Considerations for Lawyers Accepting Credit Cards

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Increasingly more and more lawyers let clients pay by credit. The current generation of consumers simply don't use cash. We flash our plastic everywhere we go—whether spending two dollars or two thousand. Cash is, most definitely, no longer king.

This norm, however convenient for the majority, is undeniably inconvenient for lawyers. Few professional regulations are as fragmented and varied as the rules on trust accounting, unearned fees, and taking credit cards. After only a few informal discussions with fellow lawyers, I realized that (a) nearly none of them understood the rules and (b) even fewer of them actually cared.

There is good news, regarding credit cards and trust accounts. Although accepting a credit card to process legal fees might not be as simple as many of our day-to-day transactions, accounting and legal tech are slowly but surely simplifying business for both your clients and you.

Trust Account Compliance

What's stopping you from joining mainstream vendors and accepting plastic payment for every service? Trust accounting. State rules vary greatly, but there are a few major red flags to note:

- Do you have to store retainer (advance) fees in a trust account? (In most states yes, in California, surprisingly, the answer is no.)
- Does your credit card processor take processing fees out of your trust account or out of a separate business account? What about chargebacks? (Hint: you want the latter. Nobody but you should be able to take money out of your trust account.)
- How do you handle mixed transactions? (A client swipes $3,450. $450 is for a filing fee to the court, $1,000 is a past due bill, and $2,000 is advanced legal fees.)

What do you do about these red flags? Unsurprisingly, "it depends" on your state. Again, California doesn't require you to store advanced unearned legal fees (commonly called a retainer) in a trust account, but doesn't prohibit it. Pretty much every other state I've researched *does* require you to keep it in a trust account, as it is technically the client's money — not yours.

Processing fees are also a huge consideration. Each time you swipe the card, the credit card processor is going to take a cut: either a flat fee per swipe, a percentage of the transaction, or both. State rules vary on whether this can charged to the client (and taken out of the swiped amount) or whether it must be covered by you — out of a separate business account, since you can't co-mingle funds in your trust account.

And if that isn't confusing enough, angry clients may try to do a chargeback with their credit card company: if your processor isn't lawyer-friendly, they may pull it out of your trust account, regardless of whether you've already taken some of that client's original funds out for bills or fees. That is, quite obviously, bad, and likely an ethics violation. (Some advise putting a provision in your retainer that requires a client to address a fee dispute with you prior to going to their credit card company.)

There are also mixed transactions; where a single, swiped amount covers some funds that belong in your trust account and other funds that do not. The short and safest answer is to put it all in your trust account and then transfer everything from there. Of course, you'll want to check with your state bar as well.

Choosing a company to process credit cards

Until 2013, the answer was simply no. Regardless of what the state ethics rules were, credit card companies prohibited this charge in their merchant agreements. Now, however, they've lifted that ban and you are free to pass along that 2.89% (or whatever their cut is) to the client — if your state ethics rules allow it. The rules here are incredibly varied amongst the state bars, with the trend in more recent years being to allow you to pass along the fees.

Here are two examples of how states fall on the issue, with the caveat that you need to check for the latest opinions from your state, as they may have come to their senses in the meantime:

- Michigan (in a 1993 opinion) prohibited lawyers from charging "additional fees to compensate for the fact that the lawyer will be receiving less than 100 percent of the client's billings by using the credit card company".
- Arizona (in a 2008 opinion) simply required full disclosure in the retainer if you are passing along the cost.

If you accept advance fees, costs, or anything else that requires a trust account, it is likely that your state bar's ethics rules will keep you from using exactly the same payment method as your local corner shop. This doesn't necessarily add an

obstacle to events- but ensures you'll be choosing a more secure method in both you and your client's best interests.

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