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FORMAL OPINION NO. 36

This opinion covers the scope of permissible disclosure of confidential client information pertaining to the representation of an insured.

An insurance defense attorney may provide such information to an insurance company which has a duty to defend the insured client so long as the information provided is not subsequently circulated to third persons.

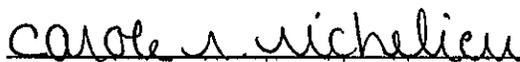
The attorney shall not provide confidential client information pertaining to the representation of the insured to third persons (either directly or via the insurance company) without first obtaining the express informed consent of the insured. HRPC 1.6(a); HRPC 1.8(f)(3).

Informed consent should include discussion of the effect of disclosure on the waiver of the insured's right to confidentiality, the attorney-client privilege, and the work product doctrine. Insurance contract provisions, standing alone, do not provide the required express informed consent.

Thus, for example, an attorney shall not send confidential client information, including attorney's bills that contain such information, to an insurer's "outside" (i.e. compliance) auditors without such consent.

DATED: Honolulu, Hawai'i, March 25, 1999.


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