

NO. 29611

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL PATRICK O'GRADY and LEILANI O'GRADY,
Petitioners,

vs.

THE HONORABLE GREG K. NAKAMURA, JUDGE OF THE CIRCUIT
COURT OF THE THIRD CIRCUIT, STATE OF HAWAII;
STATE OF HAWAII; STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION;
COUNTY OF HAWAII; HAWAIIAN ELECTRIC COMPANY; HAWAIIAN ELECTRIC
LIGHT COMPANY; HAWAIIAN ELECTRIC INDUSTRIES, INC.; and
HULU LOLO, LLC, Respondents.

ORIGINAL PROCEEDING
(CIV. NO. 07-1-0372)

ORDER

(By: Moon, C.J., Nakayama, Acoba, and Duffy, JJ.
and Intermediate Court of Appeals Chief Judge
Recktenwald, assigned by reason of vacancy)

Upon consideration of the petition for a writ of mandamus filed by petitioners Michael Patrick O'Grady and Leilani O'Grady and the papers in support, it appears that there is no federal or state constitutional right to *pro hac vice* appearance of counsel before any Hawai'i state court. See Bank of Hawaii v. Kunimoto, 91 Hawai'i 372, 388, 984 P.2d 1198, 1214 (1999), citing Leis v. Flynt, 439 U.S. 438, 442-43 (per curiam), reh'g denied, 441 U.S. 946 (1979). The *pro hac vice* appearance of Raymond Johnson as plaintiffs' counsel in Civil No. 07-1-0372 was within the discretion of the respondent judge. See RSCH 1.9. The denial of *pro hac vice* appearance was not a flagrant and manifest abuse of discretion. Thus, petitioners are not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a

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clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action. Such writ is not intended to supersede the legal discretionary authority of the lower court. Where a court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act.). Therefore,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, February 12, 2009.



Anna A. Takayama



James E. Dully, Jr.

Mark E. Ricketts