

UNLESS THE BAR ASSOCIATION SPECIFICALLY APPROVES AND PARTICIPATES IN SUCH A PLAN, THE PAYMENT OF ATTORNEY'S FEES BY MEANS OF ANY CREDIT CARD OR PAYMENT METHOD, IS NOT PERMISSIBLE.

CODE PROVISIONS INTERPRETED:

Canon 8: A lawyer should assist in improving the legal system.

Canon 9: A lawyer should avoid even the appearance of professional impropriety.

QUESTION PRESENTED

Whether or not there is any ethical prohibition against a lawyer having his fee paid by means of the clients' Master Charge, BankAmericard or other similar type of credit card?

DISCUSSION

All accepted or approved commercial practices are not necessarily acceptable from the ethical point of view, insofar as the Code of Professional Responsibility is concerned. Therefore, the mere fact that the use of these credit cards is now almost universally accepted otherwise, it does not necessarily follow that there would be no ethical prohibition against a lawyer having his fee paid by this means.

For instance, it is not professionally proper for a lawyer to send out bills for payment of fees for professional services with the statement thereon that a discount will be allowed for prompt payment (Opinion 151, Committee on Professional Ethics and Grievances of the American Bar Association). Although that Opinion was rendered in 1936, the principle announced therein was reaffirmed in Informal Decision No. C-741 of the Standing Committee on Profession Ethics, issued in 1964. This principle was based on the old Canon 12, which stated: "In fixing fees, it should never be forgotten that the profession is a branch of the

administration of justice and not a mere money getting trade." Opinion 151 states: "Although the giving of discounts may be an entirely sound and proper practice in business, we do not think it is suited to the legal profession. Business transactions are frankly impersonal and commercial in character. On the other hand, the professional relationship between an attorney and his client is highly personal, involving an intimate appreciation of each individual client's particular problem. Practices which overlook the personal element in the attorney's relationship with his client and which tend toward an undue commercial emphasis are to be condemned." A second reason set forth is the fact that an attorney's fee is an individual matter, "that in fixing fees a lawyer should take into consideration all of the circumstances surrounding each individual case", apparently meaning that charging an attorney's fee is something entirely different from, for instance, of buying groceries.

The use of data processing, something now used extensively in commercial practice, is not permissible for a law firm. (Informal Opinion No. 912 \_ 2/24/1966). This is based on the principle that it is the duty of a lawyer to preserve his client's confidences.

It seems that, as far as one may go, is to accept a note or security from his client for his fare. (Informal Decision No. 593 \_ 10/25/1962). Drinker, in his LEGAL ETHICS (Page 171) states: "He may take a conveyance to secure his fee, despite Canon 10". Wise, in his LEGAL ETHICS (Page 232), in 1970, reaffirmed that "An A.B.A. opinion held it improper for a lawyer to send out bills for professional fees offering a discount for prompt payment". However, a client may borrow money from a bank and then, make payment of his fee to the lawyer. Wise, in his Legal Ethics, (Pages 234 to 235) discusses "Legal Fee Financing Plans". He does not touch on credit cards but it seems that before credit financing is permissible, it must be approved and under the control of the Bar Association. He states, in part, "These plans must be restricted in a number of ways before a lawyer can ethically participate in them. There must be bar association sponsorship. with a clear. written agreement

between the association and the bank. The attorney wishing to participate must also sign an agreement with the bank. The bank investigates the client's credit and, if satisfactory, lends the required amount, less a discount, in exchange for the client's note". He points out that "The canons are involved in many ways" and describes what may or may not be done in these cases. He states "The plan does not stir up litigation. If properly conducted by a bar association, the plan is not so commercial as to be contrary to the honor and dignity of the profession. \*\*\* If formulated and carried out with strict observance of the Canons, a plan for financing legal fees is not unethical".

Of course, it is recognized that none of the foregoing statements is strictly in point but they do indicate that the payment of fees is something outside the pale of a mere commercial transaction. No doubt, the use of credit cards to pay legal fees smacks of commercialism; also, there is the possibility that "easy credit" might conceivably stir up frivolous litigation.

Therefore, where some question as to the propriety of using credit cards to pay for legal fees, is involved, Canon 9 (Avoiding even the appearance of professional impropriety) would seem to apply; and if the honor and dignity of the profession are at stake, certainly, Canon 8 (For improving the legal system) would be applicable.

#### CONCLUSION

The payment of attorney's fees by means of credit cards is not permissible, unless the Bar Association somehow specifically approves and participates in the plans therefor.