

IN THE SUPREME COURT OF THE  
STATE OF HAWAI'I

ODC v.

or,

A confidential pending investigation and/or  
Proceeding under the Rules of the Supreme  
Court of the State of Hawai'i and its  
Disciplinary Board, regarding a matter of  
Attorney discipline.

**CONFIDENTIAL**

Case No. 18-0339

MOTION TO ALTER OR AMEND  
JUDGMENT DATED SEPTEMBER 13,  
2022, PURSUANT TO HRCP 59(e);  
CERTIFICATE OF SERVICE

Dexter K. Ka'iama 4249  
1486 Akeke Place  
Kailua, HI 96734  
Respondent

<input type="checkbox"/> DISCIPLINARY BOARD
<input checked="" type="checkbox"/> OFFICE OF DISCIPLINARY COUNSEL
<input checked="" type="checkbox"/> RECEIVED, <input type="checkbox"/> FILED, <input type="checkbox"/> LODGED
DATE: <u>9/21/22</u> , TIME: <u>3:40</u> p.m.
CASE NO.: _____
DKT. NO.: _____
CLERK: <u>EKS</u>

**MOTION TO ALTER OR AMEND JUDGMENT DATED  
SEPTEMBER 13, 2022, PURSUANT TO HRCP 59(e)**

Respondent DEXTER K. KA'IAMA (hereafter "Respondent") respectfully moves the Disciplinary Board to alter or amend its order denying motions dated September 13, 2022, pursuant to HRCP 59(e) on the grounds of manifest error of law or fact resulting from disregarding the evidentiary standard established by *State of Hawai'i v. Lorenzo*<sup>1</sup> and the Respondent's right to due process and a fair and regular trial.

Respondent requests the Board to alter or amend its order by granting Respondent's request for an evidentiary hearing and to take judicial notice of certain facts in support Respondent's motion to dismiss subpoena.

DATED: Honolulu, Hawai'i, September 21, 2022.

Respectfully submitted,

  
/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)

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<sup>1</sup> *State of Hawai'i v. Lorenzo*, 77 Haw. 219, 221; 883 P.2d 641, 643 (Haw. App. 1994).

## MEMORANDUM IN SUPPORT OF MOTION

Respondent moves the Disciplinary Board of the Hawai'i Supreme Court (hereinafter "Board") to reconsider, alter or amend its September 13, 2022 order denying motions on the grounds of manifest error of law or fact resulting from its disregard of the evidentiary standard established by *State of Hawai'i v. Lorenzo* ("Lorenzo").

### I. INTRODUCTION

At issue in *Lorenzo* was an evidentiary standard set by the Intermediate Court of Appeals ("ICA") on personal jurisdiction. ODC claims this Board has personal jurisdiction over Respondent. The Respondent is a Hawaiian subject of the Hawaiian Kingdom and that this Board lacks personal jurisdiction over him pursuant to the evidentiary standard set by the *Lorenzo* court.

As a result, Respondent filed a motion to dismiss subpoena dated August 31, 2022, pursuant to HRCP 12(b)(2), and to schedule an evidentiary hearing, or in the alternative, motion for protective order dated September 6, 2022, and a motion for request of judicial notice in support of Respondent's motion to dismiss dated September 6, 2022. On September 13, 2022, Clifford Nākea, Chairperson the Disciplinary Board, filed an order denying motions by stating:

Dexter Ka'iama was admitted to the bar of the Hawai'i Supreme Court in 1986. In his motions, he submits that he is not subject to the jurisdiction of the Hawai'i Supreme Court's Disciplinary Board. To the extent that Dexter Ka'iama wishes to practice law as a licensed attorney in the state of Hawai'i, he is subject to the jurisdiction of the Disciplinary Board that serves as a Special Master for the Hawai'i Supreme Court to investigate and prosecute attorney violations of the Hawai'i Rules of Professional Conduct. (RSCH Rule 2 at seq.) In this context, arguments over the Kingdom of Hawai'i are irrelevant.

Chairperson Nākea's justification in denying Respondent's motions denies Respondent's right to due process and his right to a fair and regular hearing that affords all the protection under the law. Respondent's entry into the bar was 8 years prior to *Lorenzo* and the evidentiary standard that was set, which has become Hawai'i common law, and is

binding on all the courts in the (current) State of Hawai'i and members of the bar, to include Chairperson Nākea. It wasn't until 2009 that the Respondent became fully aware of the Hawaiian Kingdom's continued existence as a State under international law and his nationality as a Hawaiian subject.

Respondent's first case applying *Lorenzo* was in 2010 in *Onewest Bank v. Tamanaha*, case no. 3RC10-1-1306, where he was one of three attorneys of record with lead counsel, Keoni K. Agard, for the defendant. Since 2010, Respondent has taken the time and energy to further research the case law and international laws on the subject of the Hawaiian Kingdom as a State and he has, since the *Tamanaha* case, become as proficient on this matter as any attorney within the territory of the Hawaiian Islands. According to *Lorenzo*, the burden of proof was placed on the Defendant in either civil or criminal proceedings, to include these proceedings. There were no exceptions to this burden, *i.e.*, defendants or respondents that are practicing attorneys. To date, *Lorenzo* remains an open legal question.<sup>1</sup>

In its opening statement in its order denying motions, Chairperson Nākea gives the appearance that the Respondent is “[r]esisting the Office of Disciplinary Counsel’s (ODC) efforts to investigate a complaint.” This statement is prejudicial and violates Respondent’s right to a presumption of innocence, which is recognized as one of the most basic requirements of a fair trial or hearing. Filing a motion to dismiss the subpoena pursuant to the evidentiary standard set by *Lorenzo* cannot be construed by the Board as an action that constitutes “resisting.” It is a pre-trial or pre-administrative hearing matter allowable under HRCP 12(b)(2).

Furthermore, the Respondent regrettably views Chairperson Nākea’s statement, “[t]o the extent that Dexter Ka’iama wishes to practice law as a licensed attorney in the state of Hawai‘i, he is subject to the jurisdiction of the Disciplinary Board,” as: (1) Manifestly unjust dismissals of pre-trial (in this case pre-administrative proceedings) motions to dismiss clearly provided for under Hawai‘i State law and rules of civil procedure; (2) A blatant disregard of his legal obligations to enforce the evidentiary standard set by the Intermediate Court of Appeals (“ICA”) on personal jurisdiction under *Lorenzo*; (3) Lacking a modicum of judicial/administrative impartiality; and (4) a veiled

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<sup>1</sup> *State of Hawai‘i v. Lee*, 90 Haw. 130, 142; 976 P.2d 444, 456 (Haw. App. 1999).

threat in order to coerce Respondent to “cooperate with the Office of Disciplinary Counsel’s investigation,” the accumulation of which is tantamount to an abuse of discretion of the administrative authorities of the Chairperson.

These proceedings should be guided by the rule of law as set forth by the ICA in *Lorenzo*. “The rule of law, sometimes called ‘the supremacy of law,’ provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application.”<sup>2</sup> As United States Attorney General explained this past Saturday before new immigrants at Ellis Island, “[t]he protection of law—the rule of law—is the foundation of our system of government. The rule of law means that the law treats each of us alike; There is not one rule for friends, another for foes; one rule for the powerful, another for the powerless; a rule for the rich, another for the poor.”<sup>3</sup>

## II. DISCUSSION

According to the ICA in *Nishitani v. Baker*, “although the prosecution had the burden of proving beyond all reasonable doubt facts establishing jurisdiction [in *Lorenzo*], the defendant had the burden of proving facts in support of any defense, such as immunity, which would have precluded the court from exercising jurisdiction over the defendant.”<sup>4</sup> “However broadly we may review a litigant’s standing to pursue a legal issue in court or before an agency,” states the Hawai‘i Supreme Court, “every court must nevertheless determine as a threshold matter whether it has jurisdiction to decide the issue presented.”<sup>5</sup>

According to *Lorenzo*, the threshold matter is whether the Board has personal jurisdiction over the Respondent in light of the Hawaiian Kingdom’s continued existence as a State and the Respondent as a Hawaiian subject. “Personal jurisdiction exists when (1)

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<sup>2</sup> Black’s Law Dictionary (6th ed. 1990), 1332.

<sup>3</sup> United States Department of Justice, *Justice News—Attorney General Merrick B. Garland Administers the Oath of Allegiance and Delivers Congratulatory Remarks at Ellis Island Ceremony in Celebration of Constitution Week and Citizenship Day*, September 17, 2022 (online at: <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-administers-oath-allegiance-and-delivers>).

<sup>4</sup> *Nishitani v. Baker*, 82 Haw. 281, 289; 921 P.2d 1182, 1190 (Haw. App. 1996).

<sup>5</sup> *Pele Def. Fund v. Puna Geothermal Venture*, 77 Haw. 64, 67 (1994), citing *Bush v. Hawaiian Homes Comm’n*, 76 Haw. 128, 133, 870 P.2d 1272, 1277 (1994) (observing that a judgment rendered.

the defendant's activity falls under the State's long-arm statute, and (2) the application of the statute complies with constitutional due process."<sup>6</sup> "Hawaii's long-arm statute, HRS §634-635, was adopted to expand the jurisdiction of the State's courts to the extent permitted by the due process clause of the Fourteenth Amendment."<sup>7</sup>

The exception to the long-arm statute are defendants that have successfully presented a "factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature."<sup>8</sup> As the Hawai'i Supreme Court explained, in *State of Hawai'i v. Armitage*, "Lorenzo held that, for jurisdictional purposes, should a defendant demonstrate a factual or legal basis that the [Hawaiian Kingdom] 'exists as a state in accordance with recognized attributes of a state's sovereign nature[,] and that he or she is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai'i lack jurisdiction over him or her."<sup>9</sup>

To determine personal jurisdiction "the court has discretion to proceed either upon the written submissions or through a full evidentiary hearing."<sup>10</sup> In *Shaw v. North Am. Title Co.*, the ICA quoted 2A J. Moore, J. Lucas & G. Grotheer, *Moore's Federal Practice* ¶12.07[2.-2] at 12-69-70 (2d ed. 1993):

If the...court chooses not to conduct a full-blown evidentiary hearing on a pretrial motion to dismiss for lack of personal jurisdiction, plaintiff need make only a prima facie showing of jurisdiction through its own affidavits and supporting materials, even though plaintiff eventually must establish jurisdiction by a preponderance of the evidence either at a pretrial evidentiary hearing or at trial and, before the hearing is held, a prima facie showing suffices notwithstanding any controverting presentation by the moving party to defeat the motion.

The ODC, at the onset of these proceedings, did provide a "prima facie" showing of the Board's jurisdiction, but the Respondent's motions would have the effect of compelling the ODC "to establish jurisdiction by a preponderance of the evidence." To deny Respondent the opportunity to "prov[e] facts in support of [his] defense, such as

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<sup>6</sup> *Norris v. Six Flags Theme Parks, Inc.*, 102 Haw. 203, 207; 74 P.3d 26, 30 (2003).

<sup>7</sup> *Cowan v. First Ins. Co. of Hawaii, Ltd.*, 61 Haw. 644, 649; 608 P.2d 394, 399 (1980).

<sup>8</sup> *State of Hawai'i v. Lorenzo*, 77 Haw. 219, 221; 883 P.2d 641, 643 (Haw. App. 1994).

<sup>9</sup> *State of Hawai'i v. Armitage*, 132 Haw. 36, 57; 319 P.3d 1044, 1065 (2014).

<sup>10</sup> *Shaw v. North Am. Title Co.*, 76 Haw. 323, 326-27, 876 P.2d 1291, 1294-95 (1994).

immunity,” violates Respondent’s right to due process. The Hawai‘i Supreme Court, in *State v. Matafeo*, stated, “[t]he due process guarantee of the Federal and Hawaii constitutions serves to protect the right of an accused in a criminal case to a fundamentally fair trial (citation omitted). Central to the protections of due process is the right to be accorded a ‘meaningful opportunity to present a complete defense.’”<sup>11</sup>

### III. CONCLUSION

For the reasons set forth above, Respondent requests the Chairperson reverse its orders and grant Respondent’s Motion to Dismiss Subpoena Dated August 31, 2022, Pursuant to HRCP 12(b)(2) and the Lorenzo Principle, filed September 6, 2022 (“Motion to Dismiss Subpoena”) and Request for Judicial Notice in Support of Respondent’s Motion to Dismiss Subpoena, filed September 6, 2022. In the alternative, Respondent requests the Chairperson schedule an evidentiary hearing, pursuant to *Lorenzo*, for the Office of Disciplinary Counsel to provide rebuttable evidence, factual and legal, that the Hawaiian Kingdom ceases to exist as a State.

DATED: Honolulu, Hawai‘i, September 21, 2022.

Respectfully submitted,

  
/s/ Dexter K. Ka'iama

DEXTER K. KA'IAMA (Bar No. 4249)

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<sup>11</sup> *State v. Matafeo*, 71 Haw. 183, 184 (1990).

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**CONFIDENTIAL**

Case No. 18-0339

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**


The undersigned hereby certifies that a true and filed copy of the foregoing document will be duly served on the following parties by Hand-delivery or U.S. mail (postage prepaid on this date):

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Dated: Kailua, Hawai'i, September 21, 2022.

  
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Dexter K. Ka'iama. Esq.  
Respondent