

custody, and control of their children that is protected by the due process clause of article I, section 5 of the Hawaii Constitution.” Thus, the court held that, in Hawaii, “parents have a constitutional right to counsel under article I, section 5, in parental termination proceedings and...from and after the filing date of this opinion, courts must appoint counsel for indigent parents once the [Department of Human Services (DHS)] files a petition to assert foster custody over a child.”

The decision of the Hawaii Supreme Court—which goes beyond the U.S. Supreme Court by requiring counsel for an indigent parent in a termination case—is so recent that statistics have just started to be kept for this calendar year at the Department of Human Services.

<sup>1</sup> 372 U.S. 335 (1963).

<sup>2</sup> [www.americanbar.org/groups/legal\\_aid\\_indigent\\_defendants/initiatives/civil\\_right\\_to\\_counsel.html](http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/civil_right_to_counsel.html). ABA Model Access Act provides for a civil right to counsel to protect “basic human needs” in five areas: shelter, sustenance, safety, health, and child custody. Shelter means “a person’s or family’s access to or ability to remain in a dwelling, and the habitability of that dwelling.” Sustenance means “a person’s or family’s ability to preserve and maintain assets, income or financial support.” Safety means “a person’s ability to obtain legal remedies affording protection from the threat of serious bodily injury or harm.” Health means “access to health care for treatment of significant health problems.” Child custody means “proceedings in which the parental rights of a party are at risk of being terminated; a parent’s right to residential custody or visitation rights are at risk of being terminated, severely limited, or subject to a supervision requirement; or a party seeks sole legal authority to make major decisions affecting the child.” See further details in the “ABA Toolkit for a Right to Counsel in Civil Proceedings.”

<sup>3</sup> 425 U.S. 18 (1981).

## ODC Ethics Opinions

By Charlene M. Norris

Do you have questions about your duty to a former client or a prospective client? Are you unsure about how to handle a request for a full accounting of your client’s funds? Not certain whether you have a conflict of interest? Not sure how to handle a flat fee retainer? This is the time to call the Office of Disciplinary Counsel (“ODC”) Hotline and request an ethics opinion, and the sooner the better.

One of the primary Disciplinary Board-mandated functions of the ODC is to provide ethical guidance to active members of the bar, including *pro hac vice* counsel, regarding their own prospective conduct. This educational function is both a service to the bar and beneficial to the public in assisting attorneys to avoid ethical problems before they may arise.

### Formal Opinions

Hawai’i bar members are encouraged to visit the Disciplinary Board’s website: [odchawaii.com](http://odchawaii.com), where the full text of all current “Formal Opinions” may be found. As explained on the website, formal written opinions are issued only by the Disciplinary Board and are limited to questions of broad interest and applicability to the bar. The Disciplinary Board does not issue Formal Opinions covering individual scenarios and circumstances. Formal Opinions (“FOs”) are generally suggested by the Hawai’i Supreme Court, the Disciplinary Board, ODC and the bar, on topics ranging from sharing office space (FO 22), to retaining liens (FO 28), email security (FO 40), attorney web sites (FO 41), “of counsel” attorneys (FO 43), handling credit card payments (FO 45), and referral fees (FO 46). Formal Opinions are binding on all bar members and each attorney should be familiar with the text of each FO, as failure to comply with a Formal Opinion may be the basis for a disciplinary proceeding and sanction.

### Informal Opinions

Informal Opinions are generally provided orally by ODC Hotline attorneys to Hawai’i licensed attorneys and address specific factual situations and the

prospective conduct of the individual attorney requesting an opinion. ODC attorneys are assigned to return Hotline calls each week on a rotating basis, and each attorney spends literally hundreds of hours every year in responding to opinion requests from Hawai’i attorneys. ODC does not respond to opinion requests from the public or persons not licensed to practice law in this jurisdiction. ODC does not opine to one attorney on the conduct of other attorneys or provide legal advice. Advice is limited to ethical issues and the application of the Hawai’i Rules of Professional Conduct (“HRPC”).

In limited, complex circumstances, a written opinion request will be entertained and addressed by ODC. Each written opinion is reviewed and approved by a member of the Disciplinary Board’s Opinion Committee.

For the most part, oral opinions are sought by attorneys in time-sensitive situations and the inquiry is relatively simple. Informal Opinions, whether oral or written, are provided with reference to specific HRPC Rules and Comments, and are based solely upon the facts provided by the inquiring attorney. An attorney may be referred to the ABA/BNA Lawyers’ Manual on Professional Conduct (2009), the ABA Annotated Model Rules (7<sup>th</sup> Ed. 2011), and Bar Journal articles or Formal Opinions appearing on the website [odchawaii.com](http://odchawaii.com), as well.

A record of each Informal Opinion is confidentially maintained by the ODC in an attorney database tracking system. If you need an oral Informal Opinion, the ODC and Disciplinary Board suggest that you first check the new Hawai’i Rules of Professional Conduct (effective January 1, 2014), then call the ODC Hotline at 521-4591, choose Option 2 and leave a message with a short description of the facts and your specific question(s). An ODC attorney will try to return your call the same day, but will return the call no later than two business days after the call is received. ODC appreciates the opportunity to serve the bar in this manner.

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