



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.5(a) and 1.8(e). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 94-6
July, 1994**

Topic: Charging Interest on Advanced Expenses to Client

Digest: It is professionally proper for a lawyer to charge a client interest on advanced expenses.

Ref.: Illinois Rules of Professional Conduct, Rules 1.5(a) and 1.8(d)
ISBA Opinion Nos. 87-10, 632, 490 (overruled) and 380 (overruled).

FACTS

A law firm handles personal injury and worker's compensation cases for claimants. The law firm is considering borrowing money on a line of credit to pay for advanced costs of litigation and passing along the pro-rata share of interest charged to each client, subject to disclosure of that interest expense in each retainer agreement.

QUESTION

May a lawyer charge a client interest on expenses advanced on the client's behalf?

OPINION

ISBA Opinion No. 87-10, affirmed by the Board of Governors in January, 1991, is dispositive. The digest of that opinion stated, "It is professionally proper for a lawyer to charge a client interest on either overdue bills or advanced expenses."

ISBA Opinion No. 632, the principal foundation for the above opinion, had expressly overruled and rejected two earlier opinions, ISBA Opinion Nos. 380 and 490, which had held it unethical to charge interest on either expenses advanced to the client or past due fees.

The Illinois Rules of Professional Conduct, Rule 1.8(d) provides:

While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that a lawyer may advance or guarantee expenses of litigation, including but not limited to, court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence if:

- (1) the client remains ultimately liable for such expenses; or
- (2) the repayment is contingent on the outcome of the matter; or
- (3) the client is indigent.

There is no prohibition in this or any other Rule preventing a lawyer from charging a client interest upon advanced expenses. Although the Rules now allow a lawyer to guarantee costs and expenses with repayment contingent on the outcome of the matter, the lawyer may also elect to advance expenses and charge interest where the client remains ultimately liable regardless of the outcome of the case.

In ISBA Opinion No. 87-10, the Committee stressed that any agreement providing for the charging of interest on expenses should be placed in writing prior to the accrual of any such interest and at the earliest opportunity, usually being the execution of a written fee agreement/contract. The Committee now, as then, offers no opinion whether any agreement incorporating an interest provision might trigger statutory reporting and disclosure requirements, including issuance of periodic statements to the client.

Lastly, Rule 1.5(a) requires that a lawyer's fee shall be reasonable. The Committee believes that the rate or amount of interest charged upon advanced expenses should likewise be reasonable, as should the costs and expenses upon which the interest is charged.

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