

OPINION NO. 514

The Commission received a request for an advisory opinion from a legislator who asked the Commission to determine whether he could represent workers' compensation claimants before the Department of Labor and Industrial Relations.

The relevant provision of the ethics code, HRS §84-14(c), states that "[n]o legislator or employee shall assist any person or business or act in a representative capacity before any State or county agency for a contingent compensation in any transaction involving the State." The question the legislator asked the Commission to determine was whether workers' compensation cases involved contingent compensation, in which case HRS §84-14(c) would prohibit legislators and state employees from representing workers' compensation claimants before the Department of Labor and Industrial Relations.

In order to determine whether workers' compensation cases involved contingent compensation, the Commission initially reviewed HRS §386-94, which governs attorneys' fees in workers' compensation cases. Essentially, this section of the workers' compensation statute provides that when a claimant wins his or her case, the attorney's fee becomes a lien on the award to the claimant. If the claimant is unsuccessful, however, the attorney must bill the claimant directly. Sometimes, of course, unsuccessful claimants are unable to pay their attorneys. Because attorneys are only guaranteed payment of their fees if they are successful in securing awards for their clients, some people have concluded that an attorney's compensation in a workers' compensation case is contingent upon winning the case for the claimant.

However, the Commission, after investigating the matter, came to the conclusion that workers' compensation cases do not in fact involve contingent compensation. In making this determination, the Commission noted that nowhere does HRS §386-94 mention the words "contingent compensation." Furthermore, the Commission contacted an official in the Department of Labor and Industrial Relations, who confirmed that workers' compensation cases do not involve contingent compensation. The official stated that his office is responsible for approving attorneys' fees whether attorneys win or lose their cases. These fees, according to the official, are based on a reasonable hourly rate for the actual work performed by the attorney. For these reasons, the Commission determined that HRS §84-14(c) would not prohibit legislators or state employees from representing workers' compensation claimants before the Department of Labor and Industrial Relations.

The Commission noted that some attorneys may choose not to file an application for the approval of fees with the director of the Department of Labor and Industrial Relations when their clients' cases are unsuccessful, believing that their clients may ultimately be unable to pay those fees. However, to avoid any appearance of representing a claimant on a contingent compensation basis, the Commission suggested to the legislator that legislators and employees always file an application for the approval of fees with the director.

The Commission commended the legislator for bringing this matter to its attention at an early time and told the legislator it appreciated his sensitivity to the ethical considerations discussed above.

Dated: Honolulu, Hawaii, December 15, 1983.

STATE ETHICS COMMISSION
Edith K. Kleinjans, Chairperson
Mildred D. Kosaki, Commissioner
Rabbi Arnold J. Magid, Commissioner

Note: Vice Chairperson Allen K. Hoe and Commissioner Gary B.K.T. Lee disqualified themselves from discussion and consideration of this opinion.