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USE OF CREDIT CARDS

FORMAL OPINION 76-4

The Committee on Legal Ethics of The West Virginia State Bar has received numerous inquiries concerning the use of credit cards for payment of legal fees and expenses. While the Committee has not heretofore adopted any formal opinion with respect to the use of credit cards, an inquiring bank was advised and the Committee stated in its report filed at the annual meeting held in October, 1975, that a strict observance of the American Bar Association's Formal Opinion 338 would not expose an attorney subscribing to the plan to disciplinary action should the plan be ultimately disapproved by the Committee, provided the attorney using the plan ceased doing so upon the plan's disapproval.

The use of credit cards to pay for legal fees is an innovation which should not be discouraged when the participating lawyer complies with appropriate safeguards since the use of such cards fills a need for a segment of the public that conceivably might not otherwise have access to legal services. Attorneys participating in a credit card plan should have the provisions of EC 2-9, EC 2-10, EC 2-17, EC 5-2, EC 5-21 and EC 5-22 firmly in mind in connection with credit card transactions.

The Committee is of the opinion that under the provisions of the Code of Professional Responsibility an attorney's participation in a plan providing for the use of credit cards in the

payment of attorney fees and expenses would not be improper if the plan meets the following conditions:

(1) The bank or credit card issuer in any possible suit against the client must waive all defenses a holder in due course might have, and the client must have the right to assert against the bank or credit card issuer any defense he may have against the attorney with regard to the professional employment giving rise to the credit card transaction.

(2) The attorney shall fully and fairly disclose to the client, both orally and in writing prior to the consummation of such credit card transaction, that any defenses the client may have regarding the professional transaction may be asserted against the bank or credit card issuer as well as the attorney. The client must be expressly advised prior to execution of any credit card arrangement the rate of interest that will be charged and after what period of time it will be charged if the account remains delinquent.

(3) No directory shall be printed or published of individual attorney members of the plan.

(4) The plan is to be accepted only as a convenience for clients desiring it, and the lawyer may not increase his fee because of his participation in the plan.

(5) Lawyers participating in the plan may charge only for services rendered or cash paid on behalf of a client.

(6) The attorney shall scrupulously observe his obligation to preserve the confidences and secrets of his clients.

(7) Publicity and advertising for the plan is subject to prior approval by The West Virginia State Bar. There shall be no display of an emblem or window decal in the lawyer's office relating to the credit card. Such display is undignified and is a form of improper solicitation.

Participation by attorneys in plans which do not comply with the above conditions is hereby expressly disapproved. Attorneys who are presently using a credit card plan should ascertain that the plan meets the foregoing conditions. If it does not, they are advised to cease its use. Continued use of a plan not meeting the above requirements may subject an attorney to disciplinary action.

Dated: June 18, 1976.

John O. Kizer, Chairman

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RECENT LEGAL ETHICS INQUIRIES

USING CREDIT CARDS FOR THE PAYMENT OF  
LEGAL FEES AND EXPENSES

You recently inquired concerning the propriety of your use of either Master Charge or Bank-Americard credit cards for the payment of your legal fees and expenses.

The Committee on Legal Ethics of The West Virginia State Bar has neither approved nor disapproved of the use of credit cards for the payment of legal fees and expenses. The Committee has advised an inquiring bank and stated in its report at the annual meeting held in October, 1975, that until it took a formal position on the use of such cards a strict observance of the American Bar Association's Formal Opinion 338 would not expose an attorney subscribing to such a plan to disciplinary action should the plan be ultimately disapproved by this Committee, provided the attorney using the plan ceased doing so upon the plan's disapproval.

The Committee is currently studying the use of credit cards and will issue a formal opinion with respect to the same in the near future.