

Nebraska Ethics Advisory Opinion for Lawyers
No. 81-2

THE USE OF CREDIT CARDS FOR THE PAYMENT OF LEGAL SERVICES AND EXPENSES IS PERMITTED UNDER THE CODE OF PROFESSIONAL RESPONSIBILITY IF SPECIFIED GUIDELINES ARE FOLLOWED. PERMITTED USE OF SUCH CREDIT CARDS INCLUDES A POSSIBLE NOTICE TO THE CLIENT, TO BE ENCLOSED WITH THE STATEMENT FOR SERVICES, ADVISING THE CLIENT THAT THE ATTORNEY ACCEPTS CERTAIN SPECIFIED CREDIT CARDS AND THUS GIVING THE CLIENT THE OPPORTUNITY TO ELECT PAYMENT BY SUCH CREDIT CARD. [OPINION NO. 77-2](#) IS HEREBY RESCINDED.

FACTS

An opinion has been requested from the Advisory Committee as to the propriety of an attorney's including a notice with the statement for services to the effect that the client may pay the bill by certain credit cards that the attorney accepts, thus giving the client the opportunity to elect payment by credit card by completing and returning an enclosed form specifying the client's credit card preference and identification number.

DISCUSSION

Disciplinary Rule 2-101(B)(18), as adopted by the Nebraska Supreme Court on November 28, 1977, specifically contemplates the use of credit cards by stating that an attorney's advertising or publicity may state whether credit cards or other credit arrangements are accepted. The specific question presented to us in this opinion is whether it is a violation of the Code of Professional Responsibility for the lawyer to include with his statement for services rendered a notice advising the client that he does accept certain credit cards and that the bill may be paid by using these credit cards. The inquiry goes further to ask the propriety of having the notice include a form that the client can use to state his

credit card number.

This Committee is of the opinion that a notice is not a violation of the Code of Professional Responsibility. The use of credit cards was specifically permitted by Formal Opinion 338 of the American Bar Association Committee on Ethics and Professional Responsibility, dated November 16, 1974. In that opinion, the American Bar Committee took the position that the use of credit cards for the payment of legal expenses and services is permitted under the Code, providing all other provisions of the Code were fully and completely observed. However, it was specifically provided that a credit card plan did conform to the Code provisions if the plan required that:

1. All publicity and advertising relating to a credit card plan must be subject to the prior approval in writing of the state or local Bar Committee having jurisdiction of the Professional Ethics of the attorneys involved.

2. No directory of any kind must be printed or published of the names of individual attorney members who subscribe to the credit card plan.

3. No promotional materials of any kind are to be supplied by the credit card company to a participating attorney except possibly a small insignia to be tactfully displayed in the attorney's office indicating his participation in the use of the credit card.

4. The lawyer must not encourage participation in the plan, but his position must be that he accepts the plan as a convenience for clients who desire it. In addition, the lawyer may not increase his fee for legal services rendered to the client because of his participation in the credit card plan.

5. The charges made by the attorney to a client pursuant to a credit card plan must be only for services actually rendered or cash actually paid on behalf of a client.

6. In participating in a credit card program, the attorney must scrupulously observe his obligation to preserve the confidences and secrets of his client.

The Committee went on to also find that it was not unethical for a lawyer to charge interest on delinquent accounts in connection with such a credit card system. However, the client must be advised that the lawyer intends to charge interest and the client must agree to the payment of interest on accounts that are delinquent for more than the stated period of time. A copy of Formal Opinion 338 is attached to this opinion.

This Committee hereby adopts Formal Opinion 338 as it relates to the use of a credit card plan, excluding any question of interest. This Committee has on various occasions in the past, including quite recently, expressed its opinion concerning the charging of interest on unpaid accounts and nothing in Formal Opinion 338 shall be considered to alter any previous announcements by this Committee on that point. However, the Committee does adopt the rationale of Formal Opinion 338 as it relates to credit card plans.

Specifically referring to the question of a notice to be placed in a statement for services, the only question raised in the above six points concerns whether this constitutes a "promotional material" which may be considered to be unethical. We do not believe that the simple inclusion of a notice advising the client of the availability of such a service as payment by credit card would constitute solicitation or an unethical activity. This opinion is restricted only to notices given to clients to whom services have already been rendered. It is not to be construed as any permission of advertising concerning credit cards or any other activities concerning credit cards.