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 sure 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
Hawaii’s bar members are encouraged to visit the Disciplinary Board’s website: 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 Hawaii’s 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 Hawaii’s 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 Hawaii’s 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 Hawaii 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 (7th Ed. 2011), and Bar Journal articles or Formal Opinions appearing on the website 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 Hawaii’s 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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