

In the Matter of the Amendment
of the
Hawaii Rules of Professional Conduct

ORDER AMENDING RULE 1.8(j) AND ITS COMMENT[6]
OF THE HAWAII RULES OF PROFESSIONAL CONDUCT
(By: Moon, C.J.; Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED that Rule 1.8(j) and its Comment[6] of the Hawaii Rules of Professional Conduct are amended as follows, effective July 1, 2005 (deleted material is bracketed and stricken, new material is underlined):

1. Subsection (j) of Rule 1.8 is amended as follows:

RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS.

. . .
(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

- (1) acquire a lien [~~granted~~] authorized by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee in a civil case.

2. Comment[6] to Rule 1.8 is amended as follows:

[6] Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in common law

champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these rules, such as the exception for reasonable contingent fees set forth in Rule 1.5 and the exception for certain advances of the costs of litigation set forth in paragraph (e).

In 2005 paragraph (j) was amended to substitute the word authorized for the word granted. As explained in ABA Formal Ethics Opinion 02-427, the rule is intended to permit any legally recognized lien to secure fees to be acquired in property that is the subject of litigation. The rule should not be applied to prohibit otherwise legally and ethically obtained liens. Authorized liens may include liens granted by statute, liens originating in common law, and liens acquired by contract with the Client. Liens may also be authorized by court rules or orders, subject to applicable law. See also, ¶ [6] of the Scope provision of these rules (noting violation of Rules of Professional Conduct should not give rise to a cause of action or create a presumption that a legal duty has been breached).

DATED: Honolulu, Hawaii, February 1, 2005.