

Clients & Credit Cards

by

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A recurring question posed to the attorneys in the Minnesota Office of Lawyers Professional Responsibility who provide advisory opinions is whether it is permissible to accept payment from clients by credit card. The answer is not a simple yes or no.

Receiving payment by credit card for fees that have already been earned or for reimbursement of expenses already paid poses no problem under the Minnesota Rules of Professional Conduct.

At one time, the American Bar Association had disapproved of the practice of accepting credit cards for payment of legal services. Later, in Formal Opinion 338 (issued Nov. 16, 1974), the ABA opined that credit cards could be used for payment of legal fees, but included a series of restrictions pertaining to advertising the acceptance of credit cards. Finally, in July 2000, the ABA opined in Formal Opinion 00-419 that, not only may credit cards be accepted for payment of fees, the only advertising restrictions applicable are the general provisions of the rules that require advertising to not be false, fraudulent or misleading.

What the ABA has not addressed, however, is a lawyer's ability to accept payment by credit card for advance fees or advances against expenses yet to be incurred. Such payments, because they constitute funds to which the lawyer is not yet entitled, must be deposited in a trust account according to Rule 1.15(a) of the MRPC.

In order for the financial institution to deposit funds directly into an attorney's trust account, however, that account must be designated as the depository account in the agreement with the financial institution. That very same agreement will also authorize the financial institution to debit or make withdrawals from the account under certain circumstances – when a charge to a customer/client's account is contested, various administrative fees, etc.

The problem with this is that Rule 1.15(j) provides, in part, that "Every check, draft, electronic transfer, or other withdrawal instrument or authorization shall be personally signed or, in the case of electronic, telephone, or wire transfer, directed by one or more lawyers authorized by the firm."

This rule does not permit a financial institution, on its own, to make withdrawals from a lawyer's trust account. Given this, a trust account may not be used as the depository account for credit card transactions.

Does this mean that lawyers may not accept payment by credit card for funds that must be deposited in the trust account? While some jurisdictions have taken this position, Minnesota has not.

The position of the state's Office of Lawyers Professional Responsibility is that, while the use of credit cards for payment of funds that are to be held in trust is discouraged, it can be done. All credit card transactions should be processed through the lawyer's business account and any unearned portion immediately transferred to the lawyer's trust account. The lawyer must transfer the full amount of the unearned funds to his/her trust account and may not deduct any credit card fees from those funds. Such transfers should occur promptly after the funds have been credited to the business account and an appropriate paper trail kept evidencing the receipt and transfer of the funds.

A related question occasionally asked is, "If I have a specific agreement with the client permitting me to deduct credit card fees from payments made by credit card, is it OK to credit the client with only the net amount received from the financial institution?"

In other words, may you pass the financial institution's charges on to the client? While there is nothing in the MRPC that specifically precludes doing this if the client has agreed to the arrangement, you should carefully read your agreement with the credit card company. Most financial institutions, in their agreements with participating merchants, prohibit passing such charges on to the customer/client.

Answers to other questions about trust account procedures can be found at www.mncourts.gov/lprb/trustfaq.html.