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Hawaii

[Hawaii State Bar](#)

DISCIPLINARY BOARD of the HAWAII SUPREME COURT

FORMAL OPINION NO. 34

Inquiry has been made regarding the ethical propriety of an attorney arranging for a client to obtain loan financing to pay (a) the attorney's fees, and (b) litigation expenses.

An arrangement whereby an attorney refers a client to a bank or other lending institution to obtain a loan for legal fees and costs is generally regarded as consistent with the attorney's duty to make legal services available, thus preserving the integrity and independence of the legal profession. In making such a referral, an attorney need not determine that the credit arrangements are fair to the client or otherwise become involved in such arrangements.

An attorney may provide substantial assistance in arranging financing for a client to pay the attorney's legal fees and to pay litigation expenses provided the following conditions are met: (a) the credit charges are not usurious; (b) the client is fully informed as to the terms of the credit arrangement; (c) if the attorney or law firm has a financial interest in the lending institution or will gain financially in any way from the credit arrangement, that fact is made known to the client in advance of the client's application for financing, and (d) although an attorney is not required to determine that the terms of a particular credit arrangement are objectively fair to the client, the attorney should suggest that the client consult with independent counsel for that determination. "Substantial assistance" is defined as personal involvement in assisting and securing financing, beyond the mere referral to a lending institution.

DATED: Honolulu, Hawaii, August 2, 1994.

**JAMES A. KAWACHIKA, CHAIRPERSON, DISCIPLINARY BOARD
GERALD H. KIBE, CHIEF DISCIPLINARY COUNSEL**