



- (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