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FORMAL OPINION NO. 45 (Handling Credit Card Payments)

An attorney who accepts credit card payments for retainers, flat fees, and/or earned fees has three choices in the handling of these funds: 1) deal with a banking institution which allows the attorney to direct the deposit of these funds into specific accounts; 2) have two credit card plans - one solely for the client trust account for retainers and flat fees and one solely for a business or other nontrust account; or 3) accept credit card payments only for retainers and flat fees to be deposited into a trust account or accept credit card payments only for earned fees to be deposited into a business or other nontrust account. "Holding" or "clearing" accounts commingling these types of funds (retainers, flat fees, and earned fees) violate HRPC 1.15.

Retainers and flat fees must be deposited intact into a trust account. HRPC 1.15(a)(1); HRPC 1.15(c); HRPC 1.15(d). These funds must be maintained in trust until earned.

Earned fees cannot be deposited into a trust account. HRPC 1.15(c) (commingling).

Any charges associated with the acceptance of credit cards may be charged to the client with the client's advance consent. HRPC 1.2; HRPC 1.4(b). If any charges associated with the acceptance of credit cards are charged against a client trust account and the client has not given advance consent to charges, the attorney must deposit into the account funds reasonably sufficient to pay these bank charges. HRPC 1.15(c).

DATED: Honolulu, Hawai'i, June 26, 2003.

Handwritten signature of Carroll S. Taylor in cursive.

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CHAIRPERSON, DISCIPLINARY BOARD

Handwritten signature of Thomas E. Cook in cursive.

THOMAS E. COOK
CHAIRPERSON, OPINION COMMITTEE

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