

IO 1975

NEW HAMPSHIRE BAR ASSOCIATION  
Ethics Committee Advisory Opinion  
Representing Clients Against Municipality that is Attorney's Client

July 11, 1975

INFORMAL OPINION

June 24, 1975

Gentlemen:

The Professional Conduct Committee has been requested to comment on the use of credit cards for the payment of legal fees by members of the New Hampshire Bar.

After reviewing actions taken in other states on this issue and comments of members of the New Hampshire Bar who responded to requests for comments published in the New Hampshire Law Weekly, we issue the following opinion for your consideration:

While there are some states which have ruled that the use of credit cards for the payment of legal fees and expenses is unprofessional, Missouri Bar Formal Opinion 112, North Carolina 664, 678, we conclude that the use of such cards under proper conditions and controls is not improper. A.B.A. Formal Opinion 338 N.Y.S.B.A. Opinion No. 362 and others. The Committee has come to the conclusion that the standard "Merchant Agreement" entered into between sellers of goods and banks operating credit card systems is not satisfactory for use in the peculiar attorney-client relationship. We therefore recommend that each of the credit card plan plans prepare a special form of agreement for use in determining the relationship between the attorney and the bank extending credit under a credit card.

It is further recommended that these forms of agreement be submitted to the New Hampshire Bar Association for approval prior to their execution by an attorney. It is our opinion that any such agreement should included provisions to cover the following matters:

1. There shall be no publicity or advertising relating to the credit card plan by either the bank or the attorney, and in no directory of any kind shall be printed or published of the names of individual attorney members who subscribe to the credit card plan.
2. There shall be no promotional materials of any kind supplied by the bank to the participating attorney and there shall be nothing displayed in the attorney's office or elsewhere indicating his participation in the use of the credit card. The attorneys shall not be required to disclose the nature of the matters for which services were rendered on the so-called "sales slip" which is forwarded to the bank.
3. The Plan should reserve to the attorney the right to recapture the credit obligation in the event that the client fails to pay the loan before the bank brings suit thereon, thereby entitling the attorney to determine whether or not to proceed to sue.

4. The bank in any possible suit against the client must waive all defenses a holder in due course might have so that any defenses the client may have regarding the professional transaction may be asserted against the bank as well as the attorney, and that any dispute between the lawyer and the client may, at the option of the client, be submitted to arbitration by a fee panel appointed by the New Hampshire Bar Association Fee Dispute Committee.
5. Since the services will already have been advanced at the time the credit card transaction takes place there should be no requirement for the attorney to call the bank to determine whether or not the client's account is in good standing. The bank will need to honor only those cards which it would have honored if the call had been made. This appears a reasonable approach since the attorney is not advancing credit on the basis of the credit card because the credit has already been advanced in the form of services rendered. This will avoid possible attorney-client conflict in those cases where if the attorney had made such a call the computer would have instructed him to hold onto the credit card because the card has either expired or his client is in default in payments.

In utilizing the credit card plan the attorney shall observe the following rules”

1. The attorney shall not encourage participation in the plan and may not advertise it; however he may in that discussion which every attorney should have with is client concerning his fees in advance of performance of services mention that the plan is available if the client chooses to use it. In addition the attorney may on bills rendered after the performance of services include a statement that the bill may be paid by use of the particular credit card plan or plans of which the attorney is a member.
2. Charges made by lawyers to clients pursuant to a credit card plan shall be only for services actually rendered or cash actually paid on behalf of a client. Credit cards may not be used for retainers, or advances against work to be done in the future.
3. A lawyer may not increase the amount of the fee because of the use if the credit card.

The use of credit cards to pay for legal fees is an innovation which should not be discouraged where the participating lawyer complies with the appropriate safeguards set forth above for it fills a need for a segment of the public that conceivably might not otherwise have access to legal services CANNON 2- Participating lawyers however should have provisions of EC 2-9, EC 2-10, EC 2-17, EC 5-2, EC 5-21 and EC 5-22 firmly in mind in connection with all credit card transactions.

Respectfully submitted.

Committee on Professional Conduct

By \_\_\_\_\_  
Its Chairman

Approved by Supreme Court  
Professional Conduct Committee  
7-11-75

