

# ATTORNEY OPINION REQUESTS

## Office of Disciplinary Counsel's ("ODC") Procedures

1. **Educational Purpose:** One function of the ODC is to provide ethical guidance to members of the Bar. This educational function is both a service to the Bar, and a benefit to the public. ODC may assist attorneys in avoiding ethical problems before they may arise.
2. **Types of Opinions:** The Disciplinary Board ("DB") has delegated to ODC the responsibility to provide *informal* opinions. DB Policy IX.2(a). Only the Disciplinary Board's standing Opinions Committee may render *formal* written opinions. Disciplinary Board Rules ("DBR") Rule 8(b); DB Policy IX.1.
  - A. **Formal Written Opinions:** The ODC does not render formal written opinions. "Formal written ethics opinions are issued by the Disciplinary Board and address questions of broad interest and applicability to the Hawaii State Bar. The Board does not issue formal written ethics opinions addressing individual situations or circumstances. Formal written opinions are binding on all members of the Bar, and violation thereof may result in discipline." RSCH Rule 2.4(e)(7); DB Policy IX.1
  - B. **Informal Written Opinions:** "A request for an informal opinion may be submitted in writing, by telephone, or electronically. ODC will respond to the request in writing or by telephone." DB Policy IX.2(b). "Informal written opinions will only be prepared at the discretion of the Chief Disciplinary Counsel or Board Chair, and any such informal written opinion shall be reviewed and approved by a member of the Disciplinary Board's Opinion Committee." DB Policy IX.2(c). Where a written request is answered orally, "[t]he attorney's written request will be filed in ODC's Opinions File as 'Info/Only' with a notation that an oral opinion was provided." DB Policy IX.2(b). "While the recipient of an informal ethics opinion may disclose the opinion, ODC treats all opinions as confidential." DB Policy IX.2(d).
  - C. **Informal Oral Opinions via the Hotline:** Each week, one staff attorney – Duty Disciplinary Counsel ("Duty-DC") – is assigned to handle "hotline" calls from Hawai'i licensed attorneys, and attorneys specially admitted in Hawai'i for a particular matter (*pro hac vice*).
    - a. Informal oral opinions are limited to the calling attorney's "own prospective conduct ... and [t]he applicability of each opinion is limited to the specific facts provided by the requesting attorney." DB Policy IX.2(a); *see also Prospective Conduct Only, infra*.
    - b. Where the Duty-DC is in the office and available, any "live" call is routed directly to him or her. If the Duty-DC is not available, the caller is routed to voice mail, and a detailed message should be left, including the callers name and telephone number. Currently, the "Hotline" number is (808) 521-4591 extension 2.

**4. Record of Informal Oral Opinion Requests:** The Duty-DC records a general summary of the caller's inquiry into the ODC files, and the guidance given to the caller by reference to the applicable rules, or other authority. Upon completion of oral opinion, the Duty-DC records this summary, the date completed, and general category of inquiry.

**5. Hawai'i Licensed Attorneys Only:** Informal opinions are only given to callers who are Hawai'i licensed attorneys, including specially admitted ("*pro hac vice*") counsel regarding conduct in situations for which they are specially admitted. The Duty-DC does not respond to opinion requests from any member of the general public. Attorney callers must be the attorney seeking an informal opinion, and not the attorney's staff, spouse or other person. Non-attorney callers may be directed to ODC investigators who are able to give limited information or receive reports of alleged misconduct.

**6. Prospective Conduct Only:**

**A. Attorney's Own Conduct:** Informal opinion requests are limited to prospective conduct only, and the confidentiality of that communication is limited to discussion of such prospective conduct. No opinions are given as to past or ongoing conduct, and any information obtained regarding past, or ongoing, conduct, where such conduct indicates a violation of the rules, may be grounds for the initiation of a disciplinary complaint by the ODC.

**B. Another Attorney's Conduct:** ODC does not opine on another attorney's conduct. The caller, or any other person, including the Duty-DC, may subsequently file an ethics complaint against the other attorney. Callers wishing to discuss the conduct of another attorney should first review Hawai'i Rules of Professional Conduct ("HRPC") Rule 8.3.

**7. Guidance is non-binding:** Informal opinions provided to attorneys are for guidance only, and are non-binding. ODC does not provide "safe harbor" opinions or advise callers as to the appropriate course of conduct. Rather, the Duty-DC will point to the rules and other resources that appear to apply to the caller's situation. Due to the nature of an informal request, the Duty-DC's guidance is necessarily limited to only that version of the facts communicated by the caller, and therefore is not a definitive disposition of the situation. Guidance by the Duty-DC is not a substitute for the attorney's duty to exercise professional competence, diligence and otherwise act in accord with the applicable rules. Where appropriate, the attorney-caller may be directed to the Disciplinary Board website, <http://www.dbhawaii.org>, where binding Formal Disciplinary Board Opinions are available, and other pertinent information is contained.

**8. No Legal Advice:** The Duty-DC's guidance is limited to ethics issues within the limits stated above. Duty-DC's are prohibited from giving legal advice, and any statements given by the Duty-DC is to be deemed ethics guidance only and not a legal opinion.

**9. Conflicts:** If the attorney-caller is currently under investigation or the subject of a formal disciplinary proceeding, the request should be handled by a staff DC not presently engaged in the matter.