



*The Judiciary, State of Hawai‘i*

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

**Senate Committee on Judiciary**

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Thursday, February 1, 2024, 9:00 a.m.

State Capitol

Conference Room 016 & Videoconference

by:

Thomas J. Berger

Staff Attorney for the Hawai‘i Supreme Court

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 2514, 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

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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: SB 2514

INTRODUCED BY: DELA CRUZ

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's 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: 1/28/2024



## HAWAII ASSOCIATION OF PUBLIC ACCOUNTANTS

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



**Committee on Judiciary**  
Thursday, February 1, 2024; 9:00 a.m.  
Conference Room 016 & Videoconference  
State Capitol

**Re: SUPPORT, with amendment, of SB2514 – Relating to Attorneys**

**Chair Rhoads, Vice Chair Gabbard, 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 and co-chair of its legislative committee, while drawing upon my knowledge obtained while serving in the above positions.

SB2514 requires that a *pro hac vice* appearance for a court hearing or arbitration proceeding be supported by evidence of the local counsel's Hawaii business registration, the applicant's Hawaii general excise tax license number, and an affirmation that both the applicant and local counsel will pay all state income taxes due for Hawaii business activities.

**Recommended Amendment to SB2514: HAPA recommends that SB2514 also require evidence of Hawaii business registration by the non-resident applicant, as required by the Dept. of Commerce and Consumer Affairs.**

SB2514, with amendment, 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% -



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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 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 SB2514, as amended, 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 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 raised from Hawaii residents and businesses, the Hawaii economy will benefit.



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**Please support SB2514, as amended, to also require business registration for the applicant out-of-state law firm.**

Thank you for this opportunity to testimony. 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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### 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:** \_\_\_\_\_

**SB-2514**

Submitted on: 1/30/2024 1:25:59 PM

Testimony for JDC on 2/1/2024 9:00:00 AM

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

Comments:

Niwao & Roberts, CPAs, a P. C., strongly supports SB2514 and urges its passage with an amendment to require proof of business registration for out-of-state law firms doing business here.

Law firms based outside of Hawai‘i 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 Hawai‘i and for Hawai‘i General Excise Tax license numbers assigned. None of the out-of-state law firms we checked possess the Hawai‘i General Excise Tax number required to do business here. Some have not even registered to do business in Hawai‘i. These facts indicate that these out-of-state law firms either are ignorant of Hawai‘i business registration and tax law requirements or do not intend to pay their fair share of Hawai‘i income and general excise taxes on their Hawai‘i 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 Hawai‘i 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 SB2514 with an amendment to also require proof that out-of-state law firms are registered to do business in Hawaii.

**SB-2514**

Submitted on: 1/29/2024 9:57:59 AM

Testimony for JDC on 2/1/2024 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Richard McClellan	Individual	Support	Written Testimony Only

Comments:

I am in support of this bill.

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

**Committee on Judiciary**  
**Thursday, February 1, 2024; 9:00 a.m.**  
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**Re: SUPPORT, with amendment, of SB2514 – Relating to Attorneys**

**Chair Rhoads, Vice Chair Gabbard, 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