

RE: Rules 1.9, 1.9A (New Rule), and 2.1 of the Rules of the Supreme Court of the State of Hawai'i

CHANGES TO *PRO HAC VICE* PRACTICE AND DUTIES

The Supreme Court of the State of Hawai'i seeks public comment regarding proposals to amend Rules 1.9 and 2.1 of the Rules of the Supreme Court of the State of Hawai'i (RSCH), and to establish a new RSCH Rule 1.9A. Proposed RSCH Rule 1.9A establishes requirements for attorneys seeking to appear *pro hac vice* for arbitration proceedings. The proposed amendments to RSCH Rule 1.9 create new duties for *pro hac vice* counsel with regard to securing and maintaining that status, while the proposed amendments to RSCH Rule 2.1 extend disciplinary jurisdiction to *pro hac vice* counsel participating in arbitration proceedings. The proposed amendments are attached hereto.

Comments about the proposed amendments should be submitted, in writing, **no later than Monday, July 9, 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**
(Deleted material is bracketed and stricken; new material is underlined)

Rule 1. ADMISSION TO THE BAR.

* * *

1.9. *Pro hac vice* appearance of counsel for court proceedings.

(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 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. Within 10 days after entry of an order granting a petition or motion for *pro hac vice* appearance, and also within 10 days of making subsequent fee payments in January of each year, the attorney shall file proof of payment of the required fees in the record of the court in which the case is then pending.

~~[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.]~~ Failure to pay the required fees within 10 days after entry of the order approving the petition or motion, and in January of each subsequent year, renders the order approving the petition or motion no longer valid, and a new petition or motion must be filed.

(b) Local counsel shall file the petition or motion for *pro hac vice* appearance and the petition or motion shall be supported by:

(1) the declaration of local counsel that provides, at minimum, the following:

(A) local counsel's business address and address for service of documents; and

(B) affirmation that local counsel understands he or she is the attorney of record and is responsible for all phases of the litigation;

(2) the declaration of the applicant for *pro hac vice* admission that provides, at minimum, the following:

(A) the applicant's business address, the name of the law firm the attorney is associated with and the address of the law firm;

(B) every state and federal jurisdiction to which the applicant has been admitted to practice law and a statement attesting that the attorney is in good standing in those jurisdictions;

(C) ~~[any and all disciplinary proceedings in which the applicant was disciplined, any pending disciplinary proceedings against the applicant, or a statement, if applicable, that the applicant has never been the subject of any disciplinary proceeding;]~~ a statement that the applicant is not currently, and has not been, suspended or disbarred from the practice of law before any court or otherwise disciplined, and if the applicant has been disciplined or is subject to a pending disciplinary proceeding, material information about those proceedings must be provided;

(D) the title and case number of each case, and the court or other forum in this State, in which the applicant has sought and/or been allowed to appear *pro hac vice* and the present status of each case;~~[-and]~~

(E) if the applicant has made repeated appearances as counsel in Hawai'i during the preceding 5 years, the special circumstances that warrant the approval of the applicant's appearance in the subject case;

~~(E) (F)~~ an affirmation that, if admitted, the applicant will comply with all applicable Hawai'i statutes, laws, and rules of the courts including the Hawai'i Rules of Professional Conduct and Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers~~[-]~~; and

~~(F) (G)~~ an affirmation that, if admitted, the applicant understands that he or she is subject to all applicable Hawai'i statutes, laws, rules of the court, and the Hawai'i disciplinary process with respect to any acts or omissions occurring during representation pursuant to this Rule.

(c) An attorney ~~[allowed]~~ approved to appear *pro hac vice* pursuant to this Rule is subject to the jurisdiction of Hawai'i courts with respect to all applicable Hawai'i statutes, laws, and rules of the courts to the same extent as any other attorney admitted to practice in the courts of this state. The attorney ~~[allowed]~~ approved to appear *pro hac vice* is subject to the disciplinary jurisdiction of the Supreme Court of Hawai'i. The court in which an attorney is ~~[allowed]~~ approved to appear *pro hac vice* or the Supreme Court of Hawai'i may, for violations of Hawai'i law, the Hawai'i Rules of Professional Conduct, or orders of the court, revoke the permission for the attorney to appear *pro hac vice*, or impose any other appropriate sanction.

(d) Local counsel of record shall sign all pleadings, motions, briefs, or any other documents submitted in the case, and shall participate actively in all phases of the case and be prepared to go forward with the case as required. Service of all papers and pleadings shall be upon local counsel, and shall constitute service upon *pro hac vice* counsel and their client(s).

(e) Local counsel shall provide to the Hawai'i State Bar Association a copy of the order allowing the appearance of counsel *pro hac vice* and shall notify the Hawai'i State Bar Association when the case is closed or the order granting *pro hac vice* admission is no longer valid.

(f) An attorney not licensed in Hawai'i who fails to obtain approval to represent a party in a court proceeding as required by this Rule, and who proceeds to represent a party in a court proceeding, is subject to referral to appropriate authorities for potential violation of Hawaii Revised Statutes § 605-14 (Unauthorized practice of law prohibited) and other applicable laws.

(New Rule)

1.9A. *Pro hac vice* appearance of counsel for arbitration proceedings.

(a) Approval to appear *pro hac vice*. An attorney not licensed in Hawai‘i, but who is admitted to practice and in good standing with the highest court of a state or territory of the United States or the District of Columbia, may associate with a licensed Hawai‘i attorney (Hawai‘i attorney) to represent parties in the course of or in connection with an arbitration proceeding in Hawai‘i that concerns a legal dispute over a Hawai‘i related matter, provided that the petition to appear, accompanied by the materials set forth in subsection (b) of this Rule, is approved in writing by the arbitrator or, if there are multiple arbitrators, a majority of the arbitrators.

If the subject arbitration results in a judicial proceeding, the out-of-state attorney must comply with Rule 1.9 of these Rules to appear as counsel in the court proceeding.

(b) Contents of the application. The Hawai‘i attorney to the arbitration shall submit to the arbitrator(s) in the subject arbitration a petition for *pro hac vice* appearance by the out-of-state attorney, and shall serve the petition upon all parties to the arbitration, along with the following in support of the petition:

(1) **REQUIRED INFORMATION.** The petition shall provide the following information:

(A) The case name and number, the name of the arbitrator(s), and the arbitral forum for the proceeding in which the out-of-state attorney seeks to appear;

(B) The out-of-state attorney’s law firm name, office address, email address, and telephone number;

(C) The courts in which the out-of-state attorney has been admitted to practice and the dates of admission; and

(D) The title of all courts and other forums in Hawai‘i in which the out-of-state attorney has sought to appear as counsel *pro hac vice* in the preceding 5 years (including but not limited to petitions pursuant to this Rule); the name and number of each such case or proceeding; the date of each application or petition; and whether or not the application or petition was approved. If the attorney has made repeated appearances as counsel in Hawai‘i during the preceding 5 years, the petition shall reflect the special circumstances that warrant the approval of the attorney’s appearance in the subject arbitration.

(2) **REQUIRED DECLARATION BY OUT-OF-STATE ATTORNEY.** In addition, the out-of-state attorney shall provide a declaration that declares accurately and truthfully to the best of the attorney’s knowledge, under penalty of law, that the out-of-state attorney:

(A) is in good standing before the courts where the attorney’s license to practice law is active;

(B) is not currently, and has not been in the past, suspended or disbarred from the practice of law before any court or has otherwise been disciplined or, if the attorney has been disciplined or is subject to a pending disciplinary proceeding, providing material information about those proceedings;

(C) is not a resident of the State of Hawai‘i, and is not regularly engaged or employed as an attorney in Hawai‘i; and

(D) if given approval to represent a party in the arbitration, agrees to be subject to the jurisdiction of the courts of this state with respect to the laws of this state governing the conduct of attorneys, including the disciplinary jurisdiction of the Hawai‘i Supreme Court and the Disciplinary Board of the Hawai‘i Supreme Court, and will comply with applicable Hawai‘i laws, arbitration rules, the Hawai‘i Rules of Professional Conduct, and the Guidelines of Professional Courtesy and Civility for Hawai‘i Lawyers.

(3) **REQUIRED DECLARATION BY HAWAI‘I ATTORNEY.** The Hawai‘i attorney submitting the petition shall provide a declaration that declares accurately and truthfully to the best of the attorney’s knowledge, under penalty of law,

(A) The business address and address for service of documents for the Hawai‘i attorney; and

(B) An affirmation that he or she is the attorney of record and is responsible for all phases of the subject arbitration.

(c) Disposition of the petition. The arbitrator(s) shall respond to the petition in writing. The arbitrator(s) may approve the petition if the requirements in subsection (b) of this Rule have been satisfied. The petition shall be disapproved for failure to submit and serve the petition as described in subsection (b). In the absence of special circumstances, repeated appearances as counsel in Hawai‘i during the preceding 5 years may be grounds for disapproval of the petition and disqualification from serving as an attorney in the subject arbitration.

Upon written approval of the petition by the arbitrator(s), the Hawai‘i attorney shall forthwith submit a copy of the order approving the petition, along with a copy of the petition, to the Hawai‘i State Bar Association.

The arbitrator(s) in the subject arbitration or the Hawai‘i Supreme Court may revoke the permission for the attorney to appear in the subject arbitration if the attorney submitted a declaration containing false information or a material omission, violated Hawai‘i law, violated the Hawai‘i Rules of Professional Conduct, or violated an order of the arbitrator(s).

(d) Duties of the *pro hac vice* attorney. The out-of-state attorney admitted *pro hac vice* in an arbitration shall pay to the Hawai‘i State Bar Association the annual Disciplinary Board fee and the annual Lawyers’ Fund for Client Protection fee authorized by the Hawai‘i Supreme Court, provided that if the attorney is allowed to appear in more than one case, only one set of annual fees shall be paid. The Hawai‘i State Bar may assess a reasonable fee to register and collect these fees on an annual basis. Proof of payment of the required fees shall be served on the arbitrator(s), the parties to the subject arbitration, and the arbitral forum. For each subsequent year that the approved petition is effective, the out-of-state attorney shall pay the annual fees in January and serve proof of payment upon the arbitrator(s), the parties to the subject arbitration, and the arbitral forum.

Failure to pay the annual fees within 10 days after entry of the order approving the petition, and in January of each subsequent year, renders the order approving the petition no longer valid, and a new petition must be filed.

The out-of-state attorney shall notify the Hawai‘i attorney, the arbitrator(s), and the parties to the subject arbitration when there is any material

change to the information provided under subsections (b)(1) and (b)(2) of this Rule.

(e) Duties of the Hawai'i attorney. The Hawai'i attorney shall sign all pleadings, motions, briefs, or any other documents submitted in the subject arbitration, and shall participate actively in all phases of the arbitration and be prepared to go forward with the arbitration as required. Service of all papers and pleadings shall be upon the Hawai'i attorney and shall constitute service upon the out-of-state attorney and their client(s).

The Hawai'i attorney shall notify the Hawai'i State Bar Association when the arbitration is completed or the order approving the petition is no longer valid.

(f) Unauthorized practice of law. An attorney not licensed in Hawai'i who fails to obtain approval to represent a party in an arbitration proceeding as required by this Rule, and who proceeds to represent a party in an arbitration proceeding, is subject to referral to appropriate authorities for potential violation of Hawaii Revised Statutes § 605-14 (Unauthorized practice of law prohibited) and other applicable laws.

(g) The *pro hac vice* attorney is subject to Hawai'i jurisdiction. An attorney approved to appear in an arbitration proceeding under this Rule is subject to the jurisdiction of Hawai'i courts with respect to all applicable Hawai'i laws and rules to the same extent as any other attorney admitted to practice in this state. The attorney approved to appear in an arbitration proceeding under this Rule is also subject to the disciplinary jurisdiction of the Hawai'i Supreme Court and the Disciplinary Board of the Hawai'i Supreme Court.

(h) Limits of this Rule. Any party to an arbitration arising under a collective bargaining agreement subject to either state or federal law may be represented in the course of and in connection with those proceedings by any person, regardless of whether that person is licensed to practice law in Hawai'i, if the representation is consistent with the laws governing such proceedings.

This Rule does not apply to proceedings before state or federal administrative boards or agencies that are authorized to establish their own rules governing the practice of out-of-state attorneys before those bodies.

This Rule does not negate the rights of parties to be represented by a person of their choosing so long as that right is established as a matter of a specific state or federal law.

* * *

Rule 2. DISCIPLINARY RULES.

2.1. Jurisdiction.

Any attorney admitted to practice law in this state, ~~and~~ any attorney specially admitted by a court of this state for a particular proceeding, and any attorney specially admitted to appear in an arbitration proceeding under Rule 1.9A of these Rules is subject to the exclusive disciplinary jurisdiction of the supreme court and the Board hereinafter established.

Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any ~~voluntary~~ bar association from censuring a member or suspending or expelling a member from membership in the association. Further, nothing herein contained shall be construed to deny to any arbitrator or arbitration panel such powers as the arbitrator or arbitration panel may have that are necessary to maintain control over a particular arbitration proceeding.

* * *