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Giving your clients more choices by taking credit card payments

If you have shied away from accepting credit card payments for your solo firm, you are not alone.

Some practitioners question whether taking credit cards is permitted, as the Rules of Professional Conduct do not expressly address the topic. Others assume the process is too complicated to set up or dislike the hefty per transaction charges. Still others may consider it unseemly for lawyers to use a payment method typically used to buy widgets at the local hardware store.

Accepting credit card payments makes plain sense. Not only will your clients appreciate having the option, but consider those who are short on cash, with legal issues that require prompt attention. Allowing credit card payments could make all the difference to clients in need, while minimizing your fee collection efforts.

If credit card payments are a possibility for your practice, here are some ethical snags to avoid and a description of the company I selected to handle my transactions.

Credit card payments allowed by "consensus of authority"

Although the Illinois Rules of Professional Conduct do not specifically authorize the acceptance of credit card payments for legal fees, national and state organizations recognize their legitimate use, subject to compliance with other ethical rules.

The Attorney Registration & Disciplinary Commission's 2015 Client Trust Account Handbook for example, cites to ABA Formal Ethics Opinion 00-419 and notes that the use of credit cards to pay legal fees and expenses is supported by "the general consensus of authority." The Illinois State Bar Association reaches the same conclusion, through Advisory Opinion 14-01.

Required client disclosures

Attorneys who accept credit card payments for work performed must make certain client disclosures.

First, credit card payments are processed by third-party services, which not only learn the client's identity but also may have access

to descriptions of services, or in the event of a "chargeback" dispute, additional disclosures about the representation. Professional Conduct Rule 1.6 requires informed client consent before such details are shared with third parties.

Second, credit card transactions have costs. Although some states prohibit lawyers from passing those costs to the client, ISBA Advisory Opinion 14-01 suggests a client's payment of a reasonable service fee does not violate the Rules of Professional Conduct. For all fees and expenses chargeable to the client, Professional Conduct Rule 1.5(b) requires disclosure.

Thus, you should include provisions in your retainer agreement to address client confidentiality, and if you intend to have the client pay a service fee — consider paying the charges yourself for simplicity and goodwill — make that disclosure as well.

Additional obligations for Interest on Lawyers Trust Accounts payments

Accepting retainer payments by credit card carries additional ethical responsibilities.

First, make sure your account is set up to ensure every retainer is deposited directly into your Interest on Lawyers Trust Accounts, or IOLTA, account, without exception, in accordance with Professional Conduct Rule 1.15.

Second, do not pay credit card costs from your IOLTA account, because any deduction would impermissibly reduce the client's retainer balance in violation of Rule 1.15(c). Although Illinois State Bar Association Advisory Opinion 14-01 suggests Rule 1.15(b) allows lawyers to deposit sufficient funds in the IOLTA account to cover those amounts, Rule 1.15(b) only authorizes deposits for "bank service charges" and does not mention credit card charges. The safest course, therefore, is to pay credit card expenses exclusively from your operating account.

Third, be prepared for a potential chargeback situation, where the client disputes the payment and requests its return from the credit card company. Trouble will

SOLE SPEAK

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ensue if, for instance, MasterCard tries to charge back your IOLTA account, but the funds have been withdrawn. Use a credit card processor that is prepared for this contingency.

Choosing a credit card processor

Although a number of credit card processors provide manual card swiping, I wanted a service that allows clients to make secure payments through the web, instead of meeting in person to process a card. That left roughly six companies catering to attorneys with online card payment portals for clients.

Of this smaller group, I selected LawPay, a popular provider endorsed by the ABA and more than 40 state bar associations, including Illinois'.

My initial call to LawPay was promptly returned by an account rep, who thoroughly described the process and addressed my concerns regarding ethical issues. With IOLTA payments, for example, I was assured that all fees are taken from the operating account, to avoid any escrow deficiencies. Also, if a client disputes a payment, LawPay has dedicated staff to address the chargeback request with a process to protect against any deficit if a payment is debited back from the IOLTA account.

Setting up my LawPay account was painless. After I provided basic account information through

the company's secure site, a service rep took me through an online training session, where a sample \$1 client payment was actually posted to my account.

The payment process is straightforward, both for lawyer and client. After billing the client directly — or through services that integrate with LawPay such as Clio or Abacus — the attorney initiates a payment request to the client through LawPay's dashboard. The client receives a link to a secure payment page for the account you designate.

Once the client pays — again, through a simple, secure online web page — you receive an e-mail notification and the funds are available within one or two business days.

Regarding costs, credit card processing services are not cheap, and although LawPay is no exception, the prices appear to be in line with other providers that market to attorneys.

LawPay offers three plans, based on your needs: a low-volume, operating-account-only plan; a higher-volume plan where you designate a single depository account, either operating or trust; and a dual account plan that allows payments into both operating and trust accounts, as you designate.

The introductory plan costs \$5 per month and carries a 3.5 percent processing fee on all amounts paid. The latter two plans have monthly charges of \$15 or \$20, with a lower 1.95 percent processing fee for nonspecialty cards (e.g., Visa, MasterCard, Discover), a 2.95 percent processing fee for specialty cards (e.g., American Express) and 20-cent charge per transaction.

Every LawPay plan is month-to-month, with no long-term contract, and LawPay occasionally offers a three-month free trial period for some of its plans.

In sum, although taking credit card payments has its complexities and costs, sole practitioners who offer this option can better serve their clients, improve collections and be more competitive in the legal marketplace. And, using an online service can make this process safe and easy.