

REPORT . . .
LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

By

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We have received recently an increasing number of inquiries concerning the propriety of charging interest on attorney's fees.

On November 16, 1974, the American Bar Association Committee on Ethics and Professional Responsibility issued Formal Opinion 338, which held that credit cards could be accepted for the payment of legal services and expenses if the specified guidelines contained within the opinion were followed. Opinion 338 also stated:

"A necessary corollary to the use of credit cards is the charging of interest on delinquent accounts. It is the Committee's opinion that it is proper to use a credit card system which involves the charging of interest on delinquent accounts. It is also the Committee's opinion that a lawyer can charge his client interest providing 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."

Although Opinion 338 discussed the question of interest on delinquent accounts, there is no reason to restrict its applicability to overdue accounts. In our opinion, attorneys may levy interest or carrying charges on accounts provided that they comply with the following guidelines.

1. The client must affirmatively agree in advance to the rate of interest and to the conditions under which it will be levied. Ideally, such matters should be covered in an initial retainer agreement which is reduced to writing.
2. There must be compliance with any applicable disclosure requirements, including those set forth in the preceding paragraph and including, but not necessarily limited to, any truth-in-lending disclosures which may be required by law.
3. The rate of interest charged must not exceed the lawful rate. Charging usurious interest will result in a fee which is illegal or excessive, in violation of DR 2-106(A), of the Code of Professional Responsibility.

The foregoing state the *general* requirements which must be met before interest can be charged on

client accounts for legal services. Obviously, there may be other legal and ethical requirements which must be met in individual cases before interest may be levied.

There will, of course, be many attorneys who will continue to adhere to the long-standing tradition of the profession by carrying client accounts for legal services without interest. The purpose of this article is not to require or encourage them to depart from their current practices. The recent volume of inquiries on this subject, however, makes clear that there is a desire by many attorneys to be advised of the ethical considerations in charging interest on accounts which are often carried for a substantial time.