

NO. 28193

IN THE SUPREME COURT OF THE STATE OF HAWAII

GEORGE MIYASHIRO, Petitioner,

vs.

THE HONORABLE GEORGE M. MASUOKA, Responder

K. HAMAKAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 NOV - 1 PM 1:31

FILED

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

(By: Moon, C.J., Levinson, and Nakayama, JJ., and Intermediate Court of Appeals Judge Nakamura, in place of Duffy, J., recused, and Acoba, J., dissenting)

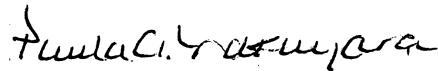
Upon consideration of the petition for a writ of mandamus filed by petitioner George Miyashiro and the papers in support, it appears that there is no federal or state constitutional right to *pro hac vice* appearance of counsel before any Hawai'i state court. See Bank of Hawaii v. Kunitomo, 91 Hawai'i 372, 388, 984 P.2d 1198, 1214 (1999). Granting Eugene Albertini full *pro hac vice* status in Civil No. 04-1-0211 was within the discretion of the circuit judge, see RSCSH 1.9, and the refusal to do so for the reasons for which *pro hac vice* appearance was initially denied was not a flagrant and manifest abuse of discretion. Thus, petitioner is not entitled to a writ of mandamus. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action. Such a 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, November 1, 2006.

David J. Gierlach,
for petitioner



I dissent and would grant the petition.

