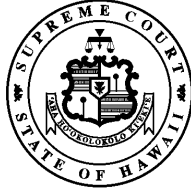


Disciplinary Board of the Hawai'i Supreme Court  
201 Merchant Street, Suite 1600  
Honolulu, Hawai'i 96813  
Telephone (808) 599-1909  
[www.odchawaii.com](http://www.odchawaii.com)



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## FORMAL OPINION NO. 46

### REFERRAL FEES

This Opinion concerns whether an attorney may accept a fee from a third-party who is not an attorney for recommending the third party's services or product to the client.

Third party professionals offer referral fees in a variety of circumstances. For example, referral fees are sometimes offered by investment advisors, realtors, insurance agents, medical service providers, or others whose services are needed by the attorney's client. Referral fees could be offered as flat fees or as a percentage of amounts charged to the client.

Irrespective of the status of the third-party to whom the client is referred, or the manner in which the referral fee is proposed, this Opinion applies to all transactions in which an attorney might be offered or be tempted to demand compensation for referring a client to a third party who is not an attorney and provides a product or service to the client. (This opinion does not apply to a division of attorney's fees between attorneys which is addressed in HRPC 1.5(e).)

HRPC Rule 1.7(a) states:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or

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and protect the public from professional misconduct by attorneys.*

- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.

HRPC 2.1 states, in part:

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice \* \* \*

It is part of an attorney's duties to a client to make referrals to third-parties if such a need becomes apparent during the attorney's representation. These referrals are part of the attorney's practice of law and should be made in the client's interests, free of conflict.

When an attorney receives a fee from a third-party for referring a client, the attorney's representation may be limited by the attorney's financial interest and may impair the attorney's exercise of independent professional judgment. As an example, the attorney may make a referral to a third-party when the services or goods provided by the third-party do not serve the client's interests. Additionally, if the client receives deficient or inappropriate products or services as the result of the referral, the attorney's duty of loyalty owed to the client may be conflicted by the relationship with the third party provider of those goods and services.

The ethical problems inherent in the arrangements addressed by this Opinion cannot be mitigated by disclosure. Indeed, even if the attorney informed the client of the relationship with the third party, the attorney could not "reasonably believe[ ] . . . the lawyer will be able to provide competent and diligent representation to [the] affected client." HRPC 1.7(b)(1). Even with full disclosure, no meaningful consent could be obtained, given the attorney's personal pecuniary interest.

Accordingly, an attorney [acting as an attorney for a client] is prohibited from accepting a fee for referring the client to a third-party provider of non-legal services or products.

DATED: Honolulu, Hawai'i, June 26, 2003  
Carroll S. Taylor  
Chairperson, Disciplinary Board

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



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