

RE:           **Rules 1.9, 10.1(a), and 10.3(a) of the Rules of the Supreme Court of the State of Hawai'i**

CHANGES TO THE LAWYERS' FUND FOR CLIENT PROTECTION  
REGARDING *PRO HAC VICE* AND INCAPACITATED ATTORNEYS

The Supreme Court of Hawai'i seeks public comment regarding proposals to amend Rules 1.9, 10.1(a), and 10.3(a) of the Rules of the Supreme Court of the State of Hawai'i (RSCH). The proposals would require attorneys appearing *pro hac vice* to pay the annual fee to the Lawyers' Fund for Client Protection paid by local counsel, and clarify the Fund's jurisdiction over claims related to *pro hac vice* attorneys and attorneys determined to be incapacitated pursuant to RSCH Rule 2.19. The proposed amendments are attached hereto.

Comments about the proposed amendments should be submitted, in writing, **no later than Monday, January 29, 2018**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website.

Attachment

**PROPOSED AMENDMENTS OF THE  
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**  
(New material is underlined)

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**Rule 1. ADMISSION TO THE BAR.**

**1.9. *Pro hac vice* appearance of counsel.**

(a) Any attorney actively licensed to practice law by the highest court of a state or territory of the United States or the District of Columbia who is not a resident of Hawai'i may be permitted to associate himself or herself with a member or members of the Hawai'i bar (local counsel) in the presentation of a specific case at the discretion of the presiding judge or judges. The petition or motion for *pro hac vice* appearance and any subsequent documents submitted on behalf of a party must be filed by local counsel and must comply with subsection (b) of this Rule. An attorney allowed to appear *pro hac vice* in a case may continue on appeal or upon remand in the same case without filing a new petition or motion for *pro hac vice* admission so long as the attorney complies with all applicable Hawai'i statutes, laws, and rules of the court in addition to other provisions of this Rule.

An attorney allowed to appear *pro hac vice* shall, for each year the order is effective, pay to the Hawai'i State Bar an annual Disciplinary Board fee and an annual Lawyers' Fund for Client Protection fee authorized by the supreme court, provided that if the attorney is allowed to appear in more than one case, only one fee shall be paid. The Hawai'i State Bar may assess a reasonable fee to register and collect this fee on an annual basis.

Failure to file proof of such payment in the record within 10 days after entry of the order and in January of each subsequent year in the court in which the case is then pending voids the order allowing the appearance *pro hac vice*, and a new petition or motion for *pro hac vice* appearance must be filed.

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**Rule 10. LAWYERS' FUND FOR CLIENT PROTECTION.**

**10.1. Purpose; trustees; administration.**

(a) **Purpose; definition of "dishonest conduct."** The purpose of the Lawyers' Fund for Client Protection of the Hawai'i Supreme Court ("Fund") is the reimbursement, to the extent and in the manner provided by these rules, of losses caused by the dishonest conduct of members of the bar of this State and any attorney specially admitted by any court of this State.

The words "dishonest conduct" as used herein mean wrongful acts committed by an attorney in the manner of defalcation or embezzlement of money; or the wrongful taking or conversion of money, property or other things of value; or refusal to refund unearned fees received in advance where the attorney performed no services or such an insignificant portion of the services that the refusal constitutes a wrongful taking or conversion of money; or borrowing money from a client without intention or reasonable ability or reasonably anticipated ability to repay it.

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**10.3. Payment of claims.**

**(a) Eligible claims.** The trustees may consider for payment all claims resulting from the dishonest conduct of a member of the Bar of this State or any attorney specially admitted by any court of this State, provided that:

(1) Said conduct was engaged in while the attorney was licensed member of the Bar of this State or specially admitted by any court of this State; and

(i) the claim originates from the attorney's providing legal services in the State of Hawai'i; and

(ii) the claimant engaged the attorney's services in the State of Hawai'i; and

(iii) the dishonest conduct occurred in the State of Hawai'i; and

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(3) The attorney has (one of the following):

(i) died;

(ii) been adjudicated a bankrupt;

(iii) been adjudicated an incompetent or incapacitated from continuing the practice of law by reason of physical or mental infirmity or illness or because of the use of drugs or intoxicants;

(iv) been disbarred or suspended from the practice of law, or voluntarily resigned from the practice of law;

(v) become a judgment debtor of the claimant, which adjudication shall have been based upon dishonest conduct while acting as specified in Rule 10.3(a) (2) and which judgment or judgments remain unsatisfied in whole or in part;

(vi) been adjudged guilty of a crime, which adjudication shall have been based upon the dishonest conduct of the attorney; or

(vii) left the jurisdiction and cannot be found.

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