

Nebraska Ethics Advisory Opinion for Lawyers
No. 77-4

IT IS NOT PROPER FOR AN ATTORNEY TO UNILATERALLY NOTIFY A CLIENT HE WILL BE CHARGED INTEREST ON A PAST DUE ACCOUNT AFTER A DATE CERTAIN IN THE FUTURE. INTEREST MAY PROPERLY BE CHARGED ONLY BY AGREEMENT WITH THE CLIENT.

FACTS

The following questions have been submitted to the Committee:

- a. May attorneys notify their clients they will be charged interest on past due accounts after a date certain in the future?
- b. May attorneys charge their clients the highest rate of interest allowed by law as consideration for the forbearance and giving time for the payment of money?
- c. Under what circumstances may attorneys charge interest on open accounts and at what rate of interest?

DISCUSSION

You say in the body of your letter at the top of page three, "We would like to notify our clients who have owed us money for more than ninety days that at a given time in the future, probably 30 days after notification, we will begin charging interest at the rate of 11% per year as a matter of economic necessity. We would point out the time allowed to make payment without interest should be sufficient to permit them to finance with their banker at lower available rates and nonpayment after that date will constitute an agreement to pay us 11%".

A similar inquiry was made to the Committee on Ethics and Professional Responsibility of the American Bar Association. The reply of that committee is their

informal decision C-741 entitled, "Interest on Unpaid Legal Fees". Their opinion is relatively short and we quote it in full:

"You have inquired as to the propriety of including in your billhead form in small print the legend:

'Interest at the rate of 6% per annum will be charged on all accounts not paid within 30 days.'

It is the opinion of the Committee that such practice would be improper, both where the clients have agreed upon the amounts of the fees and where they have not.

In the latter case, it might appear that the claimed accrual of interest on fees upon which clients have not agreed, either in advance or upon conclusion of the services, constituted a bargaining weapon an attorney might use in reaching agreement as to the amounts of the fees.

Whether or not the amounts of the fees have been agreed upon, the effect would appear to be an inducement (the saving of interest) to pay promptly. The effect is not dissimilar to offering a discount for prompt payment of attorneys' fees, and this practice was specifically disapproved by the Committee in Opinion 151 (February 15, 1936) in which the Committee quoted from Canon 12 as follows:

'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;'

and condemned the discount practice as unsuited to the legal profession although sound, proper and customary practice in

business. The Committee in Opinion 151 went on to state:

'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. Practices which overlook the personal element in an attorney's relationship with his client and which tend toward an undue commercial emphasis are to be condemned.'

However, in a special case where it is clear that the client has agreed as to the amount of a fee and is able to pay it, but desires that payment be deferred for his convenience, it would not per se be unethical for his attorney to accept from the client, or even suggest, a promissory note in the amount of the agreed fee, with interest to accrue from a specified date and the note to mature at an agreed date and with the client having a right of prepayment without penalty. Such cases would not be common in a lawyer's practice, and in each the interest rate and maturity date of the note would have to be a matter of special agreement between the attorney and his client. Informal Decision C-593 (October 25, 1963.)"

CONCLUSION

The Nebraska Advisory Committee concurs with the above-quoted opinion of the Committee on Ethics of the American Bar Association. We believe that the sections of the Nebraska statutes in Chapter 45 which relate to interest are for the control of commercial practices in charging interest and you cannot equate such statutes in any way to the fixing and collection of fees by a lawyer in the practice of law. This is not to say, however, that interest can never be charged on delinquent accounts. It can be only with the client's

agreement. See our [Opinion No. 75-1\(7\)](#).

We, therefore, answer your three questions as follows:

- a. No.
- b. Only when your client asks for time and agrees to pay interest in the amount agreed upon.
- c. The answer is the same as b.

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