



The Judiciary, State of Hawai'i

Testimony to the House Committee on Consumer Protection and Commerce

Representative Angus L.K. McKelvey, Chair
Representative Justin H. Woodson, Vice Chair

Monday, March 30, 2015, 2:00 p.m.
State Capitol, Conference Room 325

by
Elizabeth Zack
Supreme Court Staff Attorney

Bill No. and Title: Senate Bill No. 1010, S.D. 1, H.D. 1, Relating to the Unauthorized Practice of Law.

Purpose: Allows a person who is not licensed or authorized to practice law in the State to provide legal services on a temporary basis in this State if the attorney provides services in association with or assists a Hawai'i licensed attorney or as in-house counsel to an organization in another jurisdiction or to an affiliated entity or employee of that organization in the State. Requires the clerk of the supreme court to maintain a registry of all attorneys who are not licensed or authorized to practice law in the State, but provide services for a matter that is not being litigated in any court of the State. Makes conforming amendments to attorney licensure requirements. Effective 03/15/2038.

Judiciary's Position:

The Judiciary respectfully opposes this proposal and offers the following comments for consideration.

Pursuant to Article VI, section 7 of the Hawai'i Constitution, the Supreme Court of Hawaii has the power to promulgate rules and regulations for all courts relating to court process, practice and procedures, which shall have the force and effect of law. In accordance with this constitutional authority and HRS section 605-1 and HRS section 605-6, the Supreme Court regulates the examination, licensing, and disciplining of attorneys seeking to practice law in this State and has adopted rules establishing the Board of Examiners to review applications and administer examinations for admission to the Hawai'i bar. See Rule 1 of the Rules of the Supreme Court of Hawaii (RSCH). In addition, the Supreme Court adopted the Hawai'i Rules of



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Professional Conduct and established the Disciplinary Board and the Office of Disciplinary Counsel to oversee the conduct of attorneys in Hawai'i. See RSCH Rule 2.

Although these rules are in place to regulate the practice of law in Hawai'i, the Judiciary recognizes that issues have occasionally arisen concerning the oversight of attorneys who conduct legal services in Hawai'i, but are not licensed in this jurisdiction. The Judiciary, however, believes Senate Bill No. 1010, S.D. 1, H.D. 1 may encroach upon the Supreme Court's constitutional and inherent authority to regulate the practice of law in Hawai'i.

Section 2 of H.D. 1 sets forth the amendments to HRS section 605-14, which governs the unauthorized practice of law, and deletes firms, association, and corporations from the statute's jurisdiction. Many attorneys become incorporated for various reasons, and the Supreme Court has adopted several rules governing the establishment, governance, and regulation of legal associations, corporations, and partnerships. By deleting firms, associations and corporations from the purview of HRS section 605-14, the proposed H.D. 1 will have the opposite effect of its intent for this deletion will allow all incorporated attorneys from other jurisdictions to practice law in the State without any licensing requirements or regulation.

With regards to the proposed amendment adding subsection (c)(1)(A) on page 3, lines 3-7, which mentions pro hac vice admission, the supreme court already has a specific court rule regulating pro hac vice admission of attorneys in court proceedings. See RSCH Rule 1.9. Admission pro hac vice under RSCH Rule 1.9 is discretionary with the presiding judge in each specific case, but the proposed subsection appears to make admission mandatory in cases where an out-of-state attorney meets certain criteria. Moreover, to address issues related to pro hac vice admission, the Supreme Court established a working group to review the present RSCH Rule 1.9. The working group's proposal was released for public comments last year, and the Supreme Court is presently considering the written comments and proposed changes to the rule.

The Judiciary has concerns with subsection (c)(1)(B) on page 3, lines 8-12, which requires the attorneys falling within this subsection to register with the Clerk of the Supreme Court. Such a registry may incur expenditure of funds to develop forms and processes for the purpose of conducting reviews and investigations to determine the attorneys' status (i.e., disbarments, suspensions, good standing). The lack of funding in this bill for the creation and maintenance of a registry is problematic. The Judiciary also has concerns about the information required to be included in the registry because the proposal contains no method for regulation or other means to insure compliance with the requirements.

Finally, the Judiciary also has concerns about subsection (c)(2) on page 3, lines 13-15, which appears to exempt in-house counsel from the State of Hawaii's attorney licensing requirement. If this is the intent of subsection (c)(2), the subsection conflicts with licensing



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requirements already in place. As mentioned above, pursuant to HRS sections 605-1 and 605-6, the supreme court adopted rules regarding the licensing of attorneys. These rules do not exempt in-house counsel from attorney licensing requirements in the State. Requiring in-house counsel to comply with Hawai'i licensing rules ensures that the Office of Disciplinary Counsel in Hawai'i retains authority to investigate any complaints against such attorneys. To address the possible ambiguity in subsection (c)(2), the Committee could either delete subsection (c)(2) from the proposed bill or add language that acknowledges in-house counsel working in Hawai'i are governed by the Supreme Court rules.

In closing, the Judiciary agrees that the State should strive to ensure protection of consumers in this State. Nevertheless, it seems this proposed legislation may not allow this goal to be met and may raise potentially significant constitutional concerns.

Thank you for allowing the Judiciary to submit testimony on this bill.