

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 00-419

July 7, 2000

Use of Credit Cards for Payment of Legal Fees;

Withdrawal of Formal Opinions 320 (1968) and 338 (1974)

and Informal Opinions 1120 (1969) and 1176 (1971)

The Committee has learned that inquiry frequently is made of the Association's ETHICSearch Research Service regarding the propriety of lawyers permitting or encouraging clients or potential clients to use credit cards to pay their legal fees and/or expenses. Review of several of the Committee's opinions addressing this subject reveals that the advertising provisions of the ABA Model Rules of Professional Conduct, adopted in 1983, render inapplicable prohibitions or requirements that were contained in Formal Opinion 338 (November 16, 1974); Formal Opinion 320 (February 19, 1968); Informal Opinion 1120 (October 3, 1969), and Informal Opinion 1176 (February 4, 1971).

Formal Opinion 338, although not formally withdrawing Informal Opinions 1120 and 1176, had rejected their reasoning that credit cards or other bank-financing arrangements properly could be employed only for "facilitating the sales of merchandise and sales of non-professional services," and not for legal services; in so doing, the Committee accepted, per se, the propriety of using credit cards to pay legal fees. However, Opinion 338 carried forward from another earlier opinion, Formal Opinion 320 (Legal Fee Finance Plan), a series of requirements that are not justified by the present-day Model Rules of Professional Conduct.

Because the Model Rules require only that any advertising materials used by a lawyer not be false, fraudulent, or misleading, and because they do not require any advance approval by a bar association for a lawyer's participation in a credit-card plan, the Committee hereby withdraws each of the four opinions referred to above.

This opinion is based on the Model Rules of Professional Conduct and, to the extent indicated, the predecessor Model Code of Professional Responsibility of the American Bar Association. The laws, court rules, regulations, codes of professional responsibility, and opinions promulgated in the individual jurisdictions are controlling.

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