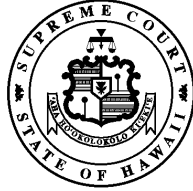


Disciplinary Board of the Hawai'i Supreme Court  
201 Merchant Street, Suite 1600  
Honolulu, Hawai'i 96813  
Telephone (808) 599-1909  
[www.odchawaii.com](http://www.odchawaii.com)



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### FORMAL OPINION NO. 37

It is the practice of some insurance companies to impose so-called "guidelines" on attorneys with respect to the legal services being provided to their insureds. These guidelines may include restrictions on allowable discovery, limitations on preparation time for hearings and/or discovery, requirements for pre-approval of research and computer research time, and restrictions on, or pre-approval of, retention of expert witnesses. Although guidelines purport to allow deviations, legal services provided to the insured that are not in compliance with the insurer's guidelines are simply not paid for.

This Opinion addresses the issue of whether it is ethically impermissible for an attorney to follow such guidelines in the attorney's representation of his or her client.

HRPC 1.8(f) provides as follows:

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
  - (1) The client consents after consultation;
  - (2) There is no interference with the lawyer's independence of professional judgment or the client-lawyer relationship; and
  - (3) Information relating to representation of a client is protected as required by Rule 1.6.

*The Disciplinary Board's mission is to maintain the integrity of the legal profession  
and protect the public from professional misconduct by attorneys.*

HRPC 5.4(c) provides as follows:

- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Billing guidelines of insurance companies that form a part of the contract with an insurance defense attorney are ethically impermissible if adherence to those guidelines interferes with the attorney's exercise of independent professional judgment on behalf of the client.

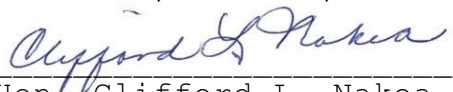
Certain billing or litigation guidelines do not necessarily give rise to ethical concerns. For example, an insurance company may require its defense counsel to report on a regular basis and provide an analysis of the case with recommendations. Additionally, the basic financial arrangement between the insurer and the insurance defense attorney can be established by contract. However, provisions that prohibit activity which, in the lawyer's professional judgment, are necessary in the representation of the client or provisions that provide a disincentive to perform those tasks are ethically unacceptable. As an example, restrictions on preparation and discovery, and the limitation on compensable communication among attorneys in an office regarding a legal matter would, in all likelihood, affect an attorney's exercise of independent judgment on behalf of the client.

If guidelines cannot be ethically followed, an attorney must obtain a modification of those guidelines or decline representation.

DATED: Honolulu, Hawai'i, March 25, 1999

Bernice Littman  
Chairperson, Disciplinary Board

UPDATED: Honolulu, Hawai'i, March 19, 2015

  
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Hon. Clifford L. Nakea (Ret.)  
Chairperson, Disciplinary Board