee may present a prepared statement by the Board on the rating of the nominee and the President or his/her designee shall appear before the confirming authority to answer any questions but only as to the HSBA policy and procedures for its rating and not as to specific reasons or basis for the Board's rating of the nominee. (revisions in italics)*

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**Additional Testimony**

Relating to the Nomination of Michael D. Wilson,  
Associate Justice of the Hawaii Supreme Court  
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As an example, the Board, under the revised procedure, may authorize the bar president to disclose that a nominee deemed unqualified did not meet the criteria of judicial temperament and professional experience. The flexibility in providing more information to the confirming authority on a particular rating may alleviate the tension that could otherwise arise.

On March 5, 2014, the Board of Directors interviewed Judge Michael Wilson and voted on whether he is qualified to be an Associate Justice of the Hawaii Supreme Court. The Board's finding of "not qualified" was based on negative comments from a number of Bar members regarding work ethic concerns, lack of professionalism in the workplace, questions concerning the propriety of conduct toward women in professional contexts, and the ability to serve at the level of a Supreme Court Justice.

Thank you for the opportunity to submit these additional clarifying comments.

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March 14, 2014  
[Delivered electronically]

Senator Clayton Hee, Chair  
Senate Committee on Judiciary and Labor  
State Capitol, Room 407  
415 South Beretania Street  
Honolulu, HI 96813

Re: GM580, Nomination of Michael Davis Wilson for Associate Justice  
of the Hawai'i Supreme Court

Dear Senator Hee:

We have been members of the Hawai'i State Bar Association for more than 30 years. We have discussed the subject matter of this letter with numerous other members of the bar, including former bar Presidents, and many prominent representatives of the community at large. They agree with the points made hereinbelow.

The evaluation of a nominee for judicial appointment, particularly to the State's highest court, must be transparent and fair. As lawyers we know what that means. It means: (1) specific and reasonably detailed notice of alleged wrongdoing; (2) the right to marshal and present evidence against the allegations; (3) the right to confront witnesses; (4) an impartial fact finder; and (5) a decision based on evidence. According to these very basic standards, Judge Wilson was not treated fairly by the members of the board of the Hawai'i State Bar Association who evaluated him. He was accused, among other matters, of public drunkenness, having been arrested, and having had a sexual harassment claim filed against him, yet no specific facts (date, time, place) were ever alleged, so it was virtually impossible for him to know what the board was talking about and to defend himself. Worse yet, when he denied the allegations, some board members expressed disbelief and asked why someone would say such a thing if it was untrue. That attitude is the hallmark of a "Star Chamber" proceeding, not a fair evaluation aimed at identifying genuine areas of concern so they can be meaningfully addressed. Since these scurrilous allegations surfaced in early March of 2014, no one has come forward with any evidence against Judge Wilson and there is no basis for believing that any of the allegations are true.

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The board members of the Bar initially insisted that the board could not disclose or explain the basis for its "unqualified" rating because of the need to protect those who submitted information from possible retaliation. That position drew heavy criticism from many of those who testified at the March 6, 2014, hearing before the Senate Judiciary and Labor Committee, and from the public. In a March 8, 2014, editorial the Honolulu Star-Advertiser called the process used to evaluate Judge Wilson "character assassination" and "patently unfair," and we agree. It was a dark and shameful moment for the board of the HSBA, but fortunately the Senate committee rejected the board's rating, and unanimously voted to recommend confirmation to the full Senate.

We thought the HSBA evaluation process had reached a low point on March 6, but we were mistaken. After being heavily criticized for being unfair, the board, on or about March 12, 2014, outdid itself by reversing its position on disclosing the reasons for its ratings and found an article in its journal that somehow authorized it to make more unsubstantiated allegations against Judge Wilson. The latest communication from the board said that its "unqualified" rating was based on negative comments from "a number of bar members" (they didn't say how many) regarding work ethic concerns, lack of professionalism in the work place, "questions" concerning the propriety of Judge Wilson's conduct toward women in a professional context, and his ability to serve at the Hawai'i Supreme Court level. Again, no specifics were provided. We do not know how many Bar members had negative comments, how many had positive comments, and whether any of the negative comments were supported by specific facts. More importantly, we have no idea what the charges mean. Does "concerns about work ethic" mean that Judge Wilson is lazy? If so, where is the evidence of that? If he was unprofessional, in what way? If there were questions about the propriety of his conduct toward women, who were the women, what were the questions and how did they arise?

The rumors, innuendo and unsubstantiated allegations against Judge Wilson stand in stark contrast to the solid record he has compiled as a judge and in several decades of community service. No one has ever filed a complaint against him with the Office of Disciplinary Counsel. No one has ever filed a complaint against him with the Commission on Judicial Conduct. No one has ever filed a sexual harassment claim against him with the state or federal Civil Rights Commissions or any other governmental entity.

In 2010, after a thorough vetting of his personal and professional qualifications, Judge Wilson was found to be highly qualified and was retained as a Circuit Court Judge. Since then he has carried out his duties and responsibilities in a highly competent and professional manner, and there was overwhelming support for him at the Judiciary and Labor Committee's March 6, 2014, confirmation hearing. The support came from people who know him well and are in a position to judge his qualifications, including a retired Hawai'i Supreme Court Justice, several

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retired Circuit Court Judges, a former Governor of Hawai'i, some of Hawai'i's most distinguished lawyers, and many prominent members of the non-legal community who testified eloquently to his lifelong commitment to the rule of law and a better Hawai'i. This positive testimony from lawyers and community leaders should not be overshadowed by vague and completely unsubstantiated allegations from unidentified members of the bar.

We are confident that Judge Michael Wilson is highly qualified to serve on the Hawai'i Supreme Court and that he will make an outstanding Justice. We urge you to confirm his nomination.

Very Truly Yours,

LAW OFFICES OF BROOK HART



Brook Hart, Esq.



Robert K. Merce, Esq.

BH:ls

Law Offices of  
**Janice P. Kim**

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March 14, 2014

To Chair Hee, Vice Chair Shimabukuro and Members of the Judiciary Committee:

I want to thank the committee for taking seriously allegations that have to do with any impropriety in the treatment of women by whomever is recommended for any post. As a civil rights attorney representing, among others, women who have been harassed I applaud this committee for its sincerity and concern for women.

I have been in private civil practice for 31 years. I am a litigator. I started my practice in 1983, joining my father, Alexander Y. H. Kim in his law firm in Kaimuki. I am a 1975 Star of the Sea graduate, a 1980 UH Manoa graduate and obtained my law degree from Georgetown University in 1983. In 1999, I represented my first sexual harassment victim and since that time I have prosecuted cases against private employers and the federal government including the TSA, the Navy and the Postal Service in the both the Federal and State Courts. I also practice in front of the EEOC and the HCRC.

I have interacted with Judge Michael Wilson two times, once in a personal interaction and the next when he sat as a substitute justice in a case I argued to the Supreme Court in 2011 called Steigman v. Outrigger Hotels Inc. Civil No.05-1-0274-02 RAN, Supreme Court No. 28473. Before I give you my observations, I wish to lay a foundation for evaluating claims of sexual harassment or sex based discrimination.

I am not privy to the concerns being raised by this nomination. I offer this testimony only to help digest what, I speculate might be before you. If this is off the mark then I ask that you disregard this letter.

It is sometimes difficult to have a model for how to view situations if the allegations involve sex based discrimination. In the law, we look for severity and/or pervasiveness. The law is not a civility code. We aren't looking for occasional moments of intemperance or obtuse behavior. I believe any of us can make a mistake in an interaction. The law doesn't punish an employer or alleged harasser for an unintended act. The law looks for severe or pervasive behavior. With regard to severity, one verified unwelcomed touch by a manager or co worker, of a private area of a female employee is severe and should negate an appointment, promotion and/or subject an employer to liability. The committee should refuse to approve anyone seeking an appointed position who has engaged in verified non consensual fondling of an employee.

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With regard to pervasiveness, typically, the harasser has a history indicative of abusing or bullying weaker males as well as females. Usually we will find "abuse of a family member" or TRO's in the past history of an aggressive male. Where the harasser in a power position picks on a female and either asks for quid pro quo sexual favors (even once) or has a history of sex based discrimination multiple times, liability attaches. What I am trying to say is that the male who will engage in these practices has a history and cannot be controlled because the urge to behave in this manner is actually closer to being pathological. There are usually multiple indicators and patterns of abusive behavior. I have no knowledge of this type of behavior with regard to Judge Wilson.

With regard to my personal observations, I will start with my appearance before the Supreme Court in *Steigman v. Outrigger*. The discussion with the Justices was vigorous and can be heard by audio recording on the date of that argument which was May 5, 2011. Judge Wilson asked one question, indicative of his viewpoint. He asked how a sitting trial judge would properly instruct a jury if the law that I advocated were changed in the manner I proposed. This question was extremely astute. Judge Wilson brought to the floor the day to day issues the trial judge and litigants would confront given my proposed change to the law. A trial judge would be faced with the dilemma of how to translate my changes into reasonable instructions to a jury and Judge Wilson knew it. As a litigator I would come up against the same challenge and Judge Wilson knew it. It was a good question and his view from the bench bodes well for all of us who toil daily with the vagaries of how to give life to the concepts expressed in legal precedent. This makes me believe, Judge Wilson would be an asset to the Supreme Court. If you have heard this before, please forgive me.

My other interaction with him was personal. I apologize in advance if this is the proverbial "more information than you need" scenario. I was divorced in 2008 and kindhearted friends thought I should date. They picked Judge Wilson as the first victim. We didn't hit it off which would be reason enough for me to testify at odds with his nomination. However, I can tell you that I was already a civil rights lawyer, I am keenly aware of power issues between men and women and I cannot help but evaluate that in every interaction. I simply didn't detect any misogyny in my brief encounter with Judge Wilson. I found him to be respectful, gracious and amiable.

I don't know more than I read in the papers and can only guess at what might be before you in this nomination. I would however, like to comment on what is probably "normal" for those of us who litigate for a living. As a litigator our tolerance for conflict is high. In other words, the uninitiated can be surprised and intimidated by our direct communication style. As you are in the public arena, dealing with multiple interactions that may provoke conflict, you are no doubt, keenly aware yourself of this phenomenon. It is a strength and a burden. It can be an asset in the courtroom and it can create misunderstanding and hard feelings outside of the arena.



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I offer you my observations in the hope that they will help you with this difficult situation. I am sorry if they do not assist in any way. Perhaps I should have but I have not consulted with or asked anyone's advice in sending this letter. I appreciate all that you do to protect our State and wish you well.

My kindest regards and gratitude for your service to our community.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Janice P. Kim', with a large, stylized flourish extending to the right.

JANICE P. KIM

JPK:gh

Testimony to the Senate Judiciary and Labor Committee

Re: GM 580, Nomination of Michael Wilson to Hawai'i Supreme Court

Hearing: Saturday, March 15, 2014, 11:00am

Chairman Hee and Members of the Committee:

I wish to offer my testimony in **STRONG SUPPORT** of confirmation of Michael Wilson to the Hawai'i Supreme Court.

As a former practicing attorney and former President of the Hawai'i State Bar Association (1992), I have known Judge Wilson for nearly thirty years in both a personal and professional capacity. In addition, we have served together for several years on the board of a non-profit organization serving Hawai'i's youth.

During this time, I have had numerous opportunities to observe Judge Wilson's personal integrity, dedication, focus, and intellect. I have also seen his compassion, understanding, and commitment to serving the community.

In all of these settings, from the very formal to the extremely informal, I have seen Judge Wilson conduct himself with dignity, respect for others, kindness and integrity. Even in settings where casual and offhand comments might have an opportunity to reveal some other side of a person's character, I have never seen Judge Wilson vary from these traits. Nor have I ever seen him conduct himself in a manner demeaning of women; indeed, he has always shown respect and proper attitude in his conduct with women. I was shocked to hear allegations to the contrary, and do not find them credible in the least.

Michael Wilson is EXACTLY the kind of person we want on Hawai'i's highest court, helping guide and act as the conscience of our State and our people.

I strongly urge you to reject the unsubstantiated innuendo and rumor that has surfaced around Judge Wilson's nomination, and recommend his confirmation to the full Senate at the earliest opportunity.

Respectfully,

Larry Gilbert  
201 Merchant Street #2225  
Honolulu, HI 96813  
T 808 457 1600  
E Lgilbert@pobox.com

To Chair Hee, Vice-Chair Shimabukuro and Members of the Judiciary Committee:

My name is Maile Sakamoto, and I would like to strongly support the nomination of Michael Wilson as Associate Justice to the Hawaii Supreme Court.

I worked with Mr. Wilson while he was Chair at the Department of Land and Natural Resources. At the time, I was the Education Coordinator for the Division of Forestry and Wildlife at DLNR. Mr. Wilson asked me to assist with the creation of a DLNR Youth Conservation Corps (YCC) program. We worked very closely to develop this program, and he was completely respectful, fair, and supportive. This program (which has now grown into a non-profit headed by an early YCC student) has given over 2000 youth experience in sustaining Hawaii's natural resources. This program would not have been possible without Mike Wilson giving me the support and direction to achieve this goal.

I have worked in State government for over 20 years, and have worked with many men who I would consider to be chauvinistic and who would treat women poorly. Mike Wilson definitely was NOT one of them. When we worked on the YCC program, I felt treated as an equal, and was encouraged to give my honest opinions and ideas, and I never felt like he was dismissive or demeaning.

In 1995, there were not as many women involved in State conservation as there are now. I know it was one of Mr. Wilson's goals with the YCC to look at the long-range development of opportunities and education for local youth, both male and female. He used to tell the kids "in the future, I would like to see one of you have my job."

Mike is a very progressive thinker, and he used to talk about "sustainability" long before it was in vogue. I found him to be a very intelligent and caring person, and very interested in improving the world around him. I believe he would be excellent for this position. I urge you to approve his nomination.

Aloha,

Maile Sakamoto

Tel: (808) 349-9519

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [thirr33@gmail.com](mailto:thirr33@gmail.com)  
**Subject:** Submitted testimony for GM580 on Mar 15, 2014 11:00AM  
**Date:** Thursday, March 13, 2014 8:11:15 PM  
**Attachments:** [Mom & Arvid.jpg](#)

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## **GM580**

Submitted on: 3/13/2014

Testimony for JDL on Mar 15, 2014 11:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Arvid Tadao Youngquist	The Mestizo Association	Comments Only	Yes

Comments: Chair, Senate Judiciary & Labor Committee Vice Chair, Senate Judiciary & Labor Committee The Right Honorable Committee Members We submitted a testimony in support of advise and consent for Justice Michael David Wilson, Esq. At the hearing we were poised to offer our testimony but because my vacation leave had expired, I was unable to attend the balance of the hearing. I understand that the vote in Committee was unanimous, 7-0 to confirm and recommend to the full Senate for a vote. Since then the Hawaii Bar Association has had two newspaper pieces published in the Honolulu StarAdvertiser explaining the particular behind the "Unqualified Rating", and since the Committee is hearing on Saturday, I gather there were some additional testifiers and witnesses coming forward. To the undersigned, these revelations are less than elucidating. What is important to remember is that both Gov. Be Cayetanoas well as Gov. Linda Lingle had individual difficulties in getting their nominees through the Hawaii Senate (AG Margerie Broster+Earl Anzai), and for Gov. Lingle, Intermediate Court of Appeals, Associate Justice Leonard. Both Justice Leonard and Justice Wilson were rated "Unqualified". The quotation, "what is good for the goose is good for gander," comes to mind. If you accept the Bar Association's ratings for Justice Leonard, why would it not accept the Bar Association's same ratings for Justice Wilson? And this for a lower court also going up to the Supreme Court. We did not testify at the hearing of Justice Leonard but did testify at the hearing of Justice Mark Rocktenwald (sic.). Another thing that sticks to my mind is about the chronology of events: Mr. Wilson Chaired the DLNR for one term. Did he not want to serve there for a second term? What is the history of his successor in getting advise and consent? Personally, the undersigned did submit two nominees to the Commission (ladies), for consideration, and I take it that neither was asked or were interested, thus there being no females on the list of six. Some other options remain: pick a replace from the remaining five, have a lower court justice stand in for the 5th Justice until a permanent Supreme Court Associate Justice is on the bench, adopt the legislation extending the term limit up to age 80, or any combination thereof. The Committee need not be stampeded into acting when these options are still available to the Chief Justice and the Judiciary, as well as the Commission. As to having more female justices on the Hawaii Supreme Court...that

will actually tip the balance totally in favor of the distaff side of the bench, which is something to consider. Thank you for permitting us to submit comments. Meanwhile, while the Committee continues to vet and ask for input from the public, we would ask that our earlier testimony in support be replaced by this testimony as a commentary. Sometimes to act is not always the desirable alternative, if you have to act against your own individual interests for the future. Thank you for your willingness to stand alone and make your own determinations. Me Ke Aloha Pūmehana, Arvid Tadao Youngquist Founder, Administrator, & Spokesman \*Note: Registered Voter and resident Kalihi Valley, CD1, U.S. House District Voter for the Upcoming Primary and the General Elections. Please vote now on the Committee to begin on the right footing.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)  
**Subject:** Submitted testimony for GM580 on Mar 15, 2014 11:00AM  
**Date:** Thursday, March 13, 2014 6:43:07 PM

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**GM580**

Submitted on: 3/13/2014

Testimony for JDL on Mar 15, 2014 11:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeannine Johnson	Individual	Oppose	No

Comments: Although I do not know the nominee, I do know how illegal vacation rentals negatively impact our neighborhoods. Mr. Wilson is a part owner of an oceanfront property on Kawela Bay that has operated as an illegal vacation rental since 1989. Never, ever should someone be rewarded for breaking the law for 25 years with a judicial appointment. Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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## **Marcella Alohalani Boido, M. A.**

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To: Sen. Clayton Hee, Chair; Sen. Maile S. L. Shimabukuro, Vice-Chair;  
All Members, Senate Committee on Judiciary and Labor

Re: GM 580, Negative comments on the HSBA process

Date: 3/15/2014, 11 a.m., Conference Room 016

Chair Hee, all members of this Committee, and the public, with special attention to the Hawaii State Bar Association, I would like to comment on the process, not the nominee. I am doing this as a private individual.

What we see now, since the release of the HSBA's letter, is that the HSBA lacks an ethical, reliable, consistent process for vetting applicants and sharing the results of the process. Instead what we are witnessing is the ad hoc smearing of a person's reputation.

Both Judge Michael Wilson, and the people who shared their concerns with the HSBA, expected a confidential process. That confidentiality has now been destroyed.

No matter how this turns out, a person's reputation has been smeared. Judge Michael Wilson has no recourse. He has no way to confront his accusers.

There is no provision in the HSBA process that I know about for the release of the letter. Therefore, it should not have been released.

Even after making this mistaken decision and deciding to release the letter, Judge Wilson should have been given a copy of the letter first. Then he could have decided whether to withdraw his application, or continue with what is becoming an ugly exercise in public humiliation.

The HSBA needs to reform its process, ASAP. When there is a negative recommendation, the process should require that either the reasons for that recommendation be shared with the nominee before anyone else, or that there shall be no release of the reasons. Both applicants and complainants should know what the rules are in advance, and have confidence that the rules will be followed faithfully, *no matter what*.

The public interest has been harmed. All the HSBA panel members ever had to do was to have the courage to stand by their established procedures. Instead, they have done something which will make it far more difficult in the future to get anyone to apply to be a judge, or for anyone to come forward with a complaint. The deepest shame belongs to the HSBA panel. *Auwe*.

## hee2 - Lora Lee

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**From:** Alan Yuen <shinsmarinealan@aol.com>  
**Sent:** Friday, March 14, 2014 11:02 AM  
**To:** hee2 - Lora Lee  
**Subject:** Mike Wilson

To: Senator Clayton Hee, Chairman Senate Judiciary and Labor Committee

I am writing to you and the Senate to express my opposition of Michael Wilson to the State Supreme Court. I have dealt with Mr. Wilson and I believe he is unqualified for the position in our State's highest court. My dealing with Mr. Wilson includes his role in the Mental Health Court and it is my opinion that he is a hypocrite in his views and actions. Mr. Wilson is unable to put his personal feelings aside and relies too heavily on his other colleagues to make his decisions..

As Mr. Wilson has demonstrated that he is unable to do his job as an impartial Judge in the Circuit court, he should not be considered for confirmation to the State Supreme court.

Please feel free to contact me if you have any questions or need further explanation. Thank you.

Alan Yuen  
405 Lanipua Street  
Honolulu, Hawaii 96825  
808-292-7067