

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #193 - 9/30/71 (26-71) Topic: Interest Charges on Unpaid
Legal Fees.

Overruled (in part) by 399

Digest: Improper for an attorney to
charge interest or service fee
on delinquent accounts.

Code*: EC 2-17; 2-19; 2-23

QUESTION

May an attorney charge a service fee or interest on delinquent
accounts?

OPINION

It has heretofore been concluded that it was improper for an
attorney to affix interest charges on delinquent accounts. N. Y. State
87 (1968); See also, ABA Inf. 741 (1964).

Nothing contained in the Code of Professional Responsibility
effective January 1, 1970 has altered this conclusion. See EC 2-17,
EC 2-19, and EC 2-23. A "service fee" instead of "interest" does not
change the result.

This, of course, does not prohibit in an extreme case, the
commencement of appropriate litigation to collect a fee to which may
be added interest and costs. A lawyer "should not sue a client for
a fee unless necessary to prevent fraud or gross imposition by the
client". EC 2-23.

Opinion #194 - 9/30/71 (27-71) Topic: Law List

Digest: Attorney may permit his name
to appear on law list certified
by the American Bar Association.

Code*: EC 2-7;
DR2-102(A)(6);
DR2-103(D);
DR2-103(E)

QUESTION

Where a motor club prepares and distributes to its members a
list of recommended attorneys, which list is certified by the American
Bar Association as being in compliance with its rules and standards, may
an attorney permit his name to be added to such list and accept an in-
dependent retainer from a client who acts on such recommendation even
though the client will be reimbursed by the motor club?

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OPINION

A motor club has prepared and distributed to its members a list of attorneys throughout the United States for the benefit of such members who may be involved in automobile accidents or criminal charges resulting from driving a motor vehicle. Listed lawyers are under no obligation to purchase a copy of the list, the motor club makes no charge for such listing, nor does it accept any consideration for the listing.

The motor club member may retain any attorney he chooses, whether or not on the recommended list, and the motor club will reimburse him for payment for such legal services in accordance with a schedule of fees set forth in his contract with the motor club.

The law list of the motor club is currently certified by the standing committee on law lists of the American Bar Association as having complied with the rules and standards of the association relating to law lists.

DR2-102(A)(6) provides that a lawyer may use a legal directory listing if it is a "reputable law list", and that a law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards.

Accordingly, it is not improper for an attorney to permit his name to be included in a list currently so certified.

DR2-103(D) provides that "a lawyer shall not knowingly assist a person or organization that recommends, furnishes, or pays for legal services to promote the use of his services..." It is the committee's opinion that this sentence relates only to a wrongful or improper list, recommendation or arrangement, that this subsection must be read together with subsection (E), which provides that a lawyer shall not accept employment when he knows or it is obvious that the person who seeks his services does so as a result of conduct prohibited under this disciplinary rule, and that this rule does not relate to the independent retainer by a client who simply acts in reliance on an approved ABA list.

In the present case, the client has complete freedom of choice and there is no relation between the attorney and the motor club arising out of employment or any other contractual relationship which might create a conflict of interest or loyalty. Such representation is not improper if reimbursement is not conditioned on the member retaining a lawyer selected for him by the motor club. See, N.Y. State 78 (1968); cf. N.Y. State 163 (1970). The following language of EC 2-7 is relevant: "Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laymen to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laymen have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers".

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Accordingly, an attorney may with propriety accept an independent retainer from a client who seeks his services as a result of finding his name on an approved law list. Where an attorney may permit his name to be included in a law list certified by the American Bar Association, it would be an unrealistic rule to say that he could not accept clients that come to him as a result of such listing.

Opinion #195 - 9/30/71 (28-71) Topic: Advertising; Solicitation;
Circularizing the Profession
To Secure Divorce Matters

Digest: An attorney may not circularize the profession advising attorneys of easy divorce laws and soliciting divorce matters from them.

Code*: DR 2-102(A); DR 2-103(C);
DR 2-105(A) (3)

QUESTION

May attorneys send letters to members of the bar informing them of the ease with which divorces may be obtained in a certain foreign nation, offering the opinion that such divorces would be valid in New York, and setting forth the arrangements already made in the foreign jurisdiction, the fee that the lawyers would charge, the cost of air travel and hotel accommodations?

OPINION

It should be noted that the General Business Law §337 makes it a misdemeanor to distribute any notice of any kind offering to advise on laws of any foreign nation for the express purpose of aiding in procuring any divorce, or offering to act as an attorney in any suit for divorce, whether in this state or elsewhere. This Committee does not pass on questions of law and therefore does not undertake to determine whether this statute is applicable to the kind of solicitations under consideration. Even in the absence of the statute the letters are improper.

All solicitations and advertising are proscribed except as expressly permitted, DR 2-102(A); DR 2-103(C). The exception contained in DR 2-105(A) (3) is as follows:

"A lawyer available to act as a consultant to or as an associate of other lawyers in a particular branch of law or legal service may distribute to other lawyers and publish in legal journals a dignified announcement of such availability, but the announcement shall not contain a representation of special competence or experience. The announcement shall not be distributed to lawyers more frequently than once in a calendar year, but it may be published periodically in legal journals."