66 IMPOSITION OF INTEREST OR FINANCE CHARGES ON CLIENT ACCOUNTS

Adopted October 20, 1984.

Syllabus

A lawyer may not unilaterally impose interest upon delinquent fee accounts or charge a finance fee unless there has been prior agreement between the attorney and the client that interest will be charged if a fee is unpaid for more than a specific period of time.

Facts

Attorney X inquired whether interest may be charged on delinquent accounts when the attorney does not have a previous agreement with the client providing for interest. The inquiry refers to Informal Opinion Y, in which the Colorado Bar Association Ethics Committee approved the use of credit cards under certain guidelines. Informal Opinion Y went on to state the opinion that a lawyer may charge his client interest providing that the client is advised that the lawyer intends to charge interest and that the client agrees beforehand to the payment of interest on accounts that are delinquent for more than the stated period of time. Informal Opinion Y essentially adopted Formal Opinion 338 of the American Bar Association Committee on Ethics and Professional Responsibility. Neither of these opinions specifically discussed whether interest may be charged where there is no agreement.

The inquiry further assumes that interest on an unpaid and liquidated account is recoverable in a legal action under the provisions of C.R.S. § 5-12-102(1)(a) or (b).

Opinion

It is the opinion of the Colorado Bar Association Ethics Committee that the Code of Professional Responsibility prohibits the unilateral charging of interest by an attorney on a delinquent account for legal services, unless there has been a prior agreement between the attorney and the client which specifically states both the amount of interest and the time periods under which interest would be imposed. This opinion is a logical extension of Formal Opinion 338 of the American Bar Association Committee on Ethics and Professional Responsibility, adopted November 16, 1974, and our previous Informal Opinion Y. This opinion does not address the question of whether an attorney may ethically enter into negotiations or agreements with his client after substantial work has been performed and a past-due account has accrued, and this opinion is not intended to make any inferences about that situation.

It is important to recognize the distinctions between what is allowable under Colorado law relating to interest that may be charged by commercial creditors, and what may be charged or performed by an attorney acting under the ethical guidelines of the legal profession. The inquiring attorney is correct that, ordinarily, interest on liquidated accounts is recoverable from the date that the account is due. C.R.S. § 5-12-102(1)(b); *Isbill Associates, Inc. v. City and County of Denver,* 666 P.2d 1117 (Colo. App. 1983). However, the courts have traditionally considered a suit by an attorney for recovery of legal fees in a different light. For example, the courts require proof of reasonableness and of a free and full disclosure of rights, beyond a mere statement of an account. *Rupp v. Cool*, 147 Colo. 18, 362 P.2d 397 (1961); *Enyart v. Orr,* 78 Colo. 6, 238 P. 29 (1925). Compare *Rhode v. Shattuck*, 619 P.2d 507 (Colo. App. 1980) (reasonableness not an element of accountant's claim on open account).

An attorney may charge interest on delinquent accounts with the client's agreement, provided that the interest charged is otherwise legal. Disciplinary Rule 2-106. Specifically, the contractual agreement must be enforceable under the law of contracts. In addition, Colorado interest statutes, state consumer credit laws and the Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* may apply.

In considering whether interest may be charged in the absence of agreement, the following ethical considerations are applicable. Ethical Consideration 2-19 mandates a "clear agreement" with the client

with regard to legal fees. This desire for clarity carries over into the charging of interest in conjunction with the legal fee. Because EC 2-19 urges attorneys to reduce the fee agreement to writing, it is our opinion that an agreement to charge interest on delinquent accounts may be oral, but a written agreement is preferable. Care should be taken that any interest charges comply with state and federal laws relating to consumer credit.

Ethical Consideration 2-23 mandates that lawyers should be zealous in their efforts to avoid controversies over fees. It is the opinion of the Committee that the unilateral charging of interest, without prior agreement, may tend to fuel controversies over fees in a great number of situations.

Finally, Ethical Consideration 2-25 counsels attorneys to consider the financial ability of a client to afford a particular fee before work is commenced. If it is clear from the circumstances that a particular client may not be able to pay a fee in a timely fashion, it is best for all parties to understand in advance whether credit will be extended by the attorney, and if so, on what terms.

It is therefore the opinion of the Colorado Ethics Committee that an attorney may not unilaterally charge interest on delinquent client accounts unless there has been a prior agreement, between the attorney and the client, which sets forth the terms upon which interest shall be charged. This agreement may be oral, subject to applicable laws, although we agree with the related ethical considerations that a written agreement is preferable. This opinion does not address the propriety of negotiated agreements between attorney and client after an account has become overdue.

The question may arise whether an attorney may seek interest at the statutory rate if suit is brought against a client for a fee. If any attorney decides that he must initiate a lawsuit against his client to collect a delinquent fee, the attorney must first consider whether the lawsuit is necessary to prevent fraud or gross imposition by the client. Otherwise, a legal action is unethical. Ethical Consideration 2-23. Once those factors have been met, the recovery that an attorney may receive in such a proceeding shall be governed by the applicable law. If there is an agreement for interest, and it can be proven, it is ethical to request recovery according to the agreement, so long as the agreement is legal. If there has been no agreement with regard to interest, it is ethical to request that statutory interest be granted. This may result in the anomalous situation whereby the attorney may recover interest from the date that the account was payable, despite our opinion that it is unethical to charge interest unilaterally where there has been no agreement. Nevertheless, we feel that there is a strong distinction to be made between the actions that an attorney makes when preparing and submitting his bill for services, and the request for relief in a legal proceeding.