



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.5. 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. 87-10
March 11, 1988**

Topic: Charging of Interest on Client Bills and on Expense Advanced to Client

Digest: It is professionally proper for an attorney to charge a client interest on either overdue bills or advanced expenses. The attorney should keep in mind suggested guidelines for maintaining a proper relationship with the client as well as possible ethical problems which may arise when charging interest.

Ref.: Rule 5-103
ISBA Opinion Nos. 380 (overruled), 490 (overruled), and 632
ISBA May, 1987 Report of Special Committee on Professionalism
ISBA Ethical Consideration Nos. 2-22, 5-1 and 5-8
Bar of the City of New York Ethical Opinion 86-6
U.S. National Bar Formal Opinion No. 338, 11/17/74
California Opinion No. 308 (1968)
15 U.S.C.A. Sections 1601-1666

FACTS

First, an attorney advances expenses to a client in order to cover costs of litigation for which both parties are aware the client has the ultimate liability. Second, an attorney bills a client for services

and the client fails to pay the bill in the prescribed period of time.

QUESTION

May an attorney charge interest on either expenses advanced by the attorney on behalf of the client or past due statements rendered to the client?

OPINION

The foundation for this discussion is provided by Ethical Consideration 2-22 which states:

A lawyer should be zealous in his efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject.

The professional judgment of the attorney should be focused primarily on his client's benefit. Personal interest should not conflict with a client's best interest. EC 5-1

The issue of whether interest should be charged on fees owing to the attorney or advancement by the attorney raises ethical questions surrounding the possible abuse of this right by the attorney: When may the attorney begin charging interest? What interest rate should be applied? Should the interest charge be considered standard income or penalty for late payment?

Rule 5-103 of the Code of Professional Responsibility points out that a lawyer should not advance financial assistance to his client except expenses of litigation. The ISBA does not encourage loaning money to clients; however EC 5-8 points out that there are situations where it is not improper, such as where necessary to successful litigation.

ISBA Opinion No. 632 maintains that, "It is professionally proper for an attorney to charge and collect either interest or handling on past due accounts for legal fees...", when certain guidelines are followed. Charging interest is not a personal, but rather an economic matter which is as acceptable as the initial charging of fees. In finding such, the Opinion explicitly rejected two earlier opinions, ISBA Opinions 380 and 490, which held it unethical to charge interest on either expenses advanced to the client or past due fees. By this opinion, Opinions 380 and 490 are expressly rejected to the extent they are inconsistent with this Opinion. Advanced expenses are an obligation of the client to the attorney, and where proper advance notice is given should be treated in the same manner as attorneys' fees. With Opinion No. 632 as a foundation, it is helpful to provide a more detailed discussion of problems which may arise when interest is charged and guidelines which an attorney should follow when considering such interest.

ISBA Opinion No. 632 provides that the client should be advised at or before the time the bill is rendered that interest will be assessed on delinquent accounts. This guideline applies equally well to advanced expenses. The ISBA Report of the Special Committee on Professionalism highlights the importance of "Written Fee Contracts." Such contracts should be used to define the attorney-client relationship. Each party's rights and obligations concerning fees are clear from the outset. Prior approval of expenditures and a reasonable interest rate could avoid a potential conflict. As

part of any interest agreement, a commercially reasonable time to pay the bill or advancement should be given before interest begins to accrue. If advances made to a client constitute "Consumer Credit" then the attorney will be required to make several disclosures pursuant to the Federal Truth in Lending Act. Under this Act the creditor (the attorney) must disclose such items as percentage rates, finance charges, amount advanced, dates payments are due, etc., 15 U.S.C.A. Sections 1601-1666. This disclosure requirement does not apply to credit extended primarily for business or commercial purposes, and it remains to be determined in each case under which category advances to the client fall.

Illinois is not the first jurisdiction to affirmatively respond to the issue addressed in this opinion. In response to the question "May an attorney enter a written retainer agreement which provides for a finance charge at an annual percentage rate of 18% of all fees not paid in one month from date of original billing?", the Committee responded in Opinions 82-6 of the Bar of the City of New York: "Yes, an attorney may under reasonable circumstances, ethically impose a reasonable finance charge on past due accounts." It was further stated that the attorney cannot threaten to withdraw representation to enforce the agreement.

Other jurisdictions permit the charging of interest. United States National Bar Formal Opinion No. 338, November 16, 1974 (Use of credit cards and charging of interest on delinquent accounts); California Opinion No. 308 (1968) (not per se unethical for lawyers to participate in a plan to finance legal fees, so long as discussed with the client and in conformance with the Canons of Ethics).

It is the opinion of the Committee that any agreement providing for the charging of interest on fees or advancements should be placed in writing at the earliest opportunity and prior to the accrual of any interest. A timely and regular statement issued by the attorney informing the client what legal fee is currently owed, including how much has been advanced to cover litigation costs, is appropriate. The statement would avoid surprise when substantial fees have amounted and would give the client an opportunity to remunerate the attorney before interest begins to accrue. In turn, such a statement would help the attorney avoid advancing large sums over a long period of time which might only be recoverable through legal action.

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