

Ethics & Issues

by Carole R. Richelieu, Chief Disciplinary Counsel

Due to the continued victimization of the public by "trust mills" and as a renewal of our previous warning to attorneys, we are reprinting (in pertinent part) an article which appeared in the March 1998 *Hawaii Bar Journal*:

The Disciplinary Board hereby alerts members of the Hawaii bar that a number of document preparation companies are using independent non-lawyer sales agents (typically insurance agents, securities brokers, or financial advisors) to sell revocable living trust packages.

Although there are many variations in the actual operation of these companies, typically, once the sales agent persuades a client to purchase a revocable living trust package, the agent assists the client in completing a questionnaire furnished to the agent by the company. The questionnaire solicits personal and financial information about the client.

As part of the sales presentation, the agent advises the client that the trust documents must be reviewed by a Hawaii lawyer who will ensure that the documents will fulfill the client's legal objectives as stated in the questionnaire. The client may select any Hawaii lawyer to conduct this review, but the agents encourage the client to select a lawyer from a list provided to the agent by the company.

The agent forwards the questionnaire to the document preparation company (usually located outside Hawaii) where the client's questionnaire is used to prepare the paperwork necessary to establish the client's revocable living trust.

After the trust documents are prepared, they are sent to the selected Hawaii lawyer along with the client's questionnaire and the lawyer's fee. The Hawaii lawyer then reviews the trust documents (and sometimes will verify information directly with the client). When the Hawaii lawyer is satisfied with the client's trust documents, he or she returns the documents to the company. The company, in turn, forwards the documents to its agent, who then assists the client in execution of the trust documents. The company then sends its agent a commission check

for selling the client a revocable living trust package.

The Disciplinary Board . . . imposed a Private Reprimand upon a Hawaii lawyer for working with a document preparation company in the manner described above. The Board determined the lawyer's conduct violated, inter alia, HRPC 5.5(b) (aiding in the unauthorized practice of law) and HRPC 7.3(a) and HRPC 8.4(a) (involving the solicitation of employment). In deciding to impose only a Private Reprimand, the Board considered, amongst other mitigating factors, that the Hawaii Bar was not previously alerted to the problem of reviewing legal documents prepared by persons not licensed to practice law in Hawaii.

H.R.S. §605-14, governing the unauthorized practice of law in Hawaii, provides in pertinent part: It shall be unlawful for any person, firm, association, or corporation to engage in or attempt to engage in or to offer to engage in the practice of law, or to do or attempt to do or offer to do any act constituting the practice of law, except and to the extent that the person, firm, or association is licensed or authorized so to do by an appropriate court, agency, or office or by a statute of the State or of the United States; . . .

The legislative history of H.R.S. §605-14 indicates that the Legislature intended to prohibit a non-lawyer from preparing legal documents in transactions in which the non-lawyer is not a party.

HRPC 5.5(b) prohibits a lawyer from assisting a person who is not a member of the bar in the performance of any activity that constitutes the unauthorized practice of law. The Disciplinary Board determined that assisting legal document preparation companies such as those described above assists a non-lawyer in the unauthorized practice of law.

Read together, HRPC 7.3(a) and HRPC 8.4(a) prohibit the use of agents to solicit employment by in-person contact with a prospective client. The Disciplinary Board determined that a lawyer violates

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these provisions by accepting legal work, such as that described above, from document preparation companies.

Discharge of Trustee

On August 9, 2002, the Court discharged Assistant Disciplinary Counsel Michael T. Lee, with thanks, as Trustee for deceased attorney R. Brian Brinkopf.

Lawyers' Fund Notices

The Trustees of the Lawyers' Fund awarded \$2,713.54 to the estate of Edith H. Alburger due to the dishonest conduct (unearned retainer) of former attorney Troy R. Egami.

Court Briefs

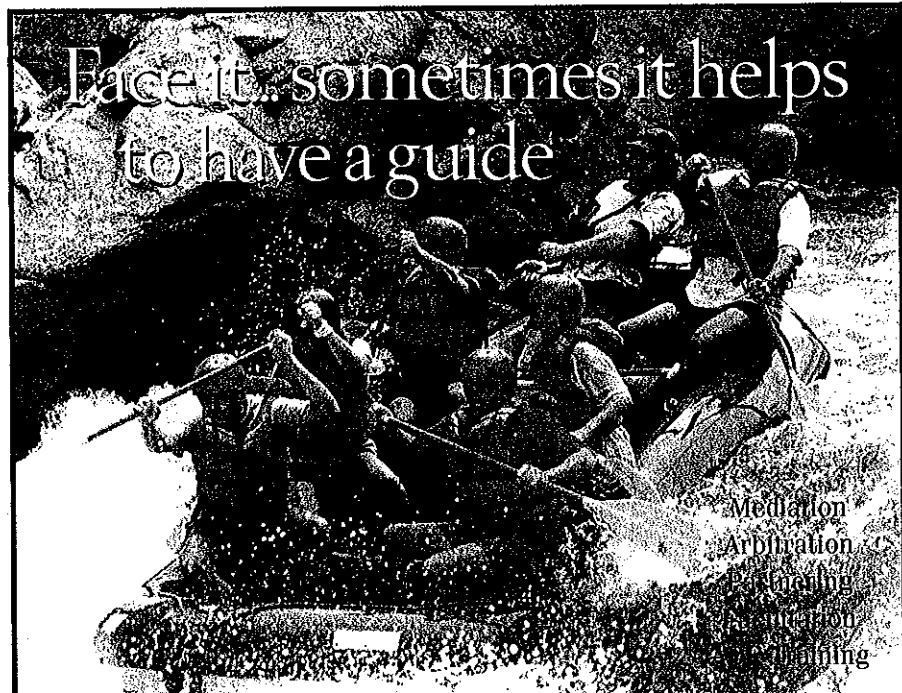
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Judiciary's Public Affairs Office at 417 South King Street, Honolulu, Hawaii 96813, by November 21, 2002. The facsimile number is 539-4801.

Comments may also be submitted through the Judiciary's Internet web site at www.state.hi.us/jud.

Judge Bryant Retires


Judge John C. Bryant, Jr., retired from the Judiciary on October 1, 2002. He served for 11 years – two as a per diem judge and nine as a full-time district family judge.




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