



The Judiciary, State of Hawai‘i

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

House Committee on Judiciary and Hawaiian Affairs

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, January 31, 2024, 2:00 p.m.
State Capitol
Conference Room 325 & Videoconference

by:

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

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2570, 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 respectfully opposes this bill. As detailed below, the Hawai‘i Supreme Court promulgates rules to regulate the practice and admission of attorneys, including pro hac vice counsel. Accordingly, the concerns raised by this bill should be 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.

SB No. 2514 seeks to impose additional admission requirements on out-of-state attorneys who seeks to temporarily appear in a lawsuit or arbitration in Hawai'i. These out-of-state attorneys are commonly referred to as pro hac vice counsel.

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. These rules have been amended over time and the Hawai'i Supreme Court is always receptive to input concerning proposed changes to the rules governing pro hac vice counsel, and other matters.

The Commission on Professionalism, chaired by Justice Richard W. Pollack (ret.), would be an appropriate forum for studying the matter, and evaluating whether rule amendments should be considered. The Commission has been active in requesting updates to the court rules governing pro hac vice counsel (RSCH 1.9, 1.9A) in response to suggestions by Commission members and others. For example, in the last ten years amendments to RSCH 1.9 and/or RSCH 1.9A occurred and then were made effective in 2015, 2018, 2019, and 2023. See SCRU-11-0000068 Dkts. 48, 76, 80, 160. My understanding is that the Commission has not previously considered inclusion of the information referenced by this bill as no such suggestion was made to the Commission.

As outlined above, RSCH 1.9 and 1.9A were promulgated and govern the admission of pro hac vice counsel. 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. The Commission as part of its process to evaluate the elements of this bill will receive input from all the various stakeholders in the legal community. In addition, the Judiciary will seek public comment of at least 90-days before adopting and finalizing any proposed amendments to the rules that govern the admission of pro hac vice counsel.

Thank you for the opportunity to testify on this matter.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: HB 2570, SB 2995

INTRODUCED BY: HB by YAMASHITA, GARRETT; SB by HASHIMOTO, AQUINO, Kidani, Moriwaki, Shimabukuro, Wakai

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 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.

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: Upon approval.

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: 1/29/2024



HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

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



House of Representatives Committee on Judiciary and Hawaiian Affairs

Wednesday, January 31, 2024; 2:00 p.m.
Conference Room 325
State Capitol

Re: **SUPPORT OF HB 2570 – Relating to Attorneys**

Chair Tarnas, Vice Chair Takayama, 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..

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 legislative committee, while drawing upon my knowledge obtained while serving in the above positions. and Co-Chair of its

HB 2570 requires that a pro hac vice appearance for a court hearing or arbitration proceeding be supported by evidence of the applicant's and local counsel's Hawaii business registrations 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 should be passed for the following reasons:

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 past 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



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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 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 none had yet obtained the Hawaii General Excise tax license number which is necessary to pay the Hawaii General Excise tax on their gross fees collected. In addition, the out-of-state law firms would be liable for any income taxes on net proceeds earned from the Maui wildfire lawsuits and other litigation.
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 when they litigate in court. See attached Rule 1.9 and Rule 1.9A of the Hawaii Supreme Court and 2024 registration form for out-of-state attorneys appearing *pro hac vice* in court and administrative hearings. (Please note 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 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 may not have to spend as much time and money to audit out-of-state law firms who practice *pro hac vice*. However, this does not capture the Hawaii tax obligations of other out-of-state law firms that do business in Hawaii on consulting and other engagements, but are not required to practice *pro hac vice* in court and administrative hearings.
7. With more tax money collected from out-of-state law firms, there will be less need to raise taxes on Hawaii residents and Hawaii businesses to meet government needs. With less taxes on Hawaii residents and businesses, the Hawaii economy will benefit.

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



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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

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.

For additional information contact Liberty Castillo at 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 : _____
License Number : _____ Jurisdiction/State: _____ Date of Admission: _____ Status : _____
License Number : _____ Jurisdiction/State: _____ Date of Admission: _____ Status : _____
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	15.00
TOTAL	\$815.00

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: _____



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House of Representatives
Committee on Judiciary and Hawaiian Affairs
Wednesday, January 31, 2024; 2:00 p.m.
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Re: SUPPORT OF HB 2570 – Relating to Attorneys

Chair Tarnas, Vice Chair Takayama, 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.

HB 2570 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 should be passed for the following reasons:

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 changed 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 whether some of the out-of-state law firms advertising to potential Maui wildfire clients had Hawaii General Excise tax license numbers, our Legislative Committee Co-Chairperson Marilyn Niwao found that none 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. She has not checked on whether out-of-state law firms involved in other litigation have obtained the Hawaii



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General Excise tax license number, but she has serious doubts that the proper amount of taxes were 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 when they litigate in court. See Rule 1.9 and Rule 1.9A of the Hawaii Supreme Court at [Hawaii State Bar Association \(hsba.org\)](http://hsba.org), where out-of-state attorneys appearing *pro hac vice* in court and administrative hearings must affirm that, if admitted, they 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. (Please note 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 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 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.
7. This bill provides notice to the out-of-state lawyers that may not be familiar with Hawaii laws.
8. With more tax money collected from out-of-state law firms, there will be less need to raise taxes for Hawaii residents.

Please support SB 2570. Thank you for this opportunity to submit testimony.

Respectfully submitted,

A handwritten signature in blue ink that reads "Denise Yoshida".

Denise Yoshida, HAPA State President
Hawaii Association of Public Accountants

HB-2570

Submitted on: 1/30/2024 1:07:00 PM

Testimony for JHA on 1/31/2024 2:00:00 PM

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

Comments:

Niwao & Roberts, CPAs, a P. C., strongly supports HB2570 and urges its passage.

Law firms based outside of Hawaii are aggressively advertising their services and meeting with Maui fire-victim clients on Maui. We have compared a number of these firms' names with the public domain data bases for businesses registered to do business in Hawaii and for Hawaii General Excise Tax license numbers assigned. None of the out-of-state law firms we checked possess the Hawaii General Excise Tax number required to do business here. This fact indicates that these out-of-state law firms either are ignorant of Hawaii tax law or do not intend to pay their fair share of Hawaii income and general excise taxes on their Hawaii earnings.

The Department of Taxation has limited resources and will never be able to identify, audit, and collect back taxes from these out-of-state law firms after they receive their fees and leave. The State of Hawaii must close the financial barn door before the animals escape, not afterwards. For the financial welfare of the State and its resident taxpayers, please close this financial barn door and pass HB2570.

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

House of Representatives
Committee on Judiciary and Hawaiian Affairs
Wednesday, January 31, 2024; 2:00 p.m.
Conference Room 325
State Capitol

Re: SUPPORT OF HB 2570 – Relating to Attorneys

Chair Tarnas, Vice Chair Takayama, 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

Brian M. Iwata
101 Aupuni St., #139
Hilo, HI 96720

January 31, 2024

Representative David A Tarnas, Chair CJ&H
Representative Cedric Asuega Gates, Chair CA&F
Committee on Judiciary & Hawaiian Affairs
Committee on Agriculture & Food Systems
Hawaii State Capitol Rm 325
415 South Beretania Street
Honolulu, HI 96813

Re: **In Support of HB2570**
Relating to Attorneys

Chairs Tarnas and Gates:

I am a taxpayer from Hilo, HI and is very concern about out-of-state attorneys and consultants who provide services to Hawaii residents and fail to pay their tax obligations in Hawaii. Failure of out-of-state attorneys and consultants to pay their tax obligation in Hawaii increases the tax burden on the Hawaii residents to make up the difference in tax collections.

This is especially true with all the out-of-state attorneys and consultants that are now involved with the Lahaina disaster as evidence by the numerous daily TV and media ads.

This bill will provide accountability for those service providers to pay their tax obligations in Hawaii and provide the Dept. of Taxation information to confirm if all taxes are property collected.

Thank you for this opportunity to testify.

Respectfully submitted,

Brian M. Iwata,