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The Advisory Committee
of the
Nebraska State Bar Association

January 17, 1975

Opinion No. 75-1

The use of credit cards for payment of legal services previously rendered and expenses previously advanced is permitted if the guidelines specified in this opinion are followed. Interest may be charged on delinquent accounts with the client's agreement. Opinion No. 72-2 which conflicts herewith is hereby rescinded.

QUESTION PRESENTED

On November 16, 1974, the American Bar Association adopted Formal Opinion 338--which allows the use of credit cards subject to certain specified guidelines. Our prior Opinion No. 72-2 prohibited the use of credit cards unless the Bar Association specifically approved and participated in the plan. The question presented is whether our Opinion No. 72-2 should be rescinded and under what specific guidelines.

DISCUSSION

The ABA Formal Opinion No. 338 refers to the following prior ABA opinions on this subject: Formal Opinion 320 and Informal Opinions 1120 and 1176. The ABA now rules that the recently adopted Code of Professional Responsibility "has overruled Informal Opinion 1176 and that the use of credit cards for payment of legal expenses and services is permitted under the Code, providing all of its provisions are fully and completely observed." We concur in the new ABA position and hereby rule that a credit card plan conforms to the Code provisions and that the considerations flowing therefrom if the plan requires that:

- 1) Neither the participating lawyer nor the credit card company shall disseminate any publicity or

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advertising relating to the credit-card plan because such activity would be prohibited under EC 2-9 and DR 2-101(A) and (B), all of which prohibit any publicity or advertising either by the lawyer or by other persons on his behalf. The proper official of the Nebraska State Bar Association may make a discreet public announcement that the credit card plan has been approved for use by Nebraska lawyers.

- 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 cash actually paid on behalf of a client; consequently, a credit card may not be used for a retainer for future services, since this would involve complicating questions of proper refunds, etc., in case the services were not fully rendered as

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contemplated by the attorney and client (See discussion of old Canon 12 in ABA Formal Opinion 320 and the complications envisioned thereunder in credit plans administered by Bar Associations).

- 6) In participating in a credit card program the attorney shall scrupulously observe his obligation to preserve the confidences and secrets of his client.
- 7) Since the charging of interest is a necessary corollary to the use of credit cards, interest may be charged provided that the client is advised by the lawyer and agrees to the payment of interest upon accounts after a stated period of time.