

Rescinded
by LEI
93-02

LEGAL ETHICS INQUIRY 78-7

(July 21, 1978)

FINANCE CHARGES ON DELINQUENT FEE ACCOUNTS

Reference is made to your letter in which you state that in an attempt to increase collections on accounts receivable, you and your partner are contemplating a finance charge of $1\frac{1}{2}\%$ per month and are considering placing the following language at the bottom of your statements:

Terms: Net cash

Finance charge of $1\frac{1}{2}\%$ per month, which is an annual rate of 18%

You asked for this Committee's opinion as to the propriety of your proposed action.

This Committee does not give legal opinions and we, therefore, express no opinion as to the legal aspects of your proposal. This opinion is limited to the propriety from an ethical standpoint of your proposal to charge interest or a finance charge on delinquent fee accounts.

The language which you propose to place at the bottom of your statements or billheads is unclear. It is not clear from the phrase "net cash" when interest will accrue on unpaid accounts. How long a period of time will the client have to pay the statement before incurring interest or finance charges at the rates stated?

Ethical Consideration 2-16 provides:

The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

Admittedly, every lawyer has clients whose abilities to pay for legal services vary. The use of credit cards in connection with the payment of legal fees under certain circumstances has been approved by this Committee in response to Legal Ethics Inquiry 76-4 (June 18, 1976). The use of credit cards is also discussed in ABA Opinion 320 and ABA Informal Opinions 1120 and 1176.

In interpreting Canon 12 of the former Canons of Professional Ethics, the Committee on Professional Ethics of the American Bar Association reasoned:

. . . It is improper for an attorney, in billing his clients, regularly to offer a uniform discount if the bill is paid within a stipulated period of time. This problem is governed by Canon 12, which outlines the general elements to be considered in fixing the fee and concludes with the sentence: "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." Although the giving of discounts may be an entirely sound and proper practice in business, we do not think it is suited to the legal profession. Business transactions are frankly impersonal and commercial in character. On the other hand, the professional relationship between an attorney and his client is highly personal, involving an intimate appreciation of each individual client's particular problems.

Practices which overlook the personal element in the attorney relationship with his client and which tend toward an undue commercial emphasis are to be condemned.

ABA Formal Opinion 151 (February 15, 1936). The Committee further pointed out that Canon 12 states that the amount of the fee must in each case depend, to at least some extent, on the client's ability to pay, and the canon even goes so far as to say that the client's poverty may require a charge that is actually less than the value of the services rendered, or even none at all. The adherence to a standard uniform discount or interest charge, the Committee added, would violate Canon 12. Certainly, the adherence to a standard financial charge violates the spirit, if not the letter, of Disciplinary Rule 2-106 of the present Code of Professional Responsibility.

ABA Informal Opinion C-741 (March 31, 1964) appears to be a precise answer to your inquiry. An attorney inquired as to the propriety of indicating on his billing statement in small print that interest at the rate of 6% per annum would be charged on all accounts not paid within 30 days. The Committee referred to its Formal Opinion 151 and stated that such a practice would be improper, saying:

Whether or not the amounts of the fees have been agreed upon, the effect would appear to be an inducement (the saving of interest) to pay promptly. The effect is not dissimilar to offering a discount for prompt payment of attorney fees, and this practice was specifically disapproved by this Committee in Opinion 151 (February 15, 1936) in which the Committee quoted from Canon 12 as follows: "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; . . ." and condemned the discount practice as unsuited to the legal profession, although sound, proper and customary practice in business.

The Committee further stated:

However, in a special case where it is clear that the client has agreed as to the amount of fee and is able to pay it, but desires that payment be deferred for his convenience, it would not per se be unethical for his attorney to accept from the client, or even suggest, a promissory note in the amount of the agreed fee, with interest to accrue from a specified date and the note to mature at an agreed date, with the client having a right of prepayment without penalty. Such cases would not be common in a lawyer's practice, and in each the interest rate and maturity date of the note would have to be a matter of special agreement between the attorney and his client.

The Committee on Professional Ethics of the New York State Bar Association in Opinion 87 (July 16, 1958) and Opinion 193 (September 30, 1971) likewise ruled that it was improper for a lawyer to affix interest charges on delinquent fee accounts. This is so whether the interest charge be designated as a discount, finance charge or service charge. We conclude from the foregoing that it would be improper for you to impose interest or finance charges upon delinquent fee accounts and to print notice of those charges on your statements or billheads.

Nothing in this opinion should be construed to prohibit, in a proper case, 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." Ethical Consideration 2-23.