

Attorneys and Their Ethics

ETHICAL CONSIDERATIONS STRICTLY LIMIT THE USE OF PUBLISHED ANNOUNCEMENTS

Legal Ethics Opinion Number 1 of 1975.

The Legal Ethics Committee of the Indiana State Bar Association has been presented with the question:

"Is it unethical for an attorney to place 'paid' advertisements in a newspaper announcing or to publish through other means of commercial publicity (1) the opening of an office, (2) the moving of an office to a new location, or (3) formation of a new association or a partnership for the practice of law?"

DR2-101 (B) reads, in part, as follows:

"A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, . . . or other means of commercial publicity, nor shall he authorize or permit others to do so in his behalf . . ."

DR2-101 (C) further states:

"A lawyer shall not compensate or give anything of value to representatives of the press, . . . or other communication medium in anticipation of or in return for professional publicity in a news item."

The exception of DR2-103 does not directly relate to the issues. Permission is granted to use announcement cards in DR2-102 (A) (2) stating:

"A lawyer or law firm shall not use professional cards, . . . or similar professional notices or devices, except that the following may be used if they are in dignified form: (2) a brief professional announcement card stating new or changed associa-

tions or addresses, change of firm name, or similar matters pertaining to the professional office of a lawyer or law firm which may be mailed to *lawyers, clients, former clients, personal friends, and relatives . . .*"

(Emphasis supplied)

Many opinions of the Legal Ethics Committee of the Indiana State Bar Association and the American Bar Association relating to these issues have previously been rendered. The most recent opinions of the Legal Ethics Committee of the Indiana State Bar Association relevant to the issues, states:

"In Opinion No. 8 of 1963, the Legal Ethics Committee held that it is a violation of Canon 27 for a lawyer to publish his professional card in a newspaper or magazine. The Indiana Legal Ethics Committee adheres to, and reaffirms Opinions Nos. 69, 182, 203, 251, 260 and 276 of the American Bar Association's Professional Ethics Committee, namely that 'the first sentence of Canon 27 providing that the customary use of simple professional cards is permissible, does not permit the publication of such cards except in approved law lists'.

In Opinion No. 4 of 1963, the Indiana Legal Ethics Committee held that simple dignified newspaper announcements of the opening of a law office, the resumption of a law practice after extended absence, or the removal of a law office to a new location, was proper. Such dignified announcements may appear three days in succession in a daily newspaper or three weeks in succession in a weekly newspaper. Repetitive insertions of such an announcement, either over a lengthy period of time or on several pages of the same day's newspaper, constitute advertising in violation of Canon 27."

These Opinions predate the Code of Professional Responsibility.

The clear interpretation of the above-quoted Disciplinary Rules of the Code of Professional Responsibility is that it is improper for a law-

JULY IS TARGET DATE FOR INDIANA ACTS

The Legislative Council expects promulgation of the Indiana Acts of 1975 by late June or mid-July with printed copies available for purchase at \$15.00 each.

Some 350 laws were enacted by the General Assembly, including approximately 100 containing emergency clauses which made them take effect immediately upon the Governor's approval. Attorneys with questions may ask at the County Clerk's office if they wish to examine unbound sets of the acts supplied those offices in May.

One bound volume are available, County Clerk may sell copies left after the official distribution they will make locally. Copies also may be purchased from the Stationery Store, Department of Administration, 77 State Office Building, Indianapolis, Ind. 46204.

yer to solicit, or exchange anything of value, including money to secure advertisements in newspapers or magazines or other means of commercial publicity. Placing a "paid" advertisement in a newspaper is not the same as mailing an "announcement" to "lawyers, clients, former clients, personal friends and relatives". Distribution of such commercial publicity far exceeds such a limited mailing.

While lawyers have a need to advise clients, personal friends and relatives of the location of their office or their association with other lawyers, it would appear that the provisions of DR2-102 (A) (2) adequately meet this need. It is the opinion of the Committee that the Code of Professional Responsibility does not permit the use of any "paid" advertisements by any means of commercial publicity to announce the opening of an office, the moving of an office to a new location, or the association with other lawyers, and the use of such paid advertisements are improper and unethical. Indiana Legal Ethics Committee Opinion No. 4 of 1963 is hereby overruled. Issued May 1, 1975.

Attorneys and Their Ethics

COVERT RECORDING OF CONVERSATIONS IS HELD UNETHICAL

In a formal opinion issued June 9, 1975, the Legal Ethics Subcommittee of the Indiana State Bar Association has concurred in and adopted the American Bar Association's Formal Opinion 337 which holds that recording of conversations without the consent or prior knowledge of all parties concerned would be unethical. The full opinion of the ISBA committee follows:

Opinion No. 2, 1975
Formal Opinion
Indiana State Bar Association
Legal Ethics Subcommittee

On August 10, 1974, the Committee on Ethics and Professional Responsibility of the American Bar Association adopted its Formal Opinion 337 in which it determined that "... no lawyer should record any conversation whether by tapes or other electronic device, without the consent or prior knowledge of all parties to the conversation." We have been asked by an attorney engaged in the practice of law in the State of Indiana for our opinion as to whether or not we concur with the above opinion of the American Bar Association.

Formal Opinion 337 reads in part as follows:

"Present Canon 9 of the Code of Professional Responsibility, A Lawyer Should Avoid Even the Appearance of Professional Impropriety, expresses in general terms the standards of professional conduct expected of lawyers in their relationships with the public, with the legal system, and with the legal profession, for all attorneys.

DR 1-102 (A) (4) of the Code of Professional Responsibility states that, 'A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.' This disciplinary rule is substantially equivalent to, but somewhat broader than, Canon 22 of the former Canons of Ethics which imposed on an attorney an obligation to be candid and fair 'before the Court and with other lawyers.' Informal Opinions C-480, 1008, and 1009 rely on Canon 22.

Canons 1, 4, 7 and 9, and Ethical Considerations all clearly express axiomatic norms for attorney conduct. Each in the view of the Committee supports the conclusion that lawyers should not make recordings without consent of all parties. Ethical Considerations EC 1-5, EC 4-4, EC 4-5, EC 7-1, EC 9-2 and EC 9-6 all state in various ways the conduct to which lawyers should aspire. None would condone such conduct. The conduct proscribed in DR 1-102 (A) (4), i.e., conduct which involves dishonesty, fraud, deceit or misrepresentation in the view of the Committee clearly encompasses the making of recordings without the consent of all parties. With the exception noted in the last paragraph, the Committee concludes that no lawyer should record any conversation whether by tapes or other electronic device, without the consent or prior knowledge of all parties to the conversation.

There may be extraordinary circumstances in which the Attorney General of the United States or the principal prosecuting attorney of a state or local government or law enforcement attorneys or officers acting under the direction of the Attorney General or such principal prosecuting attorneys might ethically make and use secret recordings if acting within strict statutory limitations conforming to constitutional requirements. This opinion does not address such exceptions which would necessarily require examination on a case by case basis. It should be stressed, however, that the

mere fact that secret recording in a particular instance is not illegal will not necessarily render the conduct of a public law enforcement officer in making such a recording ethical."

We concur in and adopt the language of the American Bar Association opinion above quoted. It is therefore our opinion that it would be improper for an attorney to record any conversation, whether by tapes or other electronic device, without the consent or prior knowledge of all parties to the conversation. The only exception to this rule might occur under the circumstances described in the last paragraph above quoted.

Issued by the Indiana State Bar Association Committee on Legal Ethics.

June 9, 1975.

JURORS HANDBOOK PRICE INCREASE IS ANNOUNCED

Effective July 1, 1975, the price of the Jurors Handbook, a publication of the Indiana State Bar Association, has been increased from 10 cents to 12½ cents per copy plus postage. This is entirely due to increased cost of printing. At the new price ISBA will not realize a profit but will avoid an unjustifiable loss.

The Jurors Handbook is used by many Indiana trial courts to effectively supplement the formal instructions given by the court.

Judges may purchase the pocket size booklets by official purchase order as supplies for the court. (See the Reminder of the Indiana Supreme Court to trial courts and the profession in *WOODS v. STATE* (1954) N.E. 2d 558 @ 561.)

The booklets also may be purchased by local bar associations for distribution to high school civics or other concerned classes. Many thousands of these books have been used since first offered.

**CREDIT CARD LAWYER'S
FEE PAYMENT APPROVED**

(Continued from page 294)

MEMORANDUM

TO: Attorneys in _____ County, Indiana
FROM: Professional Ethics Committee of the _____ County
Indiana Bar Association
SUBJ: Use of Credit Card Arrangements to Pay for Legal Services
Rendered
DATE:

Prior to the execution of any credit card arrangement which permits the clients of an attorney in _____ County, Indiana to pay for legal services rendered, the Professional Ethics Committee of The _____ County Indiana Bar Association directs each such attorney's attention to Opinion Nos. 320, 338, 1120, and 1176 of the Committee on Ethics and Professional Responsibility of the American Bar Association and Opinion No. _____ of 1975 of the Ethics Committee of the Indiana State Bar Association.

The particular ethical considerations of which each such attorney must be aware prior to entering into the credit card arrangement with the financial institution are as follows:

- A. The credit card arrangement may be used only for services rendered, fees or expenses advanced in behalf of a client and not for advances or retainers.
- B. An attorney, other than the display of a small insignia to be viewed solely from within the attorney's reception area, may not display any reference to the availability of the credit card arrangement on statements, letterhead, doors or otherwise since such reference would constitute advertisement and improper solicitation.
- C. As to credit card charge slips, "(a)ssignments to participating banks shall be without recourse."
- D. A written statement for the legal services rendered must be submitted to the client at or prior to the time the charge is made under the credit card arrangement.
- E. It would be improper for an attorney to require a client to sign a blank credit card charge slip, or to urge the use of a credit card when payment can be made otherwise.
- F. It would be improper for an attorney to charge a client with a finance or carrying charge or to increase his fee in any way because of the availability of the credit card arrangement.

The attorney must also be aware that such ethical considerations could change from time to time as a result of the institution of credit card arrangements for fee financing, and the availability of credit card arrangements in _____ County, Indiana, does not change any existing ethical considerations but merely adds a method of financing fees for legal services rendered.

**PLACEMENT MANUALS
(Law Lists) FOR
GRADUATE LAWYERS**

**LEGAL ETHICS OPINION
No. 3, of 1975**

**INDIANA STATE BAR ASSOCIATION
LEGAL ETHICS SUB COMMITTEE**

The Placement Office of Indiana University School of Law has inquired whether the School may circulate a placement manual of opportunities for employment by graduate lawyers in the criminal law area which would include a list of law firms which have a substantial practice in the area of criminal law. Prior consent of the listed law firms would be obtained. There would be a very limited distribution of the manual to the four law schools in the State.

Disciplinary Rule 2-102 (A) states that

"A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form: . . . (6) A listing

in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards".

The listing of law firms in the proposed placement manual would be a

"reputable law list or legal directory" within the meaning of this Rule and therefore would not violate the Code of Professional Responsibility.

MISSING AND UNKNOWN HEIRS LOCATED

**NO EXPENSE TO THE ESTATE
WORLD WIDE SERVICE
FOR**

**COURTS — LAWYERS — TRUST OFFICERS
ADMINISTRATORS — EXECUTORS**

American Archives Association

**INTERNATIONAL PROBATE RESEARCH
449 WASHINGTON BUILDING**

Washington, D. C.

Lawyer Acceptance of Credit Card Fee Payment Approved: Provided, Prescribed Conditions and Limitations are Honored

ABA Ethics Committee holds, in part:

Credit cards may not be used for payment of advanced retainers.

A lawyer may not increase charges to clients using credit cards above charge for like service to the client paying cash, or add finance or carrying charges.

A lawyer may not advertise his acceptance of credit cards.

Formal Opinion Of Indiana State Bar Association Legal Ethics Subcommittee

Opinion No. 4 of 1975

On November 16, 1974, the Committee on Ethics and Professional Responsibility of the American Bar Association handed down Formal Opinion No. 338 which, under certain conditions, authorized the use of credit cards for the payment of legal fees. The opinion received wide publicity. Subsequently, several individual attorneys and two local bar associations requested an opinion from this committee as to the ethical propriety of the use of such credit cards in Indiana.

Qualified Approval Stated

Provided that the conditions and limitations discussed below are observed, we find that the use of a credit card in payment of a fee for legal services does not violate the Indiana Code of Professional Responsibility. We feel, however, that the use of such cards has the potential for encouraging unethical behavior on the part of attorneys and stress the importance of the conditions and limitations imposed herein. Unless they are strictly followed, individual attorneys and the bar as a whole would be open to the charge that the use of such cards serve merely the commercial interests of the bar and not that of our clients.

The Ethics Committee of the American Bar Association, under the old Canons of Ethics, took a dim view of any credit arrangement in the payment of fees, *see e.g.*, Formal Opinion No. 151 (prohibiting discounts if a fee is paid within a certain time); Informal Opinion No. C 741 (prohibiting the charging of interest on accounts not paid within 90 days). However, in Formal Opinion No. 320, in 1968, the Ethics Committee approved a number of plans involving the financing of legal fees through a loan by the bank to the client. The Committee discussed the possible ethical objections to

these plans and concluded that under the safeguards spelled out in the plans presented to them (unlike earlier plans rejected by local bar associations, *see e.g.*, the Ethics Committee of the Los Angeles County Bar Association, Opinion No. 288; Allegheny County Bar Association, Opinion No. 9), these plans met the restrictions of the Canons.

Young Lawyers Plan Recalled

The Young Lawyers Section of the Indiana State Bar Association then proposed the adoption of one of the approved plans by attorneys in Indiana. Such a plan was approved by the House of Delegates of the Indiana State Bar Association at its October 1969 meeting. [For an excellent discussion of the plan and the events leading up to its approval, *see* Holcomb, "A Look at the Bank Method of Financing Legal Fees," 14 *Res Gestae* No. 1, P. 6 (1970)].

Subsequently in October, 1969, the Ethics Committee of the American Bar Association issued Informal Opinion No. 1120 in which it disapproved of the use of a bank credit card arrangement pointing out that such cards were for the sale of merchandise or the sale of non-professional services. The Committee noted that legal fees were not precise. The plan allowed for recourse against the attorney which would create a conflict of interest between the attorney and client. They distinguished Formal Opinion No. 320, pointing out that it dealt with a plan "intended to operate on a highly individualized basis and not on a volume basis."

In February 1971, the Committee, in Informal Opinion No. 1176, reaffirmed its prior position stating that merely prohibiting publicity and adding "without recourse" did not remove their objections. Pointing to Ethical Considerations 2-9 and 2-10 of the new Code (which discuss the problem of advertising), the Committee noted that it still banned advertising and the distinction "between the legal profession and that of other professions and businesses" was still a valid distinction.

ABA Opinion 338 Critique

As stated above, the American Bar Association's Ethics Committee overruled these opinions in November 1974. Formal Opinion No. 338 is, however, most unsatisfactory. It is short and contains no reasoning for its conclusion that these opinions should be overruled and that credit cards are ethical. After an introductory paragraph it reads, in its entirety:

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The question is presented whether under the Code the use of credit cards in payment of legal fees and expenses should be broadly sanctioned.

It is the Committee's opinion that the Code has overruled Informal Opinion 1176 and that the use of credit cards for the payment of legal expenses and services is permitted under the Code, providing all of its provisions are fully and completely observed. Generally speaking, a credit card plan conforms to these Code provisions and the considerations flowing therefrom when the plan requires that:

1. All publicity and advertising relating to a credit card plan shall be subject to the prior approval in writing of the state or local bar committee having jurisdiction of the professional ethics of the attorneys involved.
2. No directory of any kind shall be printed or published of the names of individual attorney members who subscribe to the credit card plan.
3. No promotional materials of any kind will be supplied by the credit card company to a participating attorney except possibly a small insignia to be tactfully displayed in the attorney's office indicating his participation in the use of the credit card.
4. A lawyer shall not encourage participation in the plan, but his position must be that he accepts the plan as a convenience for clients who desire it; and the lawyer may not because of his participation increase his fee for legal services rendered the client.
5. Charges made by lawyers to clients pursuant to a credit card plan shall be only for services actually rendered or case actually paid on behalf of a client.
6. In participating in a credit card program the attorney shall scrupulously observe his obligation to preserve the confidences and secrets of his client.

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 involves 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.

In contrast to Formal Opinion No. 320, which discussed in detail the ethical problems concerning bank financing and how a proper plan might be implemented, it is obvious that Formal Opinion No. 338 explains nothing. It gives state ethics committees merely the barest outline of the problems to consider and offers no rationale for the limitations imposed, nor why others were rejected. Thus, we are forced to examine the issue on the merits.

After such examination, it is the opinion of this committee that the analysis contained in Formal Opinion 320, on bank financing, provides a basis for allowing credit card arrangements and we conclude that the American Bar Association's Ethics Committee was in error in 1969 and 1971 in summarily dismissing the use of credit cards.

However, credit card plans do exhibit additional ethical dangers not inherent in plans for bank financing. The appearance of the credit card stamping machine in the law office does give credence to the charge that lawyers are "in business." The machine itself suggests "buy now—pay later." Certainly advertising the availability of deferred payment gives the appearance of encouraging litigation.

Yet, we live in a credit card economy. Needed legal services may be deferred for lack of ready cash. Lawyers are entitled to be paid for their services. Time spent by lawyers on collecting fees and the cost of lost fees increase the expense of legal services to other clients. In many parts of Indiana it is now common to pay doctor's fees through credit card arrangements. A dignified and rigidly controlled system of the use of credit cards can be established which would benefit both the legal profession and the public.

Qualifying Requirements Stated

Formal Opinion No. 338, *supra*, requires approval of any advertising or publicity relating to the credit card plan by the state or local bar association's ethics committee. The implication in Formal Opinion No. 320, on bank financing and some of the other opinions by local bar associations suggest that the state bar ethics committee should approve each local or state-wide credit card plan. The Ethics Committee of the Indiana State Bar Association does not have the staff or time to approve each plan that might be negotiated by local banks and local bar associations. Consequently, before any attorney in Indiana may use a credit card arrangement for the payment of fees, the following conditions should be met:

- (1) The plan must be approved by the ethics committee of the local bar association. (Local bar associations, if they desire to use credit card arrangements, and do not have an active ethics committee, should

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CREDIT CARD LAWYER'S FEE PAYMENT APPROVED

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appoint such a committee prior to implementing a credit card plan. If the local bar association fails to appoint such a committee, the local bar association may submit the proposed plan to the Legal Ethics Committee of the Indiana State Bar Association for its approval.

(2) The plan, in order to be approved, must comply with the requirements of Formal Opinion No. 338 of the Ethics Committee of the American Bar Association.

(3) Individual attorneys operating under the plan must conform their behavior to the requirements of Formal Opinion No. 338.

(4) In addition, and as a supplement to Formal Opinion No. 338, any plan negotiated between the local bar and local banks and any agreement between an individual attorney and a bank *must* have the following provisions contained therein before the agreement is approved:

(A) Excluding the use of credit cards for the payment of advanced retainers. The credit card arrangement may be used only for services rendered, or for fees or expenses advanced in behalf of the client.

(B) Under which lawyers agree:

(1) Not to increase charges to clients using credit cards to pay legal fees above similar charges made to clients who elect to pay in cash or to charge a client with a finance or carrying charge.

(2) Not to encourage or require any client to use a credit card for the payment of legal fees or to sign a blank credit charge slip.

(3) To display only a small credit card insignia within the attorney's office and not to display any insignia which is viewable from outside the attorney's office, nor display any reference to the availability of the credit card arrangement on statements, letterheads, doors or otherwise, since such reference would constitute advertisement and improper solicitation.

(4) To submit to each client at the time the client charges legal fees, or before a written invoice for the legal services rendered.

(5) To be aware of and to observe all ethical considerations found in the Indiana Code of Professional Responsibility and in the opinions of the American Bar Association and Indiana

State Bar Association committees on ethics and/or professional responsibility.

(6) Not to represent the bank with which the attorney has an agreement in any matter involving the collection of charges from the client of the attorney. (Thus an attorney, who has a bank client, must make his or her agreement with another bank.)

(C) Under which the banks agree:

(1) Not to require lawyers participating in the plan to have checking accounts in participating banks (unless all banks in the county can agree on the same proposal).

(2) To offer all attorneys the same discount rate without discriminating between attorneys or exploiting or capitalizing, in any way on a lawyer's participation in the plan.

(3) Assignments of credit card charge slips will be "without recourse."

(4) To clear through the ethics committee of the local county bar association

(a) Publicity of any kind;

(b) Amendments to any agreement between participating banks and any lawyer residing in or practicing in the county.

(5) Under which the county bar association can terminate any agreement between any participating bank and any participating lawyer.

For the use of local bar associations we are attaching hereto, as Appendix A, a form of agreement. We are not suggesting that this agreement is the only type that meets the requirements of this opinion, but we do suggest that it is a proper agreement and one which contains the necessary safeguards.

Also contained in Appendix A is a sample letter that a local ethics committee might send to the attorneys in the county pursuant to paragraph 17 of the agreement.

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ARE YOUR DELEGATES CERTIFIED?

Official notice of the meeting of the ISBA House of Delegates, to convene Thursday, October 9, at 1:30 p.m., in the Foyer Room of the Executive Inn, Evansville, has been mailed to all delegates of record as of August 1.

To assure representation of all local associations in the deliberations of the delegates, Chairman Donald L. Brunner asks that any local association having a vacancy in House membership promptly certify a new member in writing to the State Bar Association office.

MASTER CHARGE—ATTORNEY AGREEMENT

Agreement between _____ (Bank)
and _____ (Attorney)

which sets forth the terms and conditions upon which Bank will, from time to time acquire from Attorney Master Charge drafts (Drafts) representing charges for services rendered on behalf of a client or cash advanced on behalf of a client by the Attorney, the obligors on which are holders of a Master Charge Card (Cardholders) issued by Bank or others. Attorneys fees in connection with services rendered for the handling of bankruptcy cases will not be subject to Master Charge financing unless the Master Charge Transaction is handled by way of a third party not involved and/or not adverse in this type of action. Bank and Attorney hereby agree as follows:

1. Attorney will honor all valid unexpired Master Charge Cards (Card) when presented except those which he has been instructed by Bank or its agent not to honor.
2. There may be no advertising under this plan with reference to individual attorneys' names or with reference to attorneys directly or indirectly by Bank.
3. Attorney will maintain a demand account (Account with Bank), or otherwise arrange in a manner satisfactory to Bank for transfer to and settlement by Bank for Drafts.
4. Attorney may rent or buy from Bank on mutually satisfactory terms one or more imprinters to be used in making charges to Cardholders or otherwise obtain from Bank appropriate plate(s) for use in his existing imprinter. Such imprinters or plate(s) shall remain the property of Bank and shall be returned to Bank at the termination of this Agreement.
5. The term "charge" as used herein shall mean one or more transactions by Attorney on the same day, in connection with the rendering of services or advancement of cash on behalf of the Cardholder. Each charge shall be subject to the floor limit established by Bank from time to time unless prior authorization for a charge in excess of the floor limit is obtained by use of the telephonic authorization service established by Bank.
6. Bank shall furnish Attorney, without charge, all necessary supplies of Drafts and credit slips. Attorney agrees to use such Drafts and credit slips exclusively in connection with all charge transactions to be assigned to Bank.
7. In making a charge to a Cardholder, Attorney will:
 - a. obtain all necessary telephonic authorizations and will note the code number of each such authorization on the Draft;
 - b. refuse to complete the charge if the Card being presented has been reported to Attorney as being lost or stolen, has expired or he has been otherwise instructed by Bank not to honor such Card;
 - c. fully and legibly imprint the Card and complete the Draft which he shall require the Cardholder to sign, and will complete the transaction if the signature of the Cardholder on the Draft appears to be the same as his signature on the Card;
 - d. deliver to the Cardholder a copy of the Draft at the time of completing the transaction.
8. If Attorney's client is not a Cardholder, Attorney may provide client with Bank's application for a Card.
9. Within five (5) business days after making a charge, Attorney will deliver the Draft to Bank and will simultaneously assign, transfer, and convey the indebtedness evidenced thereby to Bank and, subject to the applicable provisions of this Agreement, Bank agrees to purchase said draft at an initial rate of discount of _____ to be adjusted effective _____ and annually thereafter upon mutual agreement between Attorney and Bank. The rate of discount shall not be excessive so as to amount to the equivalent of or the appearance of, a division of fees. Drafts delivered to Bank more than five (5) business days after their date may be refused for processing by Bank. The amount of the charges noted on each Draft shall be credited by Bank to the account of Attorney or settled for by Bank check or other credit to Attorney. Each transfer to Bank of a Draft and of the indebtedness thereby evidenced shall be in writing in form satisfactory to Bank.

10. All refunds granted by Attorney shall be on the form furnished by Bank. A copy of each form granting refunds issued by Attorney shall be delivered to Bank within five (5) business days after issuance. Upon receipt thereof, Bank shall credit the applicable Cardholder with the amount of such refund and shall charge to the Account of Attorney an amount equal to such refund. If Attorney has no Account with Bank, Attorney shall deliver funds to Bank, with, and in the amount shown on, the copy of such credit.

11. As to each Draft sold to and purchased by Bank, Attorney warrants that at the time of assignment thereof:
 - a. draft will be enforceable according to its terms;
 - b. no person other than Attorney will have or claim to have any interest in or lien on the indebtedness evidenced by the Draft;
 - c. if the charge transaction has been consented to by a Cardholder without presentation of his Card or by telephone or mail:
 1. the client has granted such consent;
 2. the client is the one whose name and number appear on the Draft; and
 3. such client is the holder of a genuine, unexpired Card.
12. All Attorney's copies of Drafts relating to each charge presented to Bank shall be preserved by Attorney for a period of twelve (12) months and Bank shall have access to such copies at all reasonable times for examination and audit and in the event of any inaccuracy or discrepancy, Bank may correct same by debit or credit to the account of Attorney. Bank may also charge to the Account of Attorney all or any part of the amount previously credited thereto by Bank for any Draft which does not comply with the warranties set forth in paragraph 11 hereof or which fails to conform to any other requirement set forth in this Agreement, or Bank may refuse to purchase any such Draft. If Attorney has no Account with Bank, adjustments set forth in this paragraph shall be promptly made between Bank and Attorney.
13. Attorney shall not collect or receive any payment on account of any Draft which has been assigned, transferred or conveyed to Bank.
14. This Agreement may be amended at any time by the parties by a writing signed by both of them; provided, however, that Attorney shall not be bound by such amendment if he or Bank consults with the Legal Ethics Committee of the (Local) County Indiana Bar Association (Bar Association) with reference to any ethical considerations raised by such amendment and the Bar Association deems such amendment to be improper.
15. Notwithstanding Paragraph 14 hereof, Bank also reserves the right to advise Attorney from time to time by written notice sent by first class mail, of amendments which Bank proposes to put into effect and the effective date thereof. Attorney shall be bound by all such amendments so proposed if, after such effective date, Attorney honors Cards and assigns, transfers or conveys Drafts generated thereby to Bank; provided, however, that Attorney shall not be bound by such amendment if he or Bank consults with the Bar Association with reference to any ethical considerations raised by such amendment and the Bar Association deems such amendment to be improper.
16. This Agreement shall remain in effect until terminated by written notice sent by first class mail by either party to the other at any time, but no such termination shall affect the obligations of Attorney or Bank existing hereunder as of the date of such termination. This Agreement shall be binding on the parties hereto and their successors and assigns.
17. Attorney hereby acknowledges receipt of a Memorandum from the Professional Ethics Committee of the Bar Association, dated _____, which summarizes the professional ethical considerations involved in this transaction and which Attorney has read and understands, and agrees to abide by these same professional ethical considerations. The parties hereto have executed this Agreement as of this _____ day

of _____, 1975.

BANK

(Title)

ATTORNEY

(Name and Address)

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CREDIT CARD LAWYER'S FEE PAYMENT APPROVED

(Continued from page 294)

MEMORANDUM

TO: Attorneys in _____ County, Indiana

FROM: Professional Ethics Committee of the _____ County Indiana Bar Association

SUBJ: Use of Credit Card Arrangements to Pay for Legal Services Rendered

DATE:

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The particular ethical considerations of which each such attorney must be aware prior to entering into the credit card arrangement with the financial institution are as follows:

- A. The credit card arrangement may be used only for services rendered, fees or expenses advanced in behalf of a client and not for advances or retainers.
- B. An attorney, other than the display of a small insignia to be viewed solely from within the attorney's reception area, may not display any reference to the availability of the credit card arrangement on statements, letterhead, doors or otherwise since such reference would constitute advertisement and improper solicitation.
- C. As to credit card charge slips, "(a)ssignments to participating banks shall be without recourse."
- D. A written statement for the legal services rendered must be submitted to the client at or prior to the time the charge is made under the credit card arrangement.
- E. It would be improper for an attorney to require a client to sign a blank credit card charge slip, or to urge the use of a credit card when payment can be made otherwise.
- F. It would be improper for an attorney to charge a client with a finance or carrying charge or to increase his fee in any way because of the availability of the credit card arrangement.

The attorney must also be aware that such ethical considerations could change from time to time as a result of the institution of credit card arrangements for fee financing, and the availability of credit card arrangements in _____ County, Indiana, does not change any existing ethical considerations but merely adds a method of financing fees for legal services rendered.

PLACEMENT MANUALS (Law Lists) FOR GRADUATE LAWYERS

LEGAL ETHICS OPINION No. 3, of 1975

INDIANA STATE BAR ASSOCIATION LEGAL ETHICS SUB COMMITTEE

The Placement Office of Indiana University School of Law has inquired whether the School may circulate a placement manual of opportunities for employment by graduate lawyers in the criminal law area which would include a list of law firms which have a substantial practice in the area of criminal law. Prior consent of the listed law firms would be obtained. There would be a very limited distribution of the manual to the four law schools in the State.

Disciplinary Rule 2-102 (A) states that

"A lawyer or law firm shall not use professional cards, professional announcement cards, office signs, letterheads, telephone directory listings, law lists, legal directory listings, or similar professional notices or devices, except that the following may be used if they are in dignified form: . . . (6) A listing

in a reputable law list or legal directory giving brief biographical and other informative data. A law list or directory is not reputable if its management or contents are likely to be misleading or injurious to the public or to the profession. A law list is conclusively established to be reputable if it is certified by the American Bar Association as being in compliance with its rules and standards".

The listing of law firms in the proposed placement manual would be a

"reputable law list or legal directory" within the meaning of this Rule and therefore would not violate the Code of Professional Responsibility.

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The Legal Ethics Subcommittee of the Indiana State Bar Association has been presented with the following facts and question:

A law firm is general counsel for First Bank. Attorney A, a member (or associate) of the firm is a Director of First Bank. In connection with its trust function, First Bank, as is the custom with other banks, employs the attorneys who drafted the will or trust to represent it in connection with the administration of that particular will or trust. Thus, in estate and trust matters the law firm that is general counsel represents only those estates, trusts or guardianships which the firm originates.

Does the law firm have a conflict when it represents an interest adverse to First Bank acting in its capacity as Executor, Trustee or Guardian, where the Bank's fiduciary status is represented by another attorney?

Any question involving conflict of interest is always very difficult. The difficulty sometimes arises because the conflict is difficult to perceive and sometimes because the recognition of the conflict requires the attorney to decline employment.

Canon 4 of the Code of Professional Responsibility of the State of Indiana is as follows:

"A Lawyer should preserve the confidence and secrets of a client."

Canon 5 is as follows:

"A Lawyer should exercise independent professional judgment on behalf of a client."

Canon 9 requires that:

"A Lawyer should avoid even the appearance of professional impropriety." (Emphasis Added)

These Canons impose a strict course of conduct and, in our opinion, requires that if there is any doubt as to whether

or not there is a conflict, the problem should be resolved by the attorney declining to accept the employment. As this committee has earlier said:

"...pursuant to the Code of Professional Responsibility, Canon 9, a lawyer is obliged to avoid at all costs the appearance of any professional impropriety. As is stated in E.C. 9-1, every lawyer is duty bound to promote public confidence in the legal profession. Any act which may cause a layman to suspect disreputable practices must be shunned."

(Indiana Legal Ethics Opinion No. 2-1971) [Emphasis Added]

Professor Wise has expressed this strict standard in conflict situations in the following words:

"...if there is the slightest doubt as to whether a proposed representation involves a conflict between two clients or between a new client and a former client or may encompass the use of special knowledge or information obtained through service of another client ...the doubt can best be resolved by Matthew VI, 24: "No man can serve two masters." (Wise, Legal Ethics, p. 256, 1970) [Emphasis added.]

On the other hand, Canon 9 must be construed so as to harmonize with other parts of the Code and the facts of each situation must be carefully examined. This is illustrated by Ethical Consideration 5-17 which reads as follows:

"Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse effect upon his judgment is, not unlikely".

Applying the above standards to the facts presented to us, we are of the opinion that it would be improper for the law firm to represent any interest of the bank adverse to the bank in its

fiduciary capacity, even though the bank is represented by other counsel in such fiduciary capacity. The strict standard of Canon 9, requiring that even an "appearance" of impropriety be avoided, allows us no other decision. It seems clear that it would not "appear" to a layman to be proper for the general counsel of the Bank to engage in litigation against the Bank under the facts presented. Although attorneys should recognize the meaning of a "fiduciary" capacity, it is doubtful that the public necessarily would understand the meaning and thereby the distinction. The adverse parties likewise might not understand such a distinction. Thus, because of the possible "appearance" of a conflict, the situation should be avoided.

Our opinion is reinforced in the situation presented to us by the fact that one of the partners is a Director of the Bank. Such a position might afford the attorney-director the possible opportunity to have access to information in the trust department relating to the matter in dispute. Furthermore, it might be argued that the attorney-director might be in a position to influence the decisions of the Trust department relating to the matter in dispute. While it is assumed that the attorney-director would recognize the impropriety of either of the activities mentioned above and would refrain from such improper activity, the mere fact that the opportunity for such activities exists means that the relationship could present an "appearance" of impropriety to the public. To avoid such an appearance of impropriety, the Firm should decline the representation of the Bank, adverse to the Bank acting in a fiduciary capacity.

Ethics of Lawyer Employment of Other Professionals

A citation of guidelines to avoid unauthorized practice of Law when member of another profession is employed in a close association with attorney serving his client

LEGAL ETHICS OPINION NO. 6 OF 1975

The Legal Ethics Committee of the Indiana State Bar Association has been presented with the inquiry:

"Please be advised that our law firm is a Professional Corporation existing under the laws of the State of Indiana. We are in the process of employing a Certified Public Accountant in order to handle tax problems for our Corporation and general clientele. It is our desire to hire said accountant on the basis that he would not become a stockholder or a partner in this law firm. We were wondering if there was anything unethical by employing such a professional person."

Canon 3 requires that "a lawyer should assist in preventing the unauthorized practice of law." The inquiry presents three questions under that canon.

First: May an accountant be employed by a law firm and, if so, under what financial arrangements? There is no prohibition on hiring an accountant to work for a law firm in ways which assist the lawyers; however, any such employment relationship must be structured so that the accountant receives a fixed salary or other compensation not based on legal fees received from clients.

Lawyers are prohibited from being partners with laymen in any endeavor which includes the practice of law. DR 3-102 (A) states:

"A lawyer or law firm may not share legal fees with a non-lawyer . . ."

DR 3-103 (A) continues:

"A lawyer shall not form a partnership with a non-lawyer if any of the activities of the partner-

ship consist of the practice of law."

A non-lawyer may only be an employee, not a partner of a law firm nor a stockholder in a legal Professional Corporation. The Standing Committee on Ethics and Professional Responsibility of the American Bar Association ("the ABA Committee") in ABA Opinion 297 (1961) stated, in part, that the prohibition on a partnership arrangement:

". . . is not violated if the employee-accountant is paid a regular salary computed without regard to fees collected for legal services rendered to particular clients."

For certain purposes an accountant may be appropriately employed by a law firm. Guidance for the proper role of such an employee is found in EC 3-6, which provides, in part:

"A lawyer often delegates tasks to clerks, secretaries, and other lay persons. Such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work and has complete professional responsibility for the work product."

The ABA Committee has published several opinions exploring the type of duties that accountants may exercise within law firms.

ABA Opinion 316 (1967) provides, in part, that:

"A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scribes, nonlawyer draftsmen or nonlawyer researchers. In fact, he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, ap-

pear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client. In other words, we do not limit the kind of assistants the lawyer can acquire in any way to persons who are admitted to the Bar, so long as the nonlawyers do not do things that lawyers may not do or do the things that lawyers only may do."

The same rules and precautions were stated in ABA Opinion 297 (1961) in which it was stated that a law firm could employ an accountant on a salaried basis for the purpose of doing accounting work for the law firm in its practice of law, provided that certain safeguards were utilized to prevent any practice of law by the accountant.

Second: May an accountant handle tax problems of a legal Professional Corporation? An accountant may appropriately handle tax questions and other accounting problems of the law firm's own business and operations. As a salaried employee an accountant would perform the role of advisor to the Professional Corporation, much as a lay person might be business manager for a law firm. Giving accounting advice to the law firm or Professional Corporation, as an employee, would not entail the unauthorized practice of law by the accountant. The employee-advisor position alone would not encompass any contact with clients or the general public and does not constitute a breach of ethics by the members of the law firm.

Third: May an accountant handle tax and other accounting questions for clients of the law firm? In our opinion, this would be proper, provided the four limitations set forth are observed. A troublesome potential

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LAWYER EMPLOYMENT OF OTHER PROFESSIONALS

(Continued from page 367)

for unethical practices on the part of the law firm arises in the instance of the accountant handling tax problems of the firm's clients. Unless definite precautions are taken to limit the work of the accountant, the work of the accountant could constitute the unauthorized practice of law.

ABA Opinion 272 (1946) delineates the proper role which an accountant employed by a law firm may occupy.

"It is entirely ethical for a firm of lawyers to employ a public accountant (whether C.P.A. or not) on a salaried basis to advise the law firm on matters of accounting and to assist the firm in connection with accounting problems arising in its law practice. For a law firm to employ an accountant on the basis of a division of the fees of the law firm would violate Canon 34, forbidding the division of legal profits or fees with those not lawyers. To permit such an accountant to certify statements under his own name as a C.P.A. for the use of clients of the law firm would violate the provision of Canon 35 requiring the lawyer's relation to the client to be personal and direct, without the intervention of any lay intermediary."

From this admonition, re-emphasized in later ABA Opinions and Informal Decisions, it becomes apparent that several precautions must be taken.

(1) The accountant should never *initially* interview clients of the Professional Corporation or determine what are their legal problems. It is the duty of the attorney to decide what legal questions must be answered, and what means should be used to obtain the answers. For an accountant to first see the client and make such a determination would be a violation of professional ethics by the law firm.

(2) If, after discussion with the client, the attorney believes that an accountant's advice is necessary for

resolution of the legal issue, the client should be advised of the necessity and given the opportunity to choose an accountant. That person might be either an accountant from within the client's own organization, an outside accountant who regularly handles the client's work, or any other accountant of the client's choosing. Only in the event that the client expresses no such preference and requests the law firm's accountant should he be brought into the case.

(3) The importance of a careful division of work between attorney and accountant, and the client's comprehension of that separation, cannot be over-emphasized. The ABA Opinions have repeatedly stressed both that accountants are not to perform legal work and that attorneys and/or law firms may not hold themselves out as members of any profession other than the law. The rule is clearly stated in ABA Opinion 272 (1946) as follows:

"The Committee all deem it in the interest of the profession and its clients that a lawyer should be precluded from holding himself out, even passively, as employable in another independent professional capacity. We find no provision in the

Canons precluding a lawyer from being a C.P.A., or from using his knowledge and experience in accounting in his law practice. We are all confident that a lawyer could not, as a practical matter, carry on an independent accounting business from his law office without violating Canon 27."

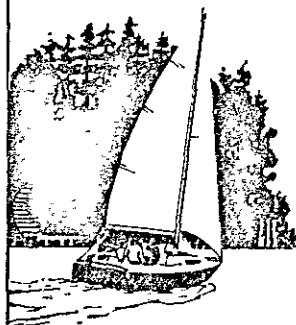
(4) It is imperative that the law firm explain to the client that the use of an accountant from within the law firm is solely as an aid in the practice of law. The in-firm accountant is to be looked at as any other para-legal researcher might be considered, not as an accountant with whom a client would have any independent relationship.

The Committee believes that all such precautions are important in order for a law firm to avoid unethical conduct. Any conduct short of compliance with those precautions may result in the appearance to a client either of a law firm practicing as an accounting firm, or of an accountant practicing law without authorization.

Issued by the Indiana State Bar Association Committee on Legal Ethics.

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