



*The Judiciary, State of Hawai‘i*

**Testimony to the Thirty-Second Legislature  
2024 Regular Session**

**House Committee on Finance**  
Rep. Kyle T. Yamashita, Chair  
Rep. Lisa Kitagawa, Vice Chair

Thursday, February 22, 2024, 11:30 a.m.  
State Capitol  
Conference Room 308 & Videoconference

by:  
Thomas J. Berger  
Staff Attorney for the Hawai‘i Supreme Court

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 2570 HD1, Relating to Attorneys.

**Purpose:** Requires petitions or motions for a pro hac vice appearance for a court proceeding or arbitration proceeding to be supported by evidence of local counsel’s Hawai‘i business registration, the applicant’s Hawai‘i general excise tax license number, an affirmation that both the applicant and local counsel will pay all state income tax due for Hawai‘i business activities, and all other information or documentation required by the Rules of the Supreme Court of the State of Hawai‘i.

**Judiciary’s Position:**

The Judiciary appreciates the intent of this bill and would like to thank Chair Yamashita and Representative Garrett for flagging this issue. In response, the Hawai‘i Supreme Court has already published a proposed rule amendment with identical requirements on pro hac vice counsel to those set forth in HB 2570. A copy of the proposed rule amendment is attached.<sup>1</sup> The deadline for public comment on the proposed rule amendment is March 25, 2024.

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<sup>1</sup> See [https://www.courts.state.hi.us/legal\\_references/rules/proposed\\_rule\\_changes/proposedrulechanges](https://www.courts.state.hi.us/legal_references/rules/proposed_rule_changes/proposedrulechanges).



Accordingly, the Judiciary requests this measure be deferred on the basis that the concerns raised by this bill are being considered by the court through its rule making process. Article VI, section 7 of the Hawai'i Constitution delegates to the Hawai'i Supreme Court the power to promulgate rules relating to the practice of attorneys, which have the force and effect of law. Hawai'i Revised Statutes §§ 605-1 and 605-6 similarly delegate to the Hawai'i Supreme Court the authority to establish admission requirements and rules governing attorney practice.

The Hawai'i Supreme Court has adopted rules that govern the admission of pro hac vice counsel. See Rules of the Supreme Court of the State of Hawai'i (RSCH), Rules 1.9, 1.9A. It is to the benefit of the public, litigants, the Hawai'i State Bar Association, courts, arbitrators, the Office of Disciplinary Counsel, and local and foreign counsel that all the requirements for pro hac vice counsel be addressed comprehensively in one textual location.

In conclusion, thank you to the Committee Chair and Representative Garrett for introducing this measure to thereby allow this discussion on pro hac vice counsel to take place. In light of the foregoing, the Judiciary respectfully requests HB 2570 be deferred.

# MEMORANDUM

To: Communications & Community Relations Office

From: Thomas Berger

Date: February 7, 2024

Re: Proposal to Amend the Rules of the Supreme Court of the State of Hawai'i, Rule 1.9 and Rule 1.9A

*PRO HAC VICE APPEARANCES IN COURT  
PROCEEDINGS AND ARBITRATION PROCEEDINGS*

The Supreme Court of Hawai'i seeks public comment regarding proposed amendments to the Rules of the Supreme Court of the State of Hawai'i, Rule 1.9, *Pro Hac Vice* Appearances of Counsel for Court Proceedings, and Rule 1.9A, *Pro Hac Vice* Appearance of Counsel for Arbitration Proceedings.

The Ramseyer version of the proposed rule amendments are attached. The proposed language to be added is underscored, and the language to be deleted is bracketed and stricken as illustrated in this [example].

Comments should be submitted in writing **no later than Monday, March 25, 2024** to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 808-539-4801, by e-mail to [pao@courts.hawaii.gov](mailto:pao@courts.hawaii.gov), or via the [Judiciary website](#).

Attachment.

**PROPOSED AMENDMENTS TO THE  
RULES OF THE SUPREME COURT OF THE STATE OF HAWAI‘I**  
*(Deleted material is bracketed and stricken; new material is underlined.)*

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**1.9. *Pro hac vice* appearance of counsel for court proceedings.**

(a) Any attorney actively licensed to practice law by the highest court of a state or territory of the United States or the District of Columbia may be permitted to associate with a member or members of the Hawai‘i bar (local counsel) in the presentation of a specific case at the discretion of the presiding judge or judges.

(1) The petition or motion for *pro hac vice* appearance and any subsequent documents submitted on behalf of a party must be filed by local counsel and must comply with subsection (b) of this Rule. An attorney allowed to appear *pro hac vice* in a case may continue on appeal or upon remand in the same case without filing a new petition or motion for *pro hac vice* admission so long as the attorney complies with all applicable Hawai‘i statutes, laws, and rules of the court in addition to other provisions of this Rule.

(2) An attorney allowed to appear *pro hac vice* shall, for each year the order is effective, pay to the Hawai‘i State Bar an annual Disciplinary Board fee and an annual Lawyers’ Fund for Client Protection fee authorized by the supreme court, provided that if the attorney is allowed to appear in more than one case, only one set of annual fees shall be paid. The Hawai‘i State Bar may assess a reasonable fee to register and collect these fees on an annual basis. Within 10 days after entry of an order granting a petition or motion for *pro hac vice* appearance, and also within 10 days of making subsequent fee payments in January of each year, the attorney shall file proof of payment of the required fees in the record of the court in which the case is then pending.

(3) Failure to pay the required fees within 10 days after entry of the order approving the petition or motion, and in January of each subsequent year, renders the order approving the petition or motion no longer valid, and a new petition or motion must be filed.

(b) Local counsel shall file the petition or motion for *pro hac vice* appearance in the court to which the authorization to appear is sought and provide a copy to the Office of Disciplinary Counsel. The petition or motion shall be supported by:

(1) the declaration of local counsel that ~~[provides,]~~ establishes the following under penalty of law [at minimum, the following]:

(A) local counsel’s business address and address for service of documents; ~~[and]~~

(B) affirmation that local counsel is to be the attorney of record and is responsible for all phases of the litigation;

(C) where local counsel is employed by an entity that is subject to the business registration requirements of the Department of Commerce and Consumer Affairs (DCCA), the local counsel shall include a copy of the certificate of good standing issued by the DCCA’s business

registration division for local counsel's employer that is dated within 10 days of the petition or motion, or in the alternative an affirmation that the local counsel is not subject to the DCCA's business registration requirements along with an explanation sufficient to apprise the court of the reasons for the exemption; and

(D) the local counsel's general excise tax license number issued by the Department of Taxation for the State of Hawai'i, and an affirmation that the local counsel will pay all state income tax due for all business activities in the State of Hawai'i, or in the alternative an explanation from local counsel that the requirements of this sub-section (D) do not apply.

(2) the declaration of the applicant for *pro hac vice* admission that ~~provides, at minimum,~~ establishes the following under penalty of law:

(A) the applicant's business address, e-mail address, the name of the law firm the attorney is associated with and the address of the law firm;

(B) every state and federal jurisdiction to which the applicant has been admitted to practice law and a statement attesting that the attorney is in good standing in those jurisdictions;

(C) a statement that the applicant is not currently, and has not been, suspended or disbarred from the practice of law before any court or otherwise disciplined, and if the applicant has been disciplined or is subject to a pending disciplinary proceeding, material information about those proceedings must be provided;

(D) the title and case number of each case, and the court or other forum in this state, in which the applicant has sought and/or been allowed to appear *pro hac vice* and the present status of each case;

(E) if the applicant has made more than one appearance as counsel in Hawai'i during the preceding ~~[5]~~ five years, the special circumstances that warrant the approval of the applicant's appearance in the subject case;

(F) an affirmation that, if admitted, the applicant will comply with all applicable Hawai'i statutes, laws, and rules of the courts including the Hawai'i Rules of Professional Conduct and Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers;

(G) an affirmation that, if admitted, the applicant shall be subject to all applicable Hawai'i statutes, laws, rules of the court, and the Hawai'i disciplinary process with respect to any acts or omissions occurring during representation pursuant to this Rule; ~~[and]~~

(H) where the applicant is employed by an entity that is subject to the business registration requirements of the Department of Commerce and Consumer Affairs (DCCA), the applicant shall include a copy of the certificate of good standing issued by the DCCA's business registration division for the applicant's employer that is dated within 10 days of the petition or motion, or in the alternative an affirmation that the applicant is not subject to the DCCA's business registration requirements along with an explanation sufficient to apprise the court of the reasons for the exemption;

(I) the applicant's general excise tax license number issued by the Department of Taxation for the State of Hawai'i, and an affirmation that

the applicant will pay all state income tax due for all business activities in the State of Hawai'i; and

~~(H)~~ (J) designation of local counsel as agent for service of Hawai'i disciplinary process.

(c) An attorney approved to appear *pro hac vice* pursuant to this Rule is subject to the jurisdiction of Hawai'i courts with respect to all applicable Hawai'i statutes, laws, and rules of the courts to the same extent as any other attorney admitted to practice in the courts of this state. The attorney approved to appear *pro hac vice* is subject to the disciplinary jurisdiction of the supreme court. The court in which an attorney is approved to appear *pro hac vice* or the supreme court may, for violations of Hawai'i law, the Hawai'i Rules of Professional Conduct, or orders of the court, revoke the permission for the attorney to appear *pro hac vice*, or impose any other appropriate sanction.

(d) Local counsel of record shall sign all pleadings, motions, briefs, or any other documents submitted in the case, and shall participate actively in all phases of the case and be prepared to go forward with the case as required. Service of all documents, including pleadings, shall be upon local counsel, and shall constitute service upon *pro hac vice* counsel and their client(s).

(e) Local counsel shall provide a copy of the order allowing the appearance of counsel *pro hac vice* to the Hawai'i State Bar and the Office of Disciplinary Counsel, and shall notify the Hawai'i State Bar and the Office of Disciplinary Counsel when the *pro hac vice* attorney's involvement is terminated, the case is closed, or the order granting *pro hac vice* admission is no longer valid.

(f) An attorney not licensed in Hawai'i who fails to obtain approval to represent a party in a court proceeding as required by this Rule, and who proceeds to represent a party in a court proceeding, is subject to the disciplinary jurisdiction of the supreme court and may be subject to referral to appropriate authorities for potential violation of Hawai'i Revised Statutes § 605-14 (Unauthorized practice of law prohibited) and other applicable laws.

**1.9A. *Pro hac vice* appearance of counsel for arbitration proceedings.**

**(a) Approval to appear *pro hac vice*.**

(1) An attorney not licensed in Hawai'i, but who is admitted to practice and in good standing with the highest court of a state or territory of the United States or the District of Columbia, may associate with a licensed Hawai'i attorney (Hawai'i attorney) to represent parties in the course of or in connection with an arbitration proceeding in Hawai'i that concerns a legal dispute over a Hawai'i-related matter, provided that the petition to appear, accompanied by the materials set forth in subsection (b) of this Rule, is approved in writing by the arbitrator or, if there are multiple arbitrators, a majority of the arbitrators.

(2) If the subject arbitration results in a judicial proceeding, the out-of-state attorney must comply with Rule 1.9 of these Rules to appear as counsel in the court proceeding.

**(b) Contents of the application or petition.** The Hawai‘i attorney to the arbitration shall submit to the arbitrator(s) in the subject arbitration a petition for *pro hac vice* appearance by the out-of-state attorney, and shall serve the petition upon all parties to the arbitration, along with the following in support of the petition:

(1) REQUIRED INFORMATION. The petition shall provide the following information:

(A) the case name and number, the name of the arbitrator(s), and the arbitral forum for the proceeding in which the out-of-state attorney seeks to appear;

(B) the out-of-state attorney’s law firm name, office address, email address, and telephone number;

(C) the courts in which the out-of-state attorney has been admitted to practice and the dates of admission; and

(D) the title of all courts and other forums in Hawai‘i in which the out-of-state attorney has sought to appear as counsel *pro hac vice* in the preceding [§]five years (including but not limited to petitions pursuant to this Rule); the name and number of each such case or proceeding; the date of each application or petition; and whether or not the application or petition was approved. If the attorney has made more than one appearance as counsel in Hawai‘i during the preceding [§]five years, the petition shall reflect the special circumstances that warrant the approval of the attorney’s appearance in the subject arbitration.

(2) REQUIRED DECLARATION BY OUT-OF-STATE ATTORNEY. In addition, the out-of-state attorney shall provide a declaration that declares accurately and truthfully to the best of the attorney’s knowledge, under penalty of law, that the out-of-state attorney:

(A) is in good standing before the courts where the attorney’s license to practice law is active;

(B) is not currently, and has not been in the past, suspended or disbarred from the practice of law before any court or has otherwise been disciplined or, if the attorney has been disciplined or is subject to a pending disciplinary proceeding, providing material information about those proceedings;

(C) is not a resident of the State of Hawai‘i, and is not regularly engaged or employed as an attorney in Hawai‘i;

(D) if given approval to represent a party in the arbitration, agrees to be subject to the jurisdiction of the courts of this state with respect to the laws of this state governing the conduct of attorneys, including the disciplinary jurisdiction of the supreme court and the Disciplinary Board of the Hawai‘i Supreme Court, and will comply with applicable Hawai‘i laws, arbitration rules, the Hawai‘i Rules of Professional Conduct, and the Guidelines of Professional Courtesy and Civility for Hawai‘i Lawyers; ~~and~~

(E) where the out-of-state attorney is employed by an entity that is subject to the business registration requirements of the Department of Commerce and Consumer Affairs (DCCA), the out-of-state attorney shall include a copy of the certificate of good standing issued by the DCCA's business registration division for the out-of-state attorney's employer that is dated within 10 days of the petition or motion, or in the alternative includes an affirmation that the out-of-state attorney is not subject to the DCCA's business registration requirements along with an explanation sufficient to apprise the court of the reasons for the exemption;

(F) has obtained a general excise tax license from the Department of Taxation for the State of Hawai'i, along with the general excise tax license number, and an affirmation that the applicant will pay all state income tax due for all business activities in the State of Hawai'i; and

~~(E)~~ (G) designates the Hawai'i attorney as agent for service of any Hawai'i disciplinary process.

(3) REQUIRED DECLARATION BY HAWAI'I ATTORNEY. The Hawai'i attorney submitting the petition shall provide a declaration ~~[that declares accurately and truthfully to the best of the attorney's knowledge,]~~ under penalty of law that establishes:

(A) the business address, e-mail address and address for service of documents for the Hawai'i attorney; ~~[and]~~

(B) ~~[an affirmation that]~~ the Hawai'i attorney is the attorney of record and is responsible for all phases of the subject arbitration~~[-];~~

(C) where local counsel is employed by an entity that is subject to the business registration requirements of the Department of Commerce and Consumer Affairs (DCCA), the local counsel shall include a copy of the certificate of good standing issued by the DCCA's business registration division for local counsel's employer that is dated within 10 days of the petition or motion, or in the alternative includes an affirmation that the local counsel is not subject to the DCCA's business registration requirements along with an explanation sufficient to apprise the court of the reasons for the exemption; and

(D) the Hawai'i attorney has obtained a general excise tax license from the Department of Taxation for the State of Hawai'i, along with the general excise tax license number, and an affirmation that the local counsel will pay all state income tax due for all business activities in the State of Hawai'i, or in the alternative an explanation from local counsel that the requirements of this sub-section (D) do not apply.

**(c) Disposition of the petition.**

(1) The arbitrator(s) shall respond to the petition in writing. The arbitrator(s) may approve the petition if the requirements in subsection (b) of this Rule have been satisfied. The petition shall be disapproved for failure to submit and serve the petition as described in subsection (b) of this Rule. In the absence of special circumstances, multiple appearances as counsel in Hawai'i during the preceding ~~[5]~~ five years may be grounds for disapproval of the petition and disqualification from serving as an attorney in the subject arbitration. Upon written approval of the petition by the arbitrator(s), the Hawai'i attorney shall forthwith submit a copy of



the order approving the petition, along with a copy of the petition, to the Hawai'i State Bar and the Office of Disciplinary Counsel.

(2) The arbitrator(s) in the subject arbitration or the supreme court may revoke the permission for the attorney to appear in the subject arbitration if the attorney submitted a declaration containing false information or a material omission, violated Hawai'i law, violated the Hawai'i Rules of Professional Conduct, or violated an order of the arbitrator(s).

**(d) Duties of the *pro hac vice* attorney.**

(1) The out-of-state attorney admitted *pro hac vice* in an arbitration shall pay to the Hawai'i State Bar the annual Disciplinary Board fee and the annual Lawyers' Fund for Client Protection fee authorized by the supreme court, provided that if the attorney is allowed to appear in more than one case, only one set of annual fees shall be paid. The Hawai'i State Bar may assess a reasonable fee to register and collect these fees on an annual basis. Proof of payment of the required fees shall be served on the arbitrator(s), the parties to the subject arbitration, the arbitral forum, and the Office of Disciplinary Counsel. For each subsequent year that the approved petition is effective, the out-of-state attorney shall pay the annual fees in January and serve proof of payment upon the arbitrator(s), the parties to the subject arbitration, the arbitral forum, and the Office of Disciplinary Counsel.

(2) Failure to pay the annual fees within 10 days after entry of the order approving the petition, and in January of each subsequent year, renders the order approving the petition no longer valid, and a new petition must be filed.

(3) The out-of-state attorney shall notify the Hawai'i attorney, the arbitrator(s), and the parties to the subject arbitration when there is any material change to the information provided under subsections (b)(1) and (b)(2) of this Rule.

**(e) Duties of the Hawai'i attorney.**

(1) The Hawai'i attorney shall sign all pleadings, motions, briefs, or any other documents submitted in the subject arbitration, and shall participate actively in all phases of the arbitration and be prepared to go forward with the arbitration as required. Service of all documents, including pleadings, shall be upon the Hawai'i attorney and shall constitute service upon the out-of-state attorney and their client(s).

(2) The Hawai'i attorney shall notify the Hawai'i State Bar and the Office of Disciplinary Counsel when the engagement of the out-of-state attorney is terminated, the arbitration is completed, or the order approving the petition is no longer valid.

**(f) Unauthorized practice of law.** An attorney not licensed in Hawai'i who fails to obtain approval to represent a party in an arbitration proceeding as required by this Rule, and who proceeds to represent a party in an arbitration proceeding, is subject to the disciplinary jurisdiction of the supreme court and may be subject to referral to appropriate authorities for potential violation of Hawaii Revised Statutes § 605-14 (Unauthorized practice of law prohibited) and other applicable laws.

**(g) The *pro hac vice* attorney is subject to Hawai'i jurisdiction.**

An attorney approved to appear in an arbitration proceeding under this Rule is subject to the jurisdiction of Hawai'i courts with respect to all applicable Hawai'i laws and rules to the same extent as any other attorney admitted to practice in this state. The attorney approved to appear in an arbitration proceeding under this Rule is also subject to the disciplinary jurisdiction of the supreme court and the Disciplinary Board of the Hawai'i Supreme Court.

**(h) Limits of this Rule.**

(1) Any party to an arbitration arising under a collective bargaining agreement subject to either state or federal law may be represented in the course of and in connection with those proceedings by any person, regardless of whether that person is licensed to practice law in Hawai'i, if the representation is consistent with the laws governing such proceedings.

(2) This Rule does not apply to proceedings before state or federal administrative boards or agencies that are authorized to establish their own rules governing the practice of out-of-state attorneys before those bodies.

(3) This Rule does not negate the rights of parties to be represented by a person of their choosing so long as that right is established as a matter of a specific state or federal law.



## HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

Organized August 7, 1943  
P.O. BOX 61043  
HONOLULU, HAWAII 96839



### House of Representatives Committee on Finance

Thursday, February 22, 2024; 11:30 a.m.  
Conference Room 308  
State Capitol

### Re: SUPPORT OF HB 2570, HD1 – Relating to Attorneys

#### Chair Yamashita, Vice Chair Kitagawa, and Committee Members:

The Hawaii Association of Public Accountants (HAPA) is the only statewide public accounting organization with active chapters on Oahu, Maui, Big Island, and Kauai. It has over 450 members, consisting primarily of small to mid-sized CPA firm owners and employees who are in the active practice of public accountancy.

My name is Marilyn M. Niwao, M.S.P.H., J.D., CPA, CGMA, and I am the immediate past State President and currently a State Director of the Hawaii Association of Public Accountants. I am a Hawaii licensed CPA and Attorney, and a principal of a well-established Maui CPA firm, Niwao & Roberts, CPAs, a P.C. for 39 years.

I am also the immediate past Vice Chair of the Hawaii Council on Revenues, a former Commissioner of the Hawaii Tax Review Commission, and a Past President of the National Society of Accountants. However, I am testifying here solely in my capacity as a State Director of the Hawaii Association of Public Accountants and Co-Chair of its legislative committee, while drawing upon my knowledge obtained while serving in the above positions.

HB 2570, HD1 requires that a *pro hac vice* appearance for a court hearing or arbitration hearing be supported by evidence of the applicant's and local counsel's Hawaii business registration and Hawaii general excise tax license numbers, and an affirmation that both the applicant and local counsel will pay all state income taxes due for Hawaii business activities.

HB 2570, HD1 should be passed with an amendment to include general excise taxes as follows:

Section 605 – (3), “An affirmation that both the applicant and local counsel will pay all state income and general excise taxes due for Hawaii business activities; and”

HB 2570, HD1, with amendment, should be passed for the following reasons:



## HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

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1. After the Maui wildfires in August 2023, there were droves of out-of-state attorneys coming to Hawaii seeking to represent Maui wildfire victims in litigation. These attorneys may charge a contingent fee for these cases that may range from 30% - 45% of the lawsuit damages or settlement amount. The damages from the Maui wildfires are estimated to be significant, and in the billions of dollars.
2. Unfortunately, based upon our experience with out-of-state CPAs, HAPA found that approximately 70% of out-of-state CPA firms were not paying Hawaii taxes since Hawaii's GET is unique in the nation. The Hawaii GET tax is applied to both gross service income and gross rental income, and this is not the case in virtually all other states. Compliance with Hawaii's tax laws markedly improved for out-of-state CPA firms when the requirement was added that out-of-state CPA firms were required to provide a Hawaii GET license number in obtaining a permit to practice in Hawaii.
3. After checking recently whether some of the out-of-state law firms advertising to potential Maui wildfire clients had Hawaii General Excise tax license numbers, I found that only 1 out of 15 had yet obtained the Hawaii General Excise tax license number which is necessary to pay the Hawaii General Excise tax. In addition, the out-of-state law firms would be liable for any income taxes on net proceeds earned from the Maui wildfire lawsuits. Individual attorneys practicing *pro hac vice* would also be liable for their taxes on their Hawaii source income.

HRS Administrative Rules Section 18-237-29.53-07 specifies that legal services provided to a party in a judicial action or proceeding, administrative proceeding, arbitration, mediation, etc. are used or consumed where the case or matter is filed. Therefore, even though a multistate law firm performs work in states other than in Hawaii, all work performed on a case filed in Hawaii are subject to Hawaii taxes because the services are used or consumed in Hawaii. Further guidance is also provided in Tax Information Release No. 2018-06.

I have not checked on whether out-of-state law firms involved in other litigation unrelated to Maui wildfires obtained the Hawaii General Excise tax license number, but I have serious doubts that the proper amount of taxes are being paid on Hawaii service income.

4. The Hawaii Supreme Court governs the practice of law and provides rules for attorneys. These out-of-state attorneys must associate with local Hawaii attorneys under Rule 1.9 and Rule 1.9A of the Hawaii Supreme Court when they appear in court and administrative proceedings. See attached 2024 registration form for out-of-state attorneys appearing *pro hac vice* in court and administrative hearings. (Please note



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that these out-of-state law firms are separate law firms from Hawaii law firms that they must associate with in court.)

5. Due to the size of the Maui Wildfire lawsuits and other litigation, HAPA supports HB 2570, HD1 (with amendment) as a means to collect potentially hundreds of millions of tax dollars which otherwise would not be collected, and to inform out-of-state attorneys in litigation of their Hawaii tax obligations.
6. Taking proactive steps to insure state tax compliance will mean that the Hawaii State Tax Department will not have to spend more time and money to audit out-of-state law firms with attorneys who are practicing *pro hac vice* in Hawaii.
7. For work by out-of-state attorneys where an action or proceeding is not pending (and where out-of-state attorneys are not practicing *pro hac vice*), legal services (such as consulting work) are still deemed to be sourced and subject to tax in Hawaii for work done for a Hawaii resident or for legal work done for a Hawaii business with Hawaii-related business activities. See HAR Section 18-237-29.53-11 (a)(3) and HAR Section 18-237-29.53-11(a)(1).
8. With more proactive tax collections from out-of-state law firms and other out-of-state businesses who do business in Hawaii, there will be less need to raise taxes for Hawaii residents, who already pay some of the highest tax rates in the nation.

**Please support HB 2570, HD1, with amendment.** Thank you for this opportunity to testify. Please do not hesitate to ask any questions by contacting me at [niwao@mauicpa.com](mailto:niwao@mauicpa.com) or at (808) 242-4600, ext. 224.

Respectfully submitted,

*Marilyn M. Niwao*

Marilyn M. Niwao, M.S.P.H., J.D., CPA, CGMA  
Hawaii State Director and Legislative Committee Co-chairperson



## PRO HAC VICE

### Rules of the Supreme Court of the State of Hawaii **1.9** and **1.9A**

Appearance of Counsel in State Court & Administrative Proceedings

\*N/A to Federal Court & Administrative Proceedings

As a **reminder**, the Rules of the Supreme Court of Hawaii require that “Local counsel shall provide a copy of the order allowing the appearance of counsel pro hac vice to the Hawai‘i State Bar and the Office of Disciplinary Counsel, and shall notify the Hawai‘i State Bar and the Office of Disciplinary Counsel when the pro hac vice attorney’s involvement is terminated, the case is closed, or the order granting pro hac vice admission is no longer valid.” RSCH 1.9C (emphasis added).

<https://www.courts.state.hi.us/wp-content/uploads/2021/02/rsch.pdf> [for pdf (print) version, and;]  
[https://www.courts.state.hi.us/wp-content/uploads/2021/02/rsch.htm#Rule1\\_9](https://www.courts.state.hi.us/wp-content/uploads/2021/02/rsch.htm#Rule1_9)

#### 2024 Fee Schedule

Credit card (VISA, MasterCard, Discover, American Express) OR check payment accepted.  
Make check payable to the Hawaii State Bar Association.

Disciplinary Board assessment	\$600.00
Registration fee	150.00
Lawyers Fund for Client Protection assessment	50.00
Processing fee	<u>15.00</u>
TOTAL	\$815.00

Complete, sign and return the 2024 Pro Hac Vice application within **ten (10)** days after entry of Order approving appearance together with the following:

- copy of the Approved order granting petition or motion
- copy of the Petition
- payment

Upon completion of registration and payment processing an electronic confirmation message (receipt) will be transmitted. Application will be processed within 3-5 business days.

You may submit your PHV Registration forms by FAX to (808) 521-7936 or EMAIL to [lcastillo@hsba.org](mailto:lcastillo@hsba.org).

For additional information contact Liberty Castillo at [lcastillo@hsba.org](mailto:lcastillo@hsba.org) or (808) 792-7339.



2024 PRO HAC VICE REGISTRATION
(For NEW Applicants ONLY)

Name: \_\_\_\_\_
First- no initials Full Middle – no initials Last

Social Security Number : \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Date of Birth: \_\_\_\_\_
The Office of Disciplinary Counsel requires the HSBA to collect SSN information for its administrative and investigative purposes, if needed.

MEMBER INFORMATION

Business (Firm/Employer) Address (Published) Required

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax : \_\_\_\_\_

Email Address: \_\_\_\_\_@\_\_\_\_\_

Communication Address Preferred Mailing and E-Mail (REQUIRED HSBA use only)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax : \_\_\_\_\_

Email Address: \_\_\_\_\_@\_\_\_\_\_

Service of Process Street Address (REQUIRED by Disc. Counsel)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax : \_\_\_\_\_

Email Address: \_\_\_\_\_@\_\_\_\_\_

Residential Street Address (REQUIRED by Disciplinary Counsel - Confidential)
(do not list business information- respond accordingly)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cell or landline Phone: \_\_\_\_\_

Fax : \_\_\_\_\_

Residential Email Address: \_\_\_\_\_@\_\_\_\_\_

Name of the HSBA Attorney associated with: \_\_\_\_\_ JD# \_\_\_\_\_

Email address of the HSBA Attorney associated with: \_\_\_\_\_

List Active case(s) in the State of Hawaii for which you have been admitted Pro Hac Vice: (Please attach additional sheet if necessary)

Table with 4 columns: Case Name, Case Number, Court Name, Approval Date. Includes four rows of blank lines for data entry.

**PRIVATE STATISTICAL INFORMATION**

**Response Required**

- 1. **GENDER**     Male    Female    Not Specified
  
- 2. **STRUCTURE OF PRIVATE PRACTICE :**    Solo Practitioner    Firm of 2-5 attorneys    Firm of 6-14 attorneys  
 Firm of 15 or more attorneys    Not Applicable    Non Legal Entity
  
- 3. **PROFESSIONAL LIABILITY INSURANCE RSCH Rule 17(d)(1)(C)**  
Do you have Professional Liability Insurance coverage?    Yes    No
  
- 4. **DISCIPLINARY ACTION:**  
During 2023 have you been subject to, or received, any professional discipline as the result of a disciplinary investigation or formal proceeding in any jurisdiction other than Hawaii?  
 Yes. Please mail a copy of the disciplinary action or order to the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, HI 96813.  
 No
  
- 5. **CRIMINAL OFFENSES:**  
During 2023 have you been convicted of any criminal offenses in any jurisdiction, excluding offenses classified as petty misdemeanors, violations or infractions under Hawai'i law?  
 Yes. Please mail a copy of the judgement or order to the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, HI 96813.  
 No
  
- 6. **Ethnicity:** Please indicate how you identify your race/ethnicity (select one only)  
 Black/African American    Chinese    Filipino    Hispanic/Latino    Japanese    Korean    Micronesian  
 Hawaiian, part Hawaiian    Other Asian    Other Pacific Islander    South Asian    White    Other \_\_\_\_\_
  
- 7. **LICENSE(S) IN OTHER JURISDICTIONS :** (Please attach additional sheet if necessary)  
License Number : \_\_\_\_\_ Jurisdiction/State: \_\_\_\_\_ Date of Admission: \_\_\_\_\_ Status : \_\_\_\_\_  
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License Number : \_\_\_\_\_ Jurisdiction/State: \_\_\_\_\_ Date of Admission: \_\_\_\_\_ Status : \_\_\_\_\_

**PAYMENT METHOD**

Disciplinary Board assessment	\$ 600.00
Registration fee	150.00
Lawyers Fund for Client assessment	50.00
Processing fee	<u>15.00</u>
<b>TOTAL</b>	<b>\$815.00</b>

**PAYMENT METHOD**

Payment by  
 AmEx    MC    VISA    DISCOVER    CHECK # \_\_\_\_\_ Amount \_\_\_\_\_  
Cardholder Name (Print) \_\_\_\_\_ Cardholder Signature: \_\_\_\_\_  
Account #: \_\_\_\_\_ Exp. Date : \_\_\_\_\_  
Billing Address: \_\_\_\_\_

**SIGNATURE**

I have read the above and certify that the information above is current and correct.  
SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_ PHONE: \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_



# TAX FOUNDATION OF HAWAII

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126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

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SUBJECT: GENERAL EXCISE, INCOME, Requirements for Out-of-State Attorneys

BILL NUMBER: HB 2570 HD 1

INTRODUCED BY: House Committee on Judiciary & Hawaiian Affairs

EXECUTIVE SUMMARY: Amends the process by which out-of-state attorneys are admitted to practice in Hawaii's courts by requiring petitions or motions for a pro hac vice appearance for a court proceeding or arbitration proceeding to be supported by evidence of local counsel's Hawaii business registration, the applicant's Hawaii general excise tax license number, an affirmation that both the applicant and local counsel will pay all state income tax due for Hawaii business activities, and all other information or documentation required by the Rules of the Supreme Court of the State of Hawaii.

SYNOPSIS: Adds a new section to chapter 605, HRS, requiring petitions or motions for pro hac vice appearances to include documentation of applicant's general excise tax license number and the sponsoring local counsel's Hawaii business registration. Also, both applicant and local counsel must affirm that they both will pay state income tax due for Hawaii business activities. Upon approval, the Supreme Court shall amend its rules accordingly.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS: This bill presents a separation of powers question. The judiciary is a coequal branch of government with the legislature, and the judiciary has constitutional authority to make rules "for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law." Haw. Const. art. VI, sec. 7. This bill, if enacted, purports to order the judiciary to change its rules; however, for the above reasons the legislature might not have the authority to so order. *Kudlich v. Ciciarelli*, 48 Haw. 290, 401 P.2d 449 (1965); *State v. Hawaiian Dredging Co.*, 48 Haw. 152, 397 P.2d 593 (1964). Perhaps this issue might be solved if the proposed requirements were instead written into HRS section 605-1, which prescribes the qualifications of attorneys.

Digested: 2/20/2024

**HB-2570-HD-1**

Submitted on: 2/21/2024 11:05:58 AM

Testimony for FIN on 2/22/2024 11:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
John W. Roberts	Niwao & Roberts, CPAs, a P. C.	Support	Written Testimony Only

Comments:

Niwao & Roberts, CPAs, a P. C. supports HB2570 HD1.

We have conducted a brief sample comparing the names of out-of-state law firms advertising to represent Maui wildfire victims against the State of Hawaii DCCA and Department of Taxation public databases for business registration and General Excise Tax license numbers. Although not a statistical sample, we found only one out-of-state law firm properly registered to do business in Hawaii and possessing a GET license number. This is unacceptable. HB2570 HD1 is necessary to make out-of-state law firms doing business in Hawaii comply with Hawaii's laws, rules, and regulations.

Hawaii-based law firms deserve a level playing field in Hawaii's competitive market for legal services. Failing to monitor out-of-state-based law firms compliance is unacceptable. It also causes Hawaii's taxpayers to pay more in taxes than they would otherwise have to if out-of-state law firms paid their fair share.

HB2570 HD1 is a good step forward, but it is not enough. Similarly-purposed legislation is needed to correct non-compliance by out-of-state-based Building industry and professional service businesses as well. Furthermore, the Hawaii Department of Taxation needs additional resources and tasking to pursue tax non-compliance by out-of-state businesses operating in Hawaii without respecting Hawaii's laws. It is time to close Hawaii's financial barn door before any more tax dollars escape, never to be collected. Hawaii's taxpayers deserve no less.

Thank you for your consideration..

**ERIC H. MATSUDA**  
**CERTIFIED PUBLIC ACCOUNTANT**  
**1481 S. King St., Suite 523**  
**Honolulu, Hawaii 96814**  
**(808) 949-7651**

**House of Representatives**  
**Committee on Finance**  
Thursday, February 22, 2024; 11:30 a.m.  
Conference Room 308  
State Capitol

**Re: SUPPORT OF HB 2570, HD1 – Relating to Attorneys**  
**Chair Yamashita, Vice Chair Kitagawa, and Committee Members:**

My name is Eric Matsuda. I am the owner of a small CPA firm in Honolulu. I have been in practice for 35 years.

I support HB 2570. We have to take proactive steps to insure compliance of all Hawaii State tax laws, including the general excise tax and Hawaii income tax.

Respectfully submitted,



Eric H. Matsuda  
CPA