

2020 Annual Report

HSBA Consumer Protection Committee

The Consumer Protection Committee was not active during the past COVID year.

Our goal has been to prevent the unauthorized practice of law in Hawaii by out-of-state attorneys which is a major problem. Although it is probably the biggest problem facing the bar, we have not had much luck in generating support from the judiciary or other practicing attorneys. This is, in part, because the ABA is controlled by the large mainland firms and their objective is to take over the quality practice of law throughout the US. So everything attorneys see is designed to support that large firm objective.

However, we are in a unique position to resist this movement in Hawaii with two official languages and the use of pidgin English and Hawaiian words in legal documents if we choose to do so.

There are numerous instances of serious harm to consumers caused by the unauthorized practice of law by out-of-state attorneys. We see it every day ranging from exorbitant fees to serious malpractice. I was personally involved in a case where the defendants paid a total of \$18M because of an out-of-state attorney trying to practice law in Hawaii. To his credit, he admitted what he had done, his firm dissolved and they threw in their policy. But others had to pay the balance for his mistakes. So there is no doubt about the harm to consumers.

Also at stake is about \$100M per year in fees for our members in top quality legal work. Paul and I think this has some importance in the overall scheme of things, but we sense that our enthusiasm is not shared by others and both of us are very busy. This unauthorized practice of law focuses on only the top quality work. This results in the larger firms being unable to retain the expertise needed to do the top quality work so that clients are forced to go outside the State for the expertise they need which can and is creating a bad snowball effect for the large firms.

The solution is very simple: Out-of-state attorneys should be required to register pro hac vice to do any legal work in Hawaii or on Hawaii matters and should be admitted only upon a showing of special need because the expertise needed is not available from attorneys licensed in Hawaii. The standard should be very strict. Some Judges such as Judge Valenciano on Kauai have been applying this strict standard while other Judges have been admitting any attorney to do anything as long as they ask. We made some minimal headway in the revised rules, but not enough.

Frankly, I am so busy that I cannot afford to spend the time that is needed to move this forward against the tide which has certainly held us back to some extent. For this reason, Paul and I must have some help from a younger, equally enthusiastic bar member, or I should resign. I cannot speak for Paul on this.

Thanks for considering our Report.

Submitted by A. Bernard Bays.