

ETHICS OPINION

RO-93-19

QUESTION:

Mobile attorney, M. [REDACTED], has requested a formal opinion regarding an association with [REDACTED] of [REDACTED]. He has provided documents for review which are attached to this opinion. Basically, [REDACTED], will finance attorney's fees for persons who cannot otherwise afford to pay. A participating lawyer makes this option available to his clients, much in the same way charge/credit cards are used. The client opens a charge account with [REDACTED], solely for payment of legal fees. It is called "LAWCARD". "Vouchers" for payments are sent directly from the lawyer to [REDACTED]. The lawyer may pay an initial \$500.00 set up fee which is taken out of the first voucher payment.

There are three levels of services for clients and that apparently is based on their relative credit-worthiness. There are A, B, and C eligible services. A client's credit-worthiness determines whether a particular legal service sought can be financed as A, B, or C eligible. [REDACTED] encourages lawyers to contact clients who are behind in their legal bills and offer them information about financing their outstanding balances. Is utilization of "LAWCARD" by Alabama attorneys in violation of the Rules of Professional Conduct?

ANSWER:

Alabama lawyers may offer "LAWCARD" to their clients as an alternative means of paying legal fees incurred in the past or to be incurred in the future.

DISCUSSION:

Disciplinary Rule 2-107(B) under the old Code of Professional Responsibility provided for payment of attorney's fees via an approved credit card plan. There is no counterpart in the Rules of Professional Conduct.


In RO-84-112 and Ethics Opinion 298, the Disciplinary Commission approved the payment and receipt of legal fees via an approved credit card plan. No higher credit fee can be charged because of the lawyer's participation.

ABA Committee on Professional Ethics Formal Opinion 320 (1968) held that it was not unethical for lawyers to arrange with lending institutions for credit-worthy clients to finance legal fees.

Since the lawyer is not providing any financial assistance per se, there is no problem with Rule 1.8(e) which states:

"Rule 1.8 Conflict of Interest:  
Prohibited Transactions

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
- (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;
  - (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and
  - (3) A lawyer may advance or guarantee emergency financial assistance to the client, the repayment of which may not be contingent on the outcome of the matter, provided that no promise or assurance of financial assistance was made to the client by the lawyer, or on the lawyer's behalf, prior to the employment of the lawyer."

As long as the lawyer is simply offering information on "LAWCARD" as an option to his clients and has no affirmative role in the credit application process, no rules are seemingly violated. The lawyer cannot charge higher fees to those clients who avail themselves of this financing nor can the lawyer make any money from the financing itself. They must not represent  in any debt actions against client arising out of any legal fee financing.

MLM/vf

9/14/93