

ADVISORY ETHICS OPINION 89-10

SYNOPSIS:

The use of credit cards for the payment of legal services and expenses is permitted under the Code of Professional Responsibility provided specified guidelines are followed.

FACTS:

The American Bar Association Committee on Ethics and Professional Responsibility rendered Formal Opinion 320 in February of 1968, relating to a legal fee finance plan, and Informal Opinions 1120 in October of 1969 and 1176 in February in 1971 relating to the use of bank credit cards for the payment of legal fees. Following the issuance of those Opinions, the ABA promulgated the Code of Professional Responsibility, which was then adopted by the Vermont Supreme Court February 10, 1971. Following the promulgation of the Code, the American Bar Association Committee ruled, in Formal Opinion 338, that the use of credit cards for the payment of legal expenses and services is permitted under the Code, providing all of its provisions have been fully and completely observed. Generally speaking, a credit card plan conforms to these Code provisions when the plan requires that:

1. Charges made by attorneys to clients pursuant to a credit card plan shall be for services actually rendered or cash actually paid on behalf of a client.
2. In participating in a credit card program, the attorney shall scrupulously observe his/her obligation to preserve the confidences and secrets of his client.

Since the issuance of ABA Formal Opinion 338, the Association has adopted the Model Rules of Professional Conduct, and the Vermont Supreme Court has amended its Disciplinary Rules so as to conform generally with the Model Rules.

OPINION:

It is this Committee's opinion that the Formal Opinion 338 restrictions concerning publicity and advertising requiring that a credit card plan meet approval of State Bar Ethics Committee and forbidding the listing of the names of individual attorneys in directories, as well as the use of promotional materials, and, further, prescribing against an attorney encouraging participation in the plan, are no longer pertinent.

In passing, it may be well to note that Formal Opinion 338 also held that, as a necessary corollary to the use of credit cards, it was proper to use a credit card system which involves the charging of interest on delinquent accounts.