
E-75-1 Use of credit cards for payment for legal services: Charging interest on delinquent accounts

At the meeting of this Committee, held in Milwaukee on February 20, 1975, the Committee determined to adopt ABA Opinion 338 concerning the use of credit cards and the charging of interest on delinquent accounts. Formal Opinion 338, dated November 16, 1974, of the Ethics Committee of the American Bar Association is reproduced herewith:

The use of credit cards for the payment of legal services and expenses is permitted under the Code of Professional Responsibility if specified guidelines are followed. Interest may be charged on delinquent accounts with the client's agreement.

The Committee on Ethics and Professional Responsibility is advised that the payment of legal fees through credit cards has been approved, subject to certain limitations and conditions, in the states of Georgia, Michigan, Oklahoma, and Oregon; and in the cities of Buffalo, New York; Cleveland, Ohio; and Los Angeles, California. This committee has previously rendered Formal Opinion 320, in February of 1968, relating to a legal fee finance plan, and Informal Opinion 1120 in October, 1969 and 1176 in February of 1971, relating to the use of bank credit cards for the payment of legal fees. The Code of Professional Responsibility has now been adopted by the American Bar Association and, with some modifications, by virtually all of the fifty states. The question is presented whether under the Code the use of credit cards in payment of legal fees and expenses should be broadly sanctioned.

It is the Committee's opinion that the Code has overruled Informal Opinion 1176 and that the use of credit cards for the payment of legal expenses and services is permitted under the Code, providing all of its provisions are fully and completely observed. Generally speaking, a credit card plan conforms to these Code provisions and the considerations flowing therefrom, when the plan requires that:

1. All publicity and advertising relating to a credit card plan shall be subject to the prior approval in writing of the state or local bar committee having jurisdiction of the professional ethics of the attorneys involved.
2. No directory of any kind shall be printed or published of the names of individual attorney members who subscribe to the credit card plan.

3. No promotional materials of any kind will be supplied by the credit card company to a participating attorney except possibly a small insignia to be tactfully displayed in the attorney's office indicating his participation in the use of the credit card.
4. A lawyer shall not encourage participation in the plan, but his position must be that he accepts the plan as a convenience for clients who desire it; and the lawyer may not because of his participation increase his fee for legal services rendered to the client.
5. Charges made by lawyers to clients pursuant to a credit card plan shall be only for services actually rendered or cash actually paid on behalf of a client.
6. In participating in a credit card program the attorney shall scrupulously observe his obligation to preserve the confidences and secrets of his client.

A necessary corollary to the use of credit cards is the charging of interest on delinquent accounts. It is the committee's opinion that it is proper to use a credit card system which involves the charging of interest on delinquent accounts. It is also the committee's opinion that a lawyer can charge his client interest providing the client is advised that the lawyer intends to charge interest and agrees to the payment of interest on accounts that are delinquent for more than a stated period of time." (End of ABA Opinion 338.)

Any lawyer who participates in a credit card plan must be especially scrupulous in observing requirements number 1 through 6. Members of this committee have examined two different charge or credit card regulations and agreements, and among other things, they require certain activities on the part of the participating lawyer ("merchant") which would be a clear violation of the Canons of Ethics and Disciplinary Rules.

For example, they require that the affiliated or participating bank or credit card company have full access to the particular lawyer's records supporting the charge. This would clearly, without the client's consent, violate the confidentiality which must exist—in other words, be a violation of requirement number 6, quoted above.

Therefore, it is the opinion of this committee that any lawyer entering an agreement concerning the participation in a credit card program insists that an amendment be added signed both by the lawyer and the bank or other contracting party, substantially in the following form:

“If there is a conflict between this contract or agreement and ABA Formal Opinion 338, Standing Committee on Ethics and Professional Responsibility, ABA, or Ethics Committee Opinion, State Bar of Wisconsin 75-1, and any subsequent Opinions or amendments thereof, this contract or agreement shall automatically be modified so as to be interpreted in conformity with said Opinions, amendments or supplements.”

Further, we believe that lawyers entering into credit card programs may wish to have inserted the right to receive notice of any default on the part of the client in making payments, and the right to determine whether or not the lawyer wishes to reimburse the participating bank and to determine whether or not he wishes to pursue, himself, collection remedies against his own client. Sample contracts which the committee has examined, do not appear to give the lawyer any such right to notice or to have an opportunity to decide how he wishes to handle the matter as to the bill or any collection or adjustment thereof, with his own client.

Further, this opinion does not purport to cover the question as to whether or not the charging of interest by lawyers may be subject to the Wisconsin Consumer Act.