

Interest on Legal Fees: Usury is Illegal, Unreasonable, and Just Plain Bad

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Rule 1.5 of the Minnesota Rules of Professional Conduct (MRPC) provides in part that a lawyer's fee shall be reasonable. The Minnesota Supreme Court has repeatedly held that an illegal fee is an unreasonable fee. See *In re Dvorak*, 554 N.W.2d 399, 403 (Minn. 1996), *In re Simmons*, 415 N.W.2d 673, 674 (Minn. 1987), *In re Hoffman*, 379 N.W.2d 514, 516 (Minn. 1986), and *In re Beal*, 374 N.W.2d 715, 718 (Minn. 1985).

Minnesota law regulates the amount of interest that may be charged on legal indebtedness. See Minn. Stat. sec. 334.01 et. seq. Interest charges in excess of the amount permitted by statute are considered usurious and therefore void. See *Katz & Lange LTD v. Beugen*, 356 N.W.2d 733 (Minn. Ct. App. 1984).

In 1993, the Lawyers Professional Responsibility Board, combining these principles, issued Opinion 16. That opinion provides that the charging of late fees or interest is unreasonable and a violation of Rule 1.5(a) of the MRPC, if one of three things exist:

- the rate of interest charged is usurious;
- Minnesota law requires that the agreement to pay the interest charged be in writing and there is no such writing; or
- federal truth-in-lending disclosures for consumer credit sales are required and have not been made.

According to Opinion 16, this boils down to three general rules for avoiding attorney discipline arising out of the charging of interest on past due fees. First, an attorney may charge a client interest at the rate of 6 percent per annum or less even if there is no written agreement or compliance with truth-in-lending requirements. Second, an attorney may charge interest at the rate of 8 percent per annum or less if there is a written agreement with the client so providing and regardless of whether truth-in-lending requirements or disclosures have been made. Third, an attorney may charge interest at a rate in excess of 8 percent per annum only if there is a written agreement with the client and compliance with federal truth-in-lending requirements.

The policy embodied in Opinion 16 is in accord with the American Law Institute's Restatement of the Law Governing Lawyers. Section 34 of the Restatement provides that "A lawyer may not charge a fee larger than is reasonable in the circumstances or than is prohibited by law." The comment to section 34 addresses the scope of this provision, noting, "The prohibition on unreasonable payment arrangements is not limited to fees in a narrow sense. It applies also to excessive disbursement or interest charges or improper security interests."

Since 1993 the Director's Office has issued at least seven admonitions (the lowest level of discipline) to attorneys for charging excessive interest in violation of Rule 1.5(a) of the MRPC and Opinion 16. Most of these have resulted from attorneys charging interest in excess of 8 percent per annum (anywhere from 12 to 21 percent) without making the required truth-in-lending disclosures. In all of these cases, the director was

spared from having to delineate exactly what the truth-in-lending deficiencies were by virtue of the fact that no disclosures at all were made beyond the amount of interest charged.

As to the exact nature of the disclosures required by truth-in-lending, that is a topic that cannot be adequately covered in this article. Suffice it to say that if your retainer agreement and monthly bills do not contain pretty much the same disclosures that are contained on your credit card bills, you probably are not complying with truth-in-lending. Typically, unless interest income is a big part of your income picture, you are probably better off limiting yourself to charging just 6 percent per annum in all cases or 8 percent per annum with a written agreement.