



## Committee on Professional Ethics

Opinion #399 - 6/16/75 (48-75) Topic: Interest on delinquent accounts.

Overrules in part #'s 87, 193

Digest: Not per se improper for lawyer to charge interest, or to use a credit card plan which assesses interest charges against delinquent accounts for payment of professional fees under certain conditions.

Code: EC 2-16, 2-17, 2-19, 2-23;  
DR 2-106.

### QUESTION

May a lawyer participate in a credit card plan which charges interest on delinquent accounts or himself charge interest on delinquent accounts for payment of professional fees?

### OPINION

Recent opinions have approved the concept of attorneys being permitted to use credit cards for the payment of legal fees, as long as such plan met certain safeguards. N.Y. State 362 (1974); ABA 338 (1974).

Although N.Y. State 362 (1974) did not address itself to the question whether an attorney could utilize a plan which charged interest on delinquent accounts, ABA 338 (1974) did consider this question, stating in that regard:

"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." (Underscoring added.)

Although the imposition of interest charges does not per se violate the Code certain minimum conditions must be met. In the case of use of credit cards the client must be expressly advised prior to the execution of any credit arrangement the rate of interest that will be charged and after what period of time it will be charged if the account remains unpaid. In the case of charging interest directly to the client by a lawyer, the lawyer must advise the client prior to performing services of the fact that interest will be charged on delinquent accounts which are delinquent for more than a stated period of time, the stated period is reasonable under all

the circumstances of the matter, the rate of interest is reasonable, the fee is not excessive and the client consents to such interest charge. EC 2-16; EC 2-17; EC 2-19; EC 2-23; DR 2-106.

To the extent they are inconsistent with this opinion N.Y. State 87 (1968), N.Y. State 193 (1971) are overruled. However, opinions that attorneys should eschew practices of an undue commercial emphasis, such as regularly offering discounts on bills within a stipulated period are fully operable. N.Y. State 253 (1972); ABA 151 (1936). Of course in the extreme case where under EC 2-23 the lawyer may sue the client to obtain his fee interest may be charged as allowed by law.

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