

FORMAL OPINION NO. 48\*

Adopted A.B.A. Informal Opinion No. 1120 rendered  
October 3, 1969, a copy of which is attached hereto.

DATED this 22nd day of October, 1969.

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\*This opinion has been superseded by I.S.B. Opinion  
No. 70 which generally approves of the use of credit cards  
for payment of fees for legal services.

Columbus City, Ind.  
Charles W. Jester  
Detroit, Mich.  
G. M. McAlpin  
Atlanta, Ga.  
Samuel P. Myers  
Evanston, Wis.  
R. Sperry  
Rock, N. D.

1155 East 63th, Chicago, Illinois 60637

Telephone (312) 493-0533

October 3, 1969

Professional Ethics Committee  
Kansas Bar Association  
c/o Fred L. Conner, Chairman  
Great Bend, Kansas

Re: Informal Opinion No. 1120  
Lawyers Subscribing to Bank  
Credit Card Plans for  
Clients' Use in Paying  
Legal Fees

Your have requested our opinion as regards the ethical propriety of lawyers participating in credit card plans as a means of enabling clients to pay legal fees. The letter enclosed a sample "Member Merchant Agreement" used by the Bank of America for its credit card plan entitled "BankAmericard".

The Member Merchant Agreement bears a subtitle "Purchase of Sales Contracts" and it provides that the Member will offer to sell "Sales Drafts" to the Bank. The Bank will pay the Member an agreed percentage of the face amount of each Sales Draft purchased by it. In the event the card holder disputes "the performance or quality of service", the Member will buy the Sales Draft back.

The Member agrees to indemnify the Bank from any claim or counter-claim on the Sales Draft. The Member also agrees to maintain a commercial bank account, against which the Bank can charge amounts payable by the Member. The Member agrees to pay an additional membership fee and agrees to display promotional materials. The Bank has the right to examine Member's records.

This plan does not meet the precise guidelines set forth in our Opinion 320, wherein we stated that

"It is not per se unethical for a local or state bar association to approve and for lawyers to participate in a plan for financing legal fees, provided adequate precautions are taken to see that the plan is formulated and administered within the framework of the canons of ethics."

It is our opinion, however, that it is unprofessional for a lawyer to subscribe to credit card plans of the specific type involved in this inquiry as a means of enabling clients to pay his legal fees. Such plans are primarily aimed at facilitating the sales of merchandise and sales of non-professional services. All the publicity is directed to that end. The general public understands this to be the case. It is wrong, in our opinion, to put professional services in those categories.

Lawyers' services, moreover, are not subject to the relatively precise objective determination possible for merchandise, air travel and so on. It is our judgment that, as a practical matter, credit card plans for payment of legal fees could not work unless all qualified lawyers might join the plan and all publicity would be subject to Bar Association approval as we stated in Opinion 320. The publicity might include the names of lawyer members but it would not tend to channel business to any particular attorney or attorneys.

This credit card plan, furthermore, involves a recourse provision which, of course, is an integral part of any general credit card plan. Merchants presumably have no particular difficulty in agreeing to recourse provisions. Lawyers, however, if called upon to "buy back" the so-called "Sales Draft" would inevitably find themselves in a position where their future relationship with their clients would be adversely affected by the fact that they would be out of pocket in the amount of the "buy back". It is well recognized that lawyers should not voluntarily put themselves into positions where the condition of their compensation may interfere with the full discharge of their duty to the client.

Formal Opinion 320, dealing with Bank Loans as a means of financing a client's payment of legal fees, is not controlling in this instance. In that situation, local Banks agreed to cooperate in helping clients borrow money to pay legal fees. Limited publicity for the plan was permitted. However, that plan obviously was intended to operate on a highly individualized basis and not on a volume basis. That plan, therefore, was not subject

in the same degree to the considerations which persuade us that the use of general type credit cards for payment of lawyers' fees is unprofessional. In addition, Formal Opinion 320 refers to two types of lending plans; one proposed in Los Angeles "with recourse" and the other proposed in Buffalo and elsewhere "without recourse". The Opinion points out that the Los Angeles plan was specifically disapproved by the Los Angeles County Bar Association, one of the grounds of disapproval being the "with recourse" feature. The Opinion goes on to state that the "without recourse" feature of the Buffalo plan is an important point of distinction.

We urge you to study carefully our Formal Opinion 320, which approves broad general principles within which specialized plans are not per se unethical, if formulated and administered in accordance with the canons of ethics as interpreted in Opinion 320. We pointed out in that Opinion that local custom within such broad ethical perimeters is a matter for each state and local bar association to determine for itself.

Sincerely,



WALTER P. ARMSTRONG,  
Chairman of Standing Committee  
on Professional Ethics

TJB:sgl

cc: Committee Members