

LEGAL ETHICS OPINION 186-A

PARTICIPATION IN PLAN PROVIDING  
FOR USE OF CREDIT CARDS FOR  
PAYMENT OF LEGAL FEES AND  
EXPENSES.

*Subject:* Permissibility of participation by attorneys in a plan providing for the use of credit cards for the payment of legal fees and expenses.

*Issue defined:* The Council initially notes that this subject was addressed in Formal Opinion 150 (1966), holding that, because of reservations concerning professionalism and dangers attendant thereto, participation of lawyers in charge plans for legal fees and expenses would be ethically improper.

Since the issuance of Formal Opinion 150, economic changes in our society have made it necessary to re-examine this issue.

As early as November 16, 1974, the American Bar Association adopted Formal Opinion 338, allowing the use of credit cards subject to specific guidelines. This opinion has served as an impetus for virtually nationwide approval of the use of credit cards for the payment of legal fees and expenses by state and local bar associations. While the Legal Ethics Committee's Virginia State Bar Informal Opinion, Legal Ethics Opinion 166, adhered to the original prohibition found in Formal Opinion 150, the Committee on Use of Credit Cards in June 1976 recommended that attorneys be allowed to participate in credit card plans on a "without recourse" basis. The Legal Ethics Committee has since issued several informal opinions approving an attorney's participation in a charge plan for the payment of legal fees and expenses in accord with the prototype plan recommended by the Committee on Use of Credit Cards and approved by Council. (See LE Op. 343, LE Op. 353, LE Op. 354, LE Op. 355, LE Op. 481 and LE Op. 498)

Moreover, the Supreme Court of Virginia has implicitly approved participation by attorneys in such plans by sanctioning advertising relating to the plans in EC:2-8. (220 Va. 616, 618 [1980]) The question thus presented is whether Formal Opinion 150 should be rescinded and under what specific guidelines.

*Discussion:* Recognition and appreciation of economic reality lead to the conclusion that Formal Opinion 150 can no longer withstand thoughtful scrutiny and should be reversed. Steadily increasing costs should not be allowed to jeopardize an individual's right to obtain the services of a qualified attorney. In many instances, the use of credit card plans may enable persons to obtain legal services which they need but otherwise would be unable or reluctant to seek because of the unavailability of sufficient cash resources. Use of credit cards is a logical step in meeting the mandate set forth by our Supreme Court in Canon Two (220 Va. 616 [1980]) that the Bar become more responsive to the needs of the public. It is the opinion of the Council that the use of credit cards for the payment of legal fees and expenses is permitted under the Code of Professional Responsibility of the Virginia State Bar, provided that all of the Code's provisions are fully observed.

It should be noted that a retainer fee may be paid by the use of a credit card, but amounts received by the attorney from the credit card institution, in the same manner as all fees received in advance of the rendering of services, must be deposited and preserved in escrow in the trust account maintained by the attorney for his clients to the extent that such fees remain unearned. See DR:9-102, 216 Va. 941, 1130 (1976). We note further that charges made by any lawyer or law firm shall be only for the reasonable value of the services actually rendered regardless of whether a credit card is used. No higher fee should be imposed by reason of a lawyer's or law firm's participation in a charge plan. Recognizing that the impetus for Council to reverse its former position lies in the belief that use of credit cards may make legal services more widely available to the public at no additional cost, it is imperative that a lawyer resist the temptation to pass through to his clients charges imposed upon the lawyer by the credit card company whether by means of a discount or by other means.

Credit cards should only be used in situations where clients have the ability to pay reasonable fees. When an attorney agrees to take a case where a client is under financial hardship and unable to pay reasonable fees, the fact that a credit card is available should not deter the attorney from his obligation to perform *pro bono* work. (EC:2-27, EC:2-28, 220 Va. 616, 623-24)

Finally, Council believes that the “without recourse” provision required by the original approved prototype plan is unworkable. In a recent report to Council by the Special Committee on Credit Card Use by Attorneys, recognition was given the fact that “[t]he 'without recourse' provision has in effect nullified the use of credit cards for legal services, since the financing agencies have been unwilling to enter into a plan with attorneys unless there is a provision for 'recourse'.” Furthermore, Council now holds the view that participation in a “without recourse” plan might adversely affect a client's right to withhold payment for services which have been improperly rendered. The use of credit cards should in no way alter the relationship between an attorney and his client. We therefore shall permit attorneys to accept credit cards for the payment of legal fees and expenses under credit card plans with banks and financial institutions only to the extent that the plans provide for full recourse against the attorney where the client refuses to pay the charge.

Council Opinion  
June 18, 1981

**Editor's Notes.** – L E Op. Nos. 166, 343, 353, 354, 355, 481 and 498 have been rescinded by the Legal Ethics Committee.