

Opinion 66

Imposition of Interest or Finance Charges on Client Accounts

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2016*

Introduction

Lawyers often struggle to ensure clients pay their legal fees, and may wonder whether they may charge interest on unpaid fees. Lawyers may want to collect interest as an impetus for clients to pay fees on time, to recoup administrative costs associated with the efforts to collect unpaid fees over time, or to offset the economic loss suffered when a client defaults on paying fees due. In this opinion, the Colorado Bar Association Ethics Committee (Committee) considers whether lawyers may charge interest on unpaid fees and, if so, whether the lawyer must first specify in writing his or her intent to collect interest on any unpaid fees.

Syllabus

A lawyer may contract to charge reasonable interest on unpaid fees. However, a lawyer may not unilaterally impose interest on delinquent fee accounts or charge a finance fee unless there is a prior agreement between the lawyer and the client specifying that interest will be charged on unpaid fees and expenses, and the applicable interest rate. Consistent with the Colorado Rules of Professional Conduct (Colo. RPC or Rules), this should be reflected in the written basis and rate of the fee.

The Committee notes that this opinion applies only to interest charged on fees not paid when due, and does not address circumstances where fees are paid over time, for instance, as the result of an agreed-upon payment plan.

Analysis

Nothing inherent in the lawyer–client relationship prohibits the charging of interest. Lawyers whose clients carry a balance of unpaid fees or expenses may contract to charge interest on the unpaid balance like any creditor to whom money is owed. However, lawyers have different duties to their clients that may exceed those of other creditors.

The Rules do not directly address the issue of lawyers charging interest on unpaid fees and expenses. However, Colo. RPC 1.4 and 1.5 provide guidance. Rule 1.4 addresses communications between a lawyer and client. Rule 1.4(a) requires a lawyer to provide necessary information to, and reasonably consult with, a client. Rule 1.4(b) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment [7A] to Rule 1.4 specifically addresses fees and expenses:

Explanation of Fees and Expenses

[7A] Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. . . . It is strongly recommended that all these communications be in writing.

Rule 1.5 governs charges for fees and expenses. Rule 1.5(a) requires that fees and expenses must be reasonable under the circumstances, and provides a non-exclusive list of factors to determine what is or is not reasonable. *See also* Colo. RPC 1.5, comment [1]. Rule 1.5(b) provides:

When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

The comments to Rule 1.5 address "Terms of Payment," but do not directly address the charging of interest on unpaid fees and expenses.

Rules 1.4 and 1.5 address charges for, and communications regarding, "fees" and "expenses." The Committee concludes that interest charged on unpaid fees and expenses is neither a fee nor an expense. A fee is a "charge for labor or services, esp. professional services." *Black's Law Dictionary* 629 (7th ed. 1999). An expense is typically defined as an expenditure of money, time, labor, or resources to accomplish a result. *Id.* at 598. Although interest is directly related to the underlying fees and expenses, and may be analogized to expenses in some circumstances, interest is neither a charge for services nor a cost incurred by the lawyer. Nonetheless, the Committee concludes that the Rules, consistent with the spirit of Rules 1.4 and 1.5, govern the charging of interest on unpaid fees and expenses.

Lawyers who intend to charge interest on unpaid fees and expenses should enter into a prior agreement with the client specifically stating that interest will be charged, the amount of interest to be charged, and the period for which interest will be imposed. The Rules do not require a specific form in which the lawyer must convey to the client information regarding interest, fees, or other details of the representation. Rule 1.5(b) specifies only that the basis and rate of a fee must generally be conveyed in writing as noted above. The Committee opines that the same writing that suffices to satisfy Colo. RPC 1.5(b) for a fee is also sufficient with regard to the interest disclosure. The Committee also opines that the disclosure need not be made at the outset of the representation; instead, the facts of an individual matter will dictate the terms under which the disclosure is made. This approach is consistent with that reached in other jurisdictions that have addressed the issue.¹

Related to the question of *whether* a lawyer may charge interest, is *how much* interest the lawyer may charge. The Committee concludes that the reasonableness requirement that applies to fees and expenses applies equally to any interest charged on unpaid fees and expenses. Interest must be reasonable under the circumstances. *See* Colo. RPC 1.5(a) & cmt. [1]. The rate that is reasonable depends on the circumstances. Lawyers may find themselves in circumstances in which they feel it is necessary to file suit against a client to collect unpaid fees. If a lawyer initiates such a lawsuit, the lawyer may seek statutory interest, even without a fee agreement permitting the lawyer to

charge interest on unpaid fees and expenses. This may result in the apparently anomalous situation in which a court permits a lawyer to recover interest from the date that an account was payable, even though it would have been unethical for the lawyer to charge interest unilaterally if there was no agreement concerning interest.

Nevertheless, the Committee believes it is appropriate to distinguish between (1) a lawyer's submittal of a bill for services, which is governed by the contract between lawyer and client and, therefore, subject to the Rules, and (2) a lawyer's pursuit of relief in a legal proceeding because a client has breached that contract by failing to pay a bill when due, which is governed by other law, including potentially applicable interest statutes.

Conclusion

A lawyer may contract to charge reasonable interest on unpaid legal fees and expenses owed by the client; however, such interest may not be unilaterally imposed and the lawyer must give the client notice that such interest will be charged specifying terms and the applicable interest rate that will apply.

Note

1. *See* D.C. Bar Legal Ethics Comm., Op. 310, "Propriety of Lawyer Charging Interest When Client Fails to Pay Fees" (2001) (a lawyer may charge interest provided the client agrees, in advance of representation or prior to a new stage in the representation); N.Y. City Bar Ass'n Comm. on Prof. Ethics, Formal Op. 2000-2, "Charging Interest on Unpaid Legal Fees" (2000) (it is not improper for a lawyer to include a provision in the legal fee agreement specifying that interest will be charged on unpaid fees, and a lawyer may charge interest—even where the fee agreement is silent—provided that the lawyer advises the client in advance that interest will be charged and gives the client the opportunity to pay the unpaid balance before interest is imposed); and Neb. Lawyer's Advisory Comm., Op. 86-3 (1986) (a lawyer may collect interest on unpaid fees provided the agreement is in writing, entered into early in the representation, the interest is reasonable, and it clearly states when the interest will become due).