

INTEREST ON ATTORNEYS FEES

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On March 26, 1993, the Lawyers Professional Responsibility Board (LPRB) issued Opinion No. 16, "Interest on Attorney's Fees." Opinion 16 (reprinted below) codifies the board's interpretation and prosecutorial position concerning interest or late charges on attorneys fees.

Opinion No. 16 Interest and Late Charges on Attorneys Fees

A lawyer's fee shall be reasonable. *See* Rule 1.5(a), Minnesota Rules of Professional Conduct. An illegal fee is unreasonable. In Minnesota, the assessment of interest or late charges on attorneys fees is unreasonable, and a violation of Rule 1.5(a), if: 1) the rate of interest is usurious; or 2) Minnesota law requires that the client agree in writing to the imposition of the interest charges, and there is no such written agreement; or 3) federal truth-in-lending disclosures for consumer credit sales are required and have not been made.

The Lawyers Professional Responsibility Board hereby issues this opinion which incorporates its interpretation and prosecutorial position concerning interest or late charges on attorneys fees. This opinion is not intended to bind or influence any trial court or other adjudicatory body in determining civil liability under truth-in-lending or usury law.

1. An attorney who charges a client interest at an annual rate of 6 percent or less on outstanding attorneys fees, without obtaining advance written agreement from the client, will not be subject to lawyer discipline for failure to comply with the truth-in-lending requirements or disclosures.
2. An attorney who charges a client interest at an annual rate of 8 percent or less pursuant to a written agreement with the client, will not be subject to lawyer discipline for failure to comply with truth-in-lending requirements or disclosures.
3. An attorney who charges a client interest at an annual rate of more than 8 percent will be subject to lawyer discipline for failure to comply with any truth-in-lending requirements or disclosures.

Opinion 16 does not prohibit an attorney from charging interest on fees. It simply puts attorneys on notice that their billing practices must comply with Minnesota laws relating to usury and federal truth-in-lending requirements. (For a detailed analysis of Minnesota usury and truth-in-lending as it relates to attorneys fees, *see* Yilek, "Interest and Late Charges: How to Charge Clients," *Bench & Bar* (March 1991). A word to the unwary is warranted: unless your retainer agreement looks remarkably similar to a Dayton's charge card agreement, you in all likelihood are not complying with truth-in-lending requirements.

Opinion 16 also sets out three key enforcement positions of the Director's Office: 1) an attorney can charge 6 percent or less per annum in interest on fees, even without an advance written agreement, and not be subject to discipline for failure to comply with truth-in-lending; 2) an attorney, pursuant to an advance written fee agreement, can charge 8 percent or less per annum in interest and not be subject to discipline for failure to comply with truth-in-lending; and 3) an attorney who charges at an annual rate more than 8 percent will be subject to discipline for failure to comply with truth-in-lending requirements.

The Director's Office position regarding interest fees was previously set out in an October 1989 article in *Bench & Bar* titled "Interest on Attorneys Fees." The board still adheres to the analysis and conclusions advanced in that article which, in turn, were simply a reflection of existing law. By a letter to the director dated December 8, 1992, Frederick Finch of the Fourth District Ethics Committee expressed the view of certain members of that committee that an article appearing in *Bench & Bar* is insufficient to properly put the bar on notice as to the board's views on interest charges. "[M]any ethical lawyers are not members of the Minnesota State Bar Association and do not receive *Bench & Bar*. Many more will not remember an October 1989 article when faced with a decision to charge interest on an account in 1992."

While it does not seem unreasonable to expect lawyers to know the laws applicable to their billing practices, it is apparent that some lawyers have a blind spot as it relates to interest. A not infrequent defense raised by attorneys whose practices regarding charging interest have been questioned is, "I don't collect the interest. I only put it on the billing statement as a way to motivate clients to make timely payment." That "defense" has not carried the day with the Director's Office, nor with the courts. See e.g. *Katz & Lange Ltd v. Beugen*, 356 N.W.2d 733 (Minn. App. 1984). In *Katz*, even though a client did not pay the 12 percent per annum service charge included on the billing statement, the Minnesota Court of Appeals found that the law firm had violated Minnesota usury laws.

Lawyers Board opinions attempt to clarify issues that routinely create problems between lawyers and clients. Several Minnesota attorneys have received private letters of admonition in the last year due to their practice with respect to interest on fees, as in years past. Due to the recurring incidence of complaints received and discipline issued, as well as the specific request for a formal opinion regarding fees, the Director's Office requested that the board consider issuing an opinion. Nevertheless, the Director's Office does not believe that a formal opinion is required to alert lawyers to laws of general application to the public or other businesses.

The letter from the ethics committee members raised another issue also of concern to the Director's Office -- the accessibility to the bar of the formal Lawyers Board opinions. To date, the opinions have been printed in *Bench & Bar* and are available from the Director's Office, but have not been available in a separate bound volume, as are the Rules of Professional Conduct and the Rules on Professional Responsibility.

The Director's Office has made a number of efforts to address this situation. First the formal board opinions are being printed in the form of a brochure, for easy distribution to the bar. To request the opinions, call the Director's Office at 296-3952 (outstate at 1-800-657-3601). Second, West Publishing Co. has recently agreed to publish the board opinions in future editions of its *Minnesota Rules of Court* and in the supplementary pamphlet to Volume 52 of the *Minnesota Statutes Annotated*. Following publication of the 1994 edition of Minnesota Rules of Court, the opinions will be included in the MN-RULES database on WESTLAW. Third, the certification language on the annual attorney registration statements now states that the opinions are available from the Director's Office. Finally, the Director's Office provides a copy of the opinions to all newly admitted attorneys.

Attorneys with ideas that they believe will assist the members of the bar in complying with professional responsibility obligations are encouraged to make suggestions to the Director's Office or the board.