

**REPORT . . . LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD**

By
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In my January, 1980 column I discussed interest on attorney's fees. I stated that attorneys may levy interest on fees provided 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.

Since January, 1980 we have in disciplinary cases enforced the guidelines set forth in the January, 1980 column. The guidelines concerning truth in lending and usury have caused little difficulty. The direction to obtain advance agreement prior to charging interest has, however, caused substantial enforcement difficulties. In fact, Board panels, when confronted with cases involving virtually identical facts issued a warning in one case and made a finding of no unethical conduct in another involving failure to obtain advance agreement.

We still believe that advance agreement is desirable and that written agreement is ideal. We do recognize, however, that there are circumstances in which either advance agreement or a written agreement is impractical. Also, clients with delinquent accounts may refuse unreasonably to pay interest.

We hope that all attorneys charging interest will attempt to use a written advance agreement concerning interest whenever practical. We will not, however, take disciplinary action against an attorney who fails to obtain advance agreement unless there is legal requirement for an advance agreement in the specific circumstances. Attorneys may then charge interest in cases where an advance agreement is not practical or possible, including cases where interest must be charged on delinquent fees as a matter of justice even if the delinquent client will not agree to the interest charged.

I emphasize that where disclosure is required, it must be made and that the interest charged must not exceed the lawful rate. Also, where the law imposes a specific requirement that there be advance agreement, such agreement must first be obtained.