

LEGAL ETHICS OPINION 186-B

IMPOSITION OF FINANCE OR  
INTEREST CHARGE ON CLIENT'S  
ACCOUNTS.

*Subject:* Permissibility of imposing a finance or interest charge on clients' accounts that have remained unpaid for more than a stated period of time.

*Issue defined:* Initially, Council notes that we have never had occasion to address this issue, although the issue is seemingly a necessary corollary to the use of credit cards, an issue we concurrently address in Formal Opinion 186-A. [LE Op. 186A] Moreover, Council notes that we do not have the authority to issue legal opinions, and we, therefore, express no opinion as to the legal aspects of this issue. The question thus becomes whether it is proper for an attorney to charge interest upon a client's account and under what specific guidelines.

*Discussion:* While the Legal Ethics Committee of the Virginia State Bar has informally opined that the imposition of an interest charge on clients' accounts which have remained unpaid for more than a stated period of time is not ethically permissible, the Committee nonetheless has refused to go so far as to say that it is unethical per se to charge interest on a client's account. [See Informal Legal Ethics Opinions 343, 344, 353, 354, 442 and 491].

Council is of the opinion that the automatic imposition of an interest or finance charge on clients' overdue accounts would be contrary to the ethical considerations given recognition by Canon 2 of the Virginia Code of Professional Responsibility. [220 Va. 616, 620 (1980)]

Ethical Consideration 2-20 [EC:2-20] provides that the "determination of a proper fee requires consideration of the interests of both client and lawyer." The automatic imposition of a uniform finance or interest charge on clients' accounts that have remained unpaid for more than a stated period ignores this personal element of the attorney-client relationship.

However, in individual cases where a client and an attorney have reached an agreement as to the amount of attorney's fees to be charged, the client is capable of paying the same but desires that the payment be deferred for the client's convenience, it is ethical for the attorney to work out an agreement with the client as to what interest charges will be imposed should the client not pay the fee by a given date so long as the client at all times has the right to prepay any remaining balance of the fee without penalty.

Ethical problems may arise where a fee has not been fully agreed upon if the attorney could claim accrued interest and use this claim as a bargaining weapon in reaching an agreement with the client as to the amount of the fee to be charged. Additionally, were the unregulated imposition of interest charges to be allowed, the attorney would possess a bargaining weapon for prompt or early payment which would give rise to a practice not unlike the use of a discount. The commercial nature of using discounts heretofore has been condemned by the legal profession. [See ABA Formal Opinion 151, February 15, 1936]

It would obviously be unethical for an attorney to charge interest on any unpaid portion of an agreed upon fee, to the extent that such fees remain unearned. Also, since it is often difficult to establish the precise date that any legal fees become earned, a practical problem may arise in determining the date from which interest began accruing thereon.

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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 and the attorney should be mindful of his obligation to perform some pro bono work when prospective clients are not able to pay reasonable fees. [EC:2-27, EC:2-28, 220 Va. 616, 623-24 (1980)]

In determining whether it is in the “public interest” to allow an attorney and client to enter into an agreement where the client pays interest should earned fees not be paid within a stated period of time, the negative aspect to the public of a possible increase in the cost of legal services must be balanced against the proposition stated in Ethical Consideration 1-1 [EC:1-1], Virginia Code of Professional Responsibility, “A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence.” [216 Va. 941, 1064 (1976)]. Therefore, in appropriate cases, it is the opinion of Council that an agreement to pay interest is not against the public interest, where it facilitates a client retaining the services of an attorney which he might otherwise have been unable to retain.

Finally, Council notes that where an attorney's fee remains unpaid, every effort should be made to work out an amicable resolution of differences which arise between the attorney and client. [EC:2-26, 220 Va. 616, 623 (1980)]

Tested by these principles, it is Council's opinion that it is improper for an attorney automatically to impose interest charges on delinquent fee accounts, whether the charges be called interest, finance or service charges. This Council has approved attorney participation in plans for the use of credit cards by clients to pay attorneys' fees. Use of these plans is a preferable alternative to charging interest for the financing of legal fees.

Interest may be imposed on clients' unpaid accounts in some circumstances. Nothing in this opinion should be construed to prohibit, in a proper case, commencement of appropriate litigation to collect a fee and interest may be added in a judgment for fees due. However, an attorney should not sue a client for a fee unless to prevent fraud or gross imposition by the client. [EC:2-26, *Id.* ]

Furthermore, in special circumstances, where the client has agreed to the amount of attorney's fees, is able to pay, but desires that payment be deferred for his convenience, an interest charge may be imposed, provided that the client agrees both as to the amount and the imposition of the charge and also retains the right of prepayment without penalty. [See Informal Legal Ethics Opinion 442]

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**Editor's Notes.** – L E Op. Nos. 343, 344, 353, 354, 442 and 491 have been rescinded by the Legal Ethics Committee.