

Ethics & Issues

by Carole R. Richelieu, Chief Disciplinary Counsel

Third Time's A Charm?

Unfortunately, despite articles, presentations, and advice, unlabeled and mislabeled client trust and attorney business accounts continue to come to the attention of the Office of Disciplinary Counsel. While such violations are minor when isolated, the fact remains that they are violations and will be charged in those cases involving other violations sufficiently serious to warrant the institution of formal disciplinary proceedings. Failure to label can also lead to serious violations, such as misappropriation and commingling where a deposit slip is not labeled and where client funds are deposited into a business account rather than a trust account.

So, here is another opportunity to comply with HRPC 1.15. It is easy, simple, and compulsory. The Hawaii Supreme Court's rule is strict, specific, detailed, and compliance is mandatory. See *Office of Disciplinary Counsel v. Lau*, 85 Haw. 212, 941 P.2d 295 (1997).

Each trust account, as well as deposit slips and checks drawn thereon, must be prominently labeled "client trust account." HRPC 1.15(b). There are no permissible substitute phrases or words (not even "clients" or "client's"). Any additional descriptive designation, however, for a specific trust account is permissible, such as "IOLTA" where applicable.

Each business account, as well as the deposit slips and checks drawn thereon, must be prominently labeled "business account," "office account," or an equivalent name. HRPC 1.15(b). Use of only the name of an attorney or law firm is not in compliance. Use of an account labeled a "trust" account which contains no client funds and is used primarily as a business account is likewise unethical.

Issuance Of Ethics Opinions

Not sure you have a conflict of interest? Unsure regarding your duties to a prospective client? Not sure how to handle your former client's request for return of her files and an accounting? Now is the time to contact ODC, not later.

An important Disciplinary Board-mandated function of ODC is the provision of ethics guidance to members of the bar about their own prospective conduct. This "education" - as opposed to purely "disciplinary" - function is of considerable significance. Obviously, it is far more beneficial to the public and the profession if attorneys can avoid ethics problems well before they have any chance of arising.

Ethics opinions fall into two general categories: "formal" and "informal." Specific policies have been adopted by the Disciplinary Board regarding the issuance of ethics opinions.

Formal written opinions are issued only by the Disciplinary Board and are restricted to questions of broad interest and applicability to the bar. The Disciplinary Board will not issue Formal Opinions covering individual situations or circumstances. The topics of Formal Opinions are usually chosen from suggestions by the Hawaii Supreme Court, the Disciplinary Board, ODC, and the bar.

Formal Opinions are binding on all members of the bar, and should an attorney fail to observe a Formal Opinion, that failure can be the basis for disciplinary liability and sanction.

Informal opinions may be written or verbal and are issued by ODC. Informal opinions are of more limited applicability because they address specific factual situations faced by individual attorneys or law firms. ODC devotes a significant amount of time

(well over a thousand opinions annually) and effort to answering informal opinion requests from Hawaii attorneys. ODC cannot answer informal opinion requests from attorneys not licensed in this jurisdiction or from the public and cannot opine on the conduct of other attorneys or on past conduct. These latter matters can only be handled through thorough investigation and analysis. Advice is limited to ethics; ODC cannot provide legal advice.

An informal written opinion is issued only upon the submission of a written opinion request. The written request must contain a complete statement of the factual circumstances upon which the request is based, and the opinion will be limited to those facts only. The opinion is reviewed by a member of the Disciplinary Board's Opinion Committee prior to issuance. If the answer to a written opinion request is relatively simple and straightforward, the request may be answered by telephone as long as the requesting attorney is satisfied with an answer given over the telephone.

A written opinion request is not, however, required in order to obtain an informal verbal opinion. Verbal opinions are usually sought by attorneys when time is of the essence or the inquiry is relatively simple. The inquirer will be provided with the best advice available under the circumstances based upon the facts as the attorney has provided. Informal verbal opinions may be followed up by ODC sending copies of written materials, such as Bar Journal articles, on the subject.

Informal opinions, then, are only as solid and valid as the facts upon which they are based, a factor solely within the control of the inquiring attorney. Rest assured that ODC keeps confidential informal written and verbal opinions issued by ODC. While the recipient of an opinion is free to share that opinion with the world, ODC will not reveal the facts or the content of any request in the opinion-giving context.

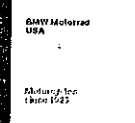
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For a verbal informal opinion, call 521-4591 and press 2 to leave a message. An ODC attorney is assigned daily to handle these calls. For a written informal opinion, send the request to 1132 Bishop Street, Suite 300, Honolulu, Hawaii 96813 sufficiently in advance of when the advice is needed.

Certificate Of Good Standing

Our office continues to receive requests from attorneys for certificates of good standing. Please be reminded that these certificates are issued only by the Hawaii Supreme Court Clerk's Office. Our office handles requests for information regarding Hawaii attorney complaint (docketed only) records with proper waivers. Individual attorneys who request such records must submit the request in writing and, please, allow time to process the request. The Hawaii State Bar Association handles registration information, such as whether an attorney is active, inactive, or administratively suspended for failure to pay mandatory fees, dues, or child support. So, please contact the Bar Association directly.

Lawyers' Fund Notices

The Trustees of the Lawyers' Fund awarded \$1,500.00 to Guy C. Monahan due to the dishonest conduct (conversion) of suspended attorney Dale L. Bennett. The Fund also awarded \$3,000.00 to Charles C. Smith due to the dishonest conduct (unearned retainer) of former attorney Thomas M. Medeiros.

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