

**NEW YORK STATE BAR ASSOCIATION**  
**Professional Ethics Committee Opinion**

annual payment equivalent to 1/2 of 1% of the average net value of the assets in the account? In addition, the client would pay a fee equivalent to 20% of the annual appreciation in the account, based upon both realized and unrealized capital gains, as well as upon income received. Any net loss would be borne exclusively by the client, although it would be applied against appreciation in subsequent years for the purpose of calculating when the additional fee of 20% would be earned. The arrangement would be terminable at any time by either the attorney or his client.

OPINION

It is not unethical for a lawyer to agree to manage a discretionary investment account for a client, assuming that he is qualified to do so. He should keep such activity entirely distinct and apart from his practice of the law, should not use it as a means of attracting legal business, and in rendering the service should continue to observe the standards of conduct required of him as a lawyer. (Canon 27; N.Y. County 273; ABA 57; ABA Unreported Committee Decision 44, quoted in Drinker "Legal Ethics" at page 286.) The compensation charged for such service should not be unconscionable or overreaching, and should be consistent with the charges customarily made by other investment counsel.

Opinion #117 - 10/30/69 (11-69)

Topic: Professional fees paid through intermediary; use of bank credit card plan.

Digest: Improper for lawyer to use bank charge plan subscribed to by both attorney and client for payment of professional fees.

Canon: *Former Canon 35*

QUESTION

Is it ethical for an attorney to join a charge plan arranged by a bank under which bills to clients are turned over to the bank which pays the attorney and collects from the client?

Upon joining the plan, the attorney pays to the bank an initial fee of \$25.00 and a fixed membership fee thereafter of \$20.00 per year. The bank charges the attorney 5% for its services, which percentage and cost is reduced as the dollar volume of the attorney's services increases, so that if fees clearing through the bank exceed \$40,000 per year, the annual net cost to the attorney is 2-1/2%. After the attorney joins, he advises his clients that if the clients also join the plan and receive credit cards, the attorney would be willing to have his fee paid through the plan.

OPINION

Within proper safeguards, bank charges plans may be used for payment of professional fees. (See Legal Service Financing Plan approved by the County Bar Association of Erie County). Any approved financing plan should reserve to the attorney the right in the attorney to

