

**ETHICS OPINION NUMBER 100
OF THE MISSISSIPPI BAR
RENDERED JANUARY 29, 1985
AMENDED APRIL 6, 2013**

FEES - Interest may be charged on delinquent accounts with the client's agreement.

The Ethics Committee of the Mississippi Bar has been asked to render an opinion on whether any prohibition exists under current statute which would prevent an attorney charging a revolving interest account of one and one-half per cent per month on his uncollected accounts to clients. This inquiry addresses a question of law and therefore the Committee, as required by its bylaws, will decline comment on this issue.

The requester further makes inquiry regarding ethical guidelines to be addressed if interest is to be charged on uncollected accounts owed by an attorney's client. Inherent in the latter question is the threshold inquiry of whether any interest may be charged in delinquent accounts owed the lawyer.

The American Bar Association on Ethics and Professional Responsibility rendered Formal opinion 338 on November 16, 1974. In this opinion the Committee held that interest may be charged on delinquent accounts with the client's agreement. This opinion addressed primarily the use of credit cards for the payment of legal services and expenses and in resolving this issue favorably, the committee stated:

A necessary corollary to the use of credit cards is the charging of interest on delinquent accounts. It is the Committee's opinion that it is proper to use a credit card system which involved the charging of interest on delinquent accounts. It is also the Committee's opinion that a lawyer can charge his client interest providing the client is advised that the lawyer intends to charge interest and agrees to the payment of interest on accounts that are delinquent for more than a stated period of time. (Emphasis supplied.)

Rule 1.5(a) of the Mississippi Rules of Professional Conduct (MRPC), provides that a lawyer's fees shall be reasonable. It goes on to list the factors to be considered in determining the reasonableness of a fee. Rule 1.5(b), MRPC, further provides that the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

Application of this Rule will not only assure a clear agreement regarding the fee itself but any interest that may be charged and it will accomplish the prerequisites for the charging of interest as set forth in formal opinion 338, *supra*.

Informal decision C-741 of the Committee on Ethics and Professional Responsibility of the American Bar Association, rendered March 31, 1964, found improper the practice of placing on the lawyer's billhead form in small print a legend reciting interest to be charged on delinquent accounts. It is this Committee's opinion that this decision has been overruled by the Code of Professional Responsibility and by Formal Opinion 338 of the Committee on Ethics and Professional Responsibility of the American Bar Association. Notwithstanding, the Committee believes that the observations set forth in the informal opinion merit respect and offer guidance when considering interest charges on delinquent accounts. This informal opinion observes that the professional relationship between an attorney and a client is highly personal when compared to business transactions which are impersonal and commercial in character. It notes that the accrual of interest on fees should not be used as a bargaining weapon in reaching agreement as to the amounts of the fees, nor should the proposed accrual of interest be used as an inducement to obtain prompt payment.

The Committee is of the opinion that a lawyer can charge his client interest, providing the client is advised that such charge will be made and agrees to the payment of interest on the account after it reaches a delinquent status for more than a stated period of time. The arbitrary imposition of interest charges on all outstanding uncollected accounts without the client's prior knowledge and consent would be improper