

Committee Opinion
June 13, 1989

LEGAL ETHICS OPINION 1247

FEE: AGREEMENT IMPOSING
FINANCE CHARGE ON CLIENT'S PAST
DUE ACCOUNTS.

You have asked the Committee to opine on the propriety of a proposed format for an agreement for payment of legal fees which provides that the prospective client agrees to pay for the services rendered in full within 30 days from date of a statement clearly labeled as such and sent to the client by the firm, and that an account which is not paid in full by the end of the 30-day period shall be considered past due, after which a finance charge may be added to the outstanding balance in an amount equal to 18% per annum.

The Committee directs your attention to LE Op. 186B which, in the view of the Committee, is dispositive of your inquiry. The opinion provides that while the Committee refused to opine that it is unethical *per se* to charge interest on a client's past-due account, the Virginia State Bar Council has opined that the automatic imposition of an interest or finance charge on clients' overdue accounts is improper and would be contrary to the ethical considerations under Canon 2 of the Virginia Code of Professional Responsibility. Ethical Consideration 2-20 [EC:2-20] provides that the "determination of a proper fee requires consideration of the interest of both client and lawyer." Also, an agreement to pay interest should only be entered into where there is a reasonable expectation that a client has the ability to pay the agreed upon fees and the interest thereon. (See EC:2-27 and EC:2-29) In its conclusion, LE Op. 186B states that interest may be imposed on clients' unpaid accounts in some additional circumstances such as where the client has agreed to the amount of the attorney's fees, is able to pay, but desires to defer payment for his convenience. An interest charge may then be imposed, provided that the client has agreed to the fee amount and the imposition of the charge and *retains the right of prepayment without penalty*. (emphasis added)

Pursuant to LE Op. 186B and the Ethical Considerations enumerated, all of which indicate the impropriety of the automatic imposition of a finance or interest charge on a client's account, the Committee opines that your proposed agreement for imposing such a charge if payment is not made within 30 days from the date of statement is not improper provided that the legal fee itself is reasonable and adequately explained to the client. (See DR:2-105(A)) Furthermore, an attorney should always take into consideration a client's financial ability to pay reasonable fees and where an account is overdue the attorney should be zealous in his efforts to avoid controversies over fees and should attempt to resolve amicably any differences on the subject. (See EC:2-25) The Committee would also direct your attention to the need for the agreement to comply with any other applicable laws.

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