

Nebraska Ethics Advisory Opinion for Lawyers
No. 86-3

AN ATTORNEY MAY CHARGE INTEREST ON PAST DUE ACCOUNTS FOR LEGAL SERVICES WITH THE CLIENT'S AGREEMENT. SUCH AGREEMENT MUST:

- (1) BE IN WRITING;
- (2) BE ENTERED INTO PRIOR TO OR EARLY IN THE PROVISION OF LEGAL SERVICES;
- (3) CLEARLY STATE A REASONABLE RATE OF INTEREST;
- (4) CLEARLY SET OUT WHEN THE ACCOUNT WILL BECOME PAST DUE AND SUBJECT TO THE INTEREST CHARGE BUT NOT LESS THAN 30 DAYS AFTER THE BILLING DATE.

FACTS

The Committee has received a request to clarify the Committee's position on charging interest on past due accounts for legal services.

QUESTION PRESENTED

The specific question the Committee has been asked to address is: May attorneys enter into agreements with their clients prior to services being rendered that interest at a certain rate may be charged on clients' accounts which have been past due for a stated period of time?

DISCUSSION

The Committee has previously considered the issue of interest on delinquent accounts in its Opinions [75-1](#), [77-4](#), and [81-2](#).

[Opinion 75-1](#) was issued to adopt the American Bar Association's ("ABA") position on the use of credit cards for payment of legal fees. The ABA's position was issued in its Formal Opinion 338 which allows the use of credit cards subject to specified guidelines. In order to allow the use of credit cards, the ABA and the Nebraska State Bar Association ("NSBA") necessarily had to allow interest to be charged on delinquent accounts. ABA Formal Opinion 338 did so by placing in the headnote of that Opinion the following sentence: "Interest may be charged on delinquent accounts with the client's agreement." The Opinion elaborated in its final paragraph which should be read in its entirety, and follows:

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.

The NSBA Advisory [Opinion 75-1](#) adopted this view entirely by stating in the "Discussion" section of the Opinion that, "We concur in the new ABA position . . .," and by placing in the headnote the identical language used in the ABA Opinion, that being, "Interest may be charged on delinquent accounts with the client's agreement. "

There can be no doubt that the Committee intended to adopt ABA Opinion 338 entirely. Unfortunately, some uneasiness has been experienced because [Opinion 75-1](#) paraphrased the final paragraph of ABA Opinion 338 (quoted above) in an attempt at conciseness. The result was that paragraph 7 of the "Discussion" section of [75-1](#) says simply that:

Since the charging of interest is a necessary corollary to the use of credit cards, interest may be charged provided that the client is advised by the lawyer and agrees to the payment of interest upon accounts after a stated period of time.

The result is that some have read the Opinion so that it only allows interest to be charged in connection with the use of credit cards and not on regularly billed accounts because the paragraph did not discuss credit card interest separately from other interest as the paragraph quoted from ABA Opinion 338 did. This is hairsplitting at its best.

The Committee hereby adopts ABA Formal Opinion 338 in its entirety without reservation or modification. "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." ABA Formal Opinion 338, *supra*.

Our [Opinion 77-4](#) dealt with the issue of whether an attorney could notify clients with delinquent accounts, for services already rendered, that interest would be charged if these amounts were not paid. The Committee decided that "it was not proper for an attorney to unilaterally notify a client he will be charged interest on a past due account." The problem was that in this case the client had not agreed to the interest charge prior to services being rendered. The Committee restated its position adopted in [Opinion 75-1](#), that being: "Interest may properly be charged only by agreement with the client." [Opinion 77-4](#). We readopt [Opinion 77-4](#) in its entirety.

Our [Opinion 81-2](#) allowed an attorney to notify his clients that they could pay their bill by credit card with a notice enclosed with the statement. The Opinion only incidentally dealt with the issue of interest by readopting the Committee's earlier position on the use of credit cards and the charging of interest in connection with such plans. The Opinion expressly readopted the

Committee's prior positions on the issue of charging interest on delinquent accounts (discussed above) in the second to the last paragraph of the "Discussion" section of that Opinion. Unfortunately, the language of that paragraph would indicate that ABA Formal Opinion 338 was somehow inconsistent with the Committee's position, which was not and is not the case. To the extent that that paragraph of [Opinion 81-2](#) is inconsistent with this Opinion, it should be disregarded.

An agreement to charge interest on past due accounts must:

- (1) Be in writing;
- (2) Be entered into prior to or early in the provision of legal services;
- (3) Clearly state a reasonable rate of interest;
- (4) Clearly set out when the account will become past due and subject to the interest charge, but not less than 30 days after the billing date.

CONCLUSION

An attorney may enter into an agreement with clients, prior to services being rendered, that interest at a certain rate may be charged on clients' accounts which have been past due for at least 30 days if the agreement conforms to the guidelines of this Opinion.