

FINANCE CHARGES ON DELINQUENT FEE ACCOUNTS

In 1978, the Committee on Legal Ethics issued a formal opinion prohibiting an attorney from imposing finance charges on delinquent fee accounts. See L.E.I. 78-7. The Committee relied on several older opinions from the American Bar Association and other jurisdictions which rejected the application of business practices to the legal profession as too impersonal and commercial in nature. With the establishment of the new Rules of Professional Conduct, the Committee has seen a number of practices permitted by lawyers which once would have seemed commercial in nature.

Therefore, the Committee deems it appropriate to reconsider its position. At least eleven other jurisdictions permit, under their current ethical rules, the imposition of a finance charge in some manner.

The Committee is of the opinion that Rule 1.5 of the Rules of Professional Conduct does not prohibit an attorney from charging interest on unpaid balances provided that the client agrees to such terms in writing at the outset of the representation.¹

Although Rule 1.5 does not require all fee agreements to be in writing, the Committee frequently receives complaints from clients without written fee agreements that they did not understand the terms of the fee when they retained the lawyer.

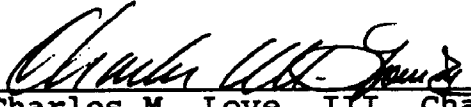
¹The language concerning the finance charge must be clear and highlighted.

Because the imposition of a finance charge is a new concept which has the potential to confuse the client even further, fairness to the public mandates voluntary, written client consent at the outset of representation. Requesting a client in the middle of representation to consent to such charges would carry with it the implied threat that the attorney might withdraw. Client consent under such circumstances has the potential to be coerced.

The Committee also warns lawyers that they must comply with any applicable federal or state laws regarding the amount and method of imposing finance charges.

L.E.I. 78-7 is rescinded.

Entered: July 16, _____, 1993.



Charles M. Love, III, Chairman
Committee on Legal Ethics