

FO 1984-85/1

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Formal Opinion #1984-85/1
Credit Cards: Use for Payment of Legal Fees
September 11, 1984

RULE REFERENCES:

SUBJECTS:

CODE REFERENCES:

- *DR2-110(A)(3)
- *DR2-101(D)
- *EC2-1
- *EC2 16
- *EC2-17
- *EC2-19

SUPREME COURT RULE REFERENCES:

- *Supreme Court Rule 50(2)(C)

ANNOTATION:

A credit card may be used for the payment of legal fees and a lawyer may enter into the standard "Merchant Agreement" with the credit card issuer provided the lawyer enters into a fee agreement in which the client consents to limited disclosure concerning the client to a third party and the imposition of interest charges. Canon 2 and 5

Where a credit card is used for a retainer, in the event the lawyer withdraws or the representation is terminated, the lawyer must promptly refund any balance in cash or issue a credit to the card holder's account. Supreme Court Rule 50 (2)(C); DR 2-110(A)(3).

A lawyer willing to accept credit card payments may advertise that fact. DR 2-101.

QUESTIONS:

1. May a lawyer accept credit cards for the payment of legal fees?
2. May a lawyer who accepts credit cards advertise that fact to clients and prospective clients?
3. May credit cards be used for payment of retainers or advances for services not yet rendered?
4. May a lawyer use the standard "Merchant Agreement" or must a special agreement be approved by the Bar Association?

RESPONSE:

On June 24, 1975, the New Hampshire Supreme Court's Committee on Professional Conduct (predecessor to the Ethics Committee) issued an advisory opinion, approving the use of credit cards as payment for legal services, subject to severe restrictions, including a prohibition against advertising or publicity concerning credit cards and a requirement that attorneys not execute the standard "Merchant Agreement" with a particular bank.

The Ethics Committee reviewed the 1975 opinion and in light of intervening changes in the Disciplinary Code and in Federal Law, elected not to follow it. See also ABA Formal Opinion 338, (November 16, 1974).

Lawyers have an ethical obligation to assist in making legal services fully available to all persons, including persons for whom the cost of legal services is a deterrent to obtaining representation. EC 2-1; EC 2-16. At the same time, a lawyer is entitled to collect a reasonable fee for services rendered. EC 2-17. For some clients, the opportunity to use credit cards might make legal services more accessible, while insuring that the lawyer will be paid.

It is advisable under any circumstances that the fee agreement between the lawyer and the client be discussed fully in the representation and reduced to writing. EC 2-19. This will be particularly true where credit cards are used, as the fee arrangement may require some disclosure of client confidence to a third party and may require a client to pay substantial interest on any unpaid balance. A lawyer who agrees to accept credit cards should, therefore, have a written agreement in which the client consents to such limited disclosure and to the imposition of interest charges. Subject to this limitation and to careful adherence to the constraints of Canons 2 and 5, a lawyer may ethically enter into a "Merchant Agreement" with a credit card issuer and accept credit card payments for legal services.

A lawyer must be particularly careful when accepting a credit card for payment of an advance or retainer for services not yet rendered. Under New Hampshire Supreme Court Rule 50(2)(C), retainer fees that are not refundable if not earned must be placed in a trust account until the fees are actually earned. If the lawyer withdraws or terminates the representation for any reason, the lawyer must promptly refund the money or issue a credit to the cardholder's account. DR 2-110(A) (3). The lawyer must also comply with applicable law and regulations concerning the manner in which the refund or credit is issued.

A lawyer willing to accept credit card payments may advertise that fact. DR 2-101(D) specifically permits advertising concerning "the availability of credit arrangements". The advertising must, of course, comply in all respects to the rules governing lawyer advertising. DR 2-101; but see In Re RMJ 455 U.S. 191 (1982); Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978); Bates v. State Bar of Arizona, 433 U.S. 350 (1977).