

Ethics Opinion No. 79-1

Whether it is Proper for an Attorney to Charge Interest on Unpaid Portions of a Billing.

The question posed to the Committee is:

Is it proper for an attorney to charge interest on unpaid portions of a billing?

There are three opinions of the American Bar Association Committee on Ethics which are pertinent to this inquiry.

Formal Opinion No. 151 (February 15, 1936) held that it was improper to offer a discount to clients for prompt payment of fees. The opinion was premised upon then-in-effect Canon 12:

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade . . .

Informal Decision No. 741 (March 31, 1964) held that it would be improper to include the following language on an attorney's billing form:

Interest at the rate of six percent per annum will be charged on all accounts not paid within thirty days.

The Committee's rationale for Informal Decision No. 741 was that the practice might constitute a bargaining weapon which the attorney might use in reaching an agreement as to the amount of fees where the fees owed were in dispute. Furthermore, the Committee contended that even where the fees have been agreed upon, the claim of interest would appear to be an inducement to pay promptly, similar in effect to offering a discount for prompt payment, a practice which was condemned in Formal Opinion No. 151, as discussed above. On the other hand, Informal Decision No. 741 (1964) went on to state that in special cases it would be appropriate for an attorney to accept a promissory note for the amount of a fee, with interest to accrue until paid, and with the provision that the client could prepay without penalty. This practice would be acceptable, according to the Informal Decision No. 741, only where the client was able to pay but desired that payment be deferred for his convenience rather than of necessity.

Formal Opinion No. 338 (November 16, 1974) dealt generally, and approvingly, with the use of credit cards for the payment of legal services; it also contains the following statement:

It is also the Committee's opinion that a lawyer can charge his client interest providing that 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 Alaska Bar Association Committee on Ethics notes in these opinions a definite liberalizing trend toward the allowance of interest on unpaid billings; more importantly, the Committee does not find any provision of the Code of Professional Responsibility which directly or indirectly prohibits or condemns the charging of interest on unpaid billings. The Committee believes that the public generally would in fact be surprised if interest were not charged on overdue billings as in the case of any other debt. If it is an attorney's intent to charge interest on unpaid billings, he should of course inform his client of that intent to avoid later disputes, but the Committee can find no reason either in logic or under the provisions of the Code of Professional Responsibility which would indicate that the charging of interest is improper.

Adopted by the Board of Governors on May 19, 1979.