

**THE PROFESSIONAL ETHICS COMMITTEE FOR  
THE STATE BAR OF TEXAS  
Opinion No. 582  
April 2008**

**QUESTION PRESENTED**

May a lawyer enter into a fee arrangement in which the lawyer bills for his services and the client agrees that, if payment is not made to the lawyer within 30 days of tender of the invoice, the lawyer may charge the client's credit card for the amount of the invoice?

**STATEMENT OF FACTS**

A lawyer proposes to represent a client under a fee agreement that includes a provision under which the client authorizes the lawyer to charge the client's credit card for invoices that are 30 days past due.

**DISCUSSION**

Both this Committee and the American Bar Association Standing Committee on Ethics and Professional Responsibility have previously ruled that using credit cards in payment of legal fees is acceptable. See Texas Professional Ethics Committee Opinion 349 (October 1969); American Bar Association Standing Committee on Ethics and Professional Responsibility Formal Opinion 00-419 (July 7, 2000). Thus, a lawyer may accept a credit card in payment of a fee.

In the fact scenario here considered, the client is given the opportunity to pay by some other means during the first 30 days after the invoice is submitted. Only if the client does not pay within 30 days is the client's credit card charged. Rule 1.04(a) of the Texas Disciplinary Rules of Professional Conduct states in part: "A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee." If the fee charged otherwise complies with the Texas Disciplinary Rules of Professional Conduct and any applicable requirement for court approval of the fee, then there is nothing inherently illegal or unconscionable about the arrangement as stated. Because the facts in this opinion involve charging the client's credit card after the legal services have been performed, it is permissible for the funds received under the credit card payment arrangement to go into the lawyer's operating account.

A different rule applies if the client disputes the fee. It is not permissible for a credit card payment arrangement to negate the requirement that an attorney hold disputed funds separately. In ordinary circumstances, when a lawyer holds money or property of another and a dispute arises, a lawyer is required to segregate any disputed funds until the dispute is resolved. Rule 1.14(c) states in part:

"When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. . . . If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved . . . ."

If such a dispute exists, the lawyer may charge the client's credit card for the disputed amount but the lawyer may not place that amount in his operating account.

## **CONCLUSION**

The Texas Disciplinary Rules of Professional Conduct do not prohibit a lawyer's charging a credit card for attorney's fees that have been earned by the lawyer provided the client consents and the client's ability to challenge a disputed statement for legal fees is preserved.