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## **Should your firm be accepting credit cards?**

By Jerry Sullenberger

*LOMAS Advisor*

If you've ever looked at your accounts receivable with despair, or wondered when your "slow pay" clients are going to react to your gentle reminders about overdue invoices, then you are a candidate to introduce payment by credit cards into your practice.

Diner's Club and American Express issued the first charge cards in 1950. In 1951, Diner's Club issued 200 credit cards that were usable in 27 restaurants in New York. However, it wasn't until 1970, when the magnetic stripe was added, that credit cards gained the versatility to support widespread usage. American businesses have learned the benefits of accepting credit cards during the past 30 years.

Okay, now you're asking, "Well and good, but I'm a professional. Taking credit from my clients won't work for me." To that I ask, "Why not?"

Thousands of professionals and professional service firms accept credit cards. Doctors, accountants, dentists, hospitals, and even other lawyers, take this form of payment. If you don't – you're missing an excellent tool from your financial management tool bag.

Accepting credit cards contributes to a more even cash flow. Amounts paid by credit cards are normally deposited in your account within 48 hours. Further, it can eliminate "slow pays" and the expense of collections. There is a benefit for your clients as well. In some cases, clients can obtain your services more readily using credit than when cash is their only alternative.

If you've already added credit card capability to your firm, or you are thinking about it — there are several points to keep in mind. Lawyers march to a different drummer. The law is a profession, but the practice of law must be run like a business in today's world. The challenges to the firm come not only from the need to meet all the usual federal, state and county regulations that apply to a business, but also from the necessity of complying with the Rules Regulating The Florida Bar. Therefore, a law firm's business decision are influenced, and sometimes modified, by the Bar's regulations. Credit card usage is a prime example.

Bar Rule 5-1.1 (a) (1) establishes the requirements for trust accounts and forbids commingling of attorney and client funds and property.

If the client gave a check to the firm for future costs, those funds must be held in the trust account. To comply, the firm deposits the check to the trust.

However, what if you have opened a credit card merchant service account (MSA) to accept client payments? When you create the MSA, you must link the MSA to a specific firm bank account. Suppose you linked the card to your operating account?

This time, a client asks to pay you for future costs, using his credit card, and you agree. The money, which must be deposited in trust, is credited to the operating account, generally within 48 hours. In a couple of days, you write an operating account check to deposit the funds to the trust account. For however long that process took, you were in violation of Rule 5-1.1(a)(1) because the funds are commingled.

The same scenario applies if you linked the credit card MSA to your trust account number. Routine credit card payments of invoices, retainers, flat fees, etc., would result in recurring instances of commingling—a violation of the rules.

The Bar auditors might understand about a situation that rarely occurs, such as a check accidentally deposited in the wrong account. However, with credit card payments, it is more

likely to become a common occurrence, and would be unacceptable. When asked about misapplied deposits, Jim Wells, a Bar auditor, said, "We wouldn't report a rule violation for that, as long as they quickly catch the mistake. Everybody makes mistakes." However, when asked about credit card payments routinely flowing into one account and then being moved internally, Wells commented, "We'd have to report that they were commingling client trust funds with law firm funds."

By now, you've probably already figured out the solution to the dilemma. Unlike a regular business, the law firm must open multiple MSAs. One will be linked to the operating account, and the other linked to the trust account.

There is credit card processing equipment that can handle multiple accounts, and your staff will require training. Those who process credit card payments must be trained to select the appropriate MSA, to properly direct the funds. The firm will also have to develop and institute procedures for how credit card payments will be handled. It will be important for the attorney to specify how a client credit card payment will be allocated. Your procedure may require the attorney to complete a simple form, specifying how much is payable to the trust account and how much is payable to the operating account.

When a charge is applied to the credit card, credit limit and validity of the card are verified. When approved, the credit limit is adjusted to deduct the amount paid to the firm, and the merchant service provider (MSP) transfers the money to the appropriate bank account typically within 48 hours, via a wire transfer, minus the discount rate charged for the service.

- The discount rate must be paid by the firm, and cannot be charged back to the client. Think of the discount rate as similar to offering a 2 percent discount on the bill, encouraging prompt cash payment. It's a fee for the service provided by the MSP. You probably don't want to do both. In other words, you can't afford to discount a credit card payment (because you already will pay a discount fee).
- For example, the client pays his December \$2,000 invoice, in full, by credit card. The MSP deducts the discount rate (\$36) and deposits \$1,964 into the firm's operating checking account within 48 hours. The firm rapidly receives its money with a corresponding positive benefit to the bottom line. The discount rate is expensed.
- In another example, the client gives a cost advance to the firm, using a credit card. The same process outlined above happens. However, in this case, the client is advancing \$5,000 for costs. All \$5,000 must go into the trust account. The deposit of the credit card transaction to the trust account will be minus the discount rate. In our example, the trust account will receive a deposit of \$4,910 after the MSP deducts the discount rate (\$90). The client gave the firm \$5,000 for costs, so the firm must then deposit, from operating account funds, the \$90 discount rate withheld. The client's trust balance then reflects the full \$5,000. The fees charged by the MSP and paid by the firm are costs of doing business and will be expensed.
- Additionally, on a monthly basis, the statement from the MSP will arrive and there will be additional service charges made against the account. In the case of the trust, operating funds must be deposited to the trust at the time the statement is reconcile, to cover these.
- Working with the trust account requires special care. Client ledgers must always balance, and the firm must always be concerned about "using other people's money." Consequently, it is an acceptable practice to maintain a small but adequate amount of the firm's money in the trust account to offset fees such as wire charges or charges for printing checks. Any fees levied against the trust account are charged to the firm's ledger. The firm's ledger is replenished from the operating account as required. Covering MSP service charges would be a natural use of these funds.

"I believe it is permissible to increase the amount of firm money maintained in the trust account for bank costs, to the extent credit card discount fees and service charges are

charged to the firm's ledger," Wells commented.

"The firm would probably want to start with perhaps \$200, and over time, adjust the amount of firm money maintained in the trust account, until they reach the level where they can cover all their monthly activity, and only have to replenish their bank costs once a month."

Discount rates vary, depending upon whether the card is swiped in the machine or information is taken over the phone and entered into the machine. There is a greater risk of fraud if the firm does not see the physical credit card, as it would when swiping the card. Accordingly, there may be tiered discount rates.

To get started, your costs are generally the purchase or lease of a credit card processing machine as an initial outlay. Thereafter, the MSP charges a "discount rate" for each transaction. The amount of the discount rate is one of the elements you need to consider when selecting a provider.

Selecting the right merchant service provider is extremely important. When you search for merchant services on Google, there are more than 4.4 million hits. So how do you know where to go or who to choose?

For general information, download the white paper "Merchant Account Buyer's Guide" by Jack Kendall at [www.expandyourbusiness.com](http://www.expandyourbusiness.com). This guide gives a thorough overview of how merchant services work, including pros and cons, gotchas, warnings and the like. Although Kendall is in the business of selling merchant services, the information he includes is mostly generic and very helpful.

A merchant service source you might try is Attorney Credit Card Services, (321) 242-2529, e-mail [accs@mpinet.net](mailto:accs@mpinet.net). ACCS was founded by Tracy Griffin, a Florida attorney, specifically to provide credit card merchant services to attorneys. She has addressed the peculiarities of law firm credit card services. For example, ACCS deposits the full amount of trust transactions into the trust account, and subsequently charges discount rates and service charges for trust credit card activity directly to the operating account, once a month, rather than at the time of each transaction. That certainly simplifies the bookkeeping required. Credit card charges payable into a firm's operating account are deposited, less the discount rate. She has also eliminated minimum activity fees and has other policies helpful to law firms.

How do you determine where incoming money goes within the firm? Both Ethics Opinion 92-3 and 76-37 address these issues.

- **Prepaid Costs.** Ethics Opinion 93-2 says, *"Regarding prepaid costs, Rule 4-1.15(a) states that money entrusted to an attorney for a specific purpose, including advances for costs and expenses, is held in trust and must be applied only to that purpose. See also Rule 5-1.1(a). Accordingly, in view of the specific requirement of these rules, advances for costs and expenses must be deposited in the attorney's trust account and withdrawn and applied against such expenses as they are incurred and paid."*
- **Fees.** By definition, fees are charges for work performed. Normally these fees are paid after being invoiced to the client, or paid from funds in trust designated for that purpose.
- For our purposes, credit card payments for billed fees would be because of an invoice to the client.
- These payments are for work performed and may only be deposited into the operating account. Ethics Opinion 93-2 *"Earned fees, including 'true retainers,' must not be placed in the trust account."*
- **Retainers.** The word "retainer" has evolved from its earliest meaning, described below as the "classic or true retainer." Today "retainer" is often synonymous with fees.

- Classic or true retainers. The classic or true retainer traditionally means, “I am hiring you to be my attorney. I will pay you a monthly retainer to ensure you are available if or when I have work for you, and therefore you can’t accept work from adverse parties.”
- The classic or true retainer essentially compensates the attorney for the possibility of having to turn down work because of conflict of interest.
- Paying a true retainer is a method for the client to ensure the services of a particular lawyer. For example, a client, if contemplating a divorce, may pay a retainer to the best divorce lawyer in the state. Because of conflict, the spouse would not be able to hire the retained attorney should divorce proceedings begin.
- Classic or true retainers may only be deposited into operating accounts.
- Nonrefundable retainers. Nonrefundable retainers are generally paid to secure the services of the attorney, and the attorney and client specifically agree the fee is nonrefundable. It does not necessarily cover all the work to be done, and additional billing may be required. Nonrefundable retainers are considered earned upon receipt. Therefore, they may be deposited only into the operating account. Ethics Opinion 93-2 comments, *“A prepaid fee which the attorney and client have expressly agreed is nonrefundable is likewise earned upon receipt and so should not be held in trust but should be deposited into the attorney’s general account. Nevertheless, the lawyer may later be obligated to refund part, or possibly all of it, if the legal services are not performed, in which case the fee may be found to be excessive, but the money is the lawyer’s upon receipt of it.”*
- Refundable retainers. The client pays a refundable retainer in advance for work yet to be done.
- These funds are considered to be client money, are deposited into the trust account
- The attorney invoices the client and eventually pays the invoice from the trust account.
- Flat fee – Flat rate fees are typically an inclusive rate for a particular matter such as Incorporation, a divorce or traffic ticket. The client pays costs separately.
- Flat fees are considered earned upon payment and must be deposited into the operating account.
- Funds, advanced for costs, must be deposited into trust.
- Flat fee including costs. In some instances, a lawyer might quote a flat fee for a particular matter and include all costs. Per Bar Ethics Opinion 93-2, *“When charging a flat fee (a portion of which will be used to pay costs), the lawyer must deposit into the trust account any unearned fee, as well as the estimated amount of costs. An attorney who charges a flat fee, a portion of which will be used to pay costs, must deposit into the trust account any unearned fee, as well as the estimated amount of costs.”*

Establishing credit cards as a method of payment to your firm will have long-reaching benefits in increasing and stabilizing cash flow, reducing expenses for collections or bad checks, and possibly even reducing slow payments of invoices. For success, it is crucial to research the market, make a wise selection for your MSP, and to establish internal procedures and training of firm personnel. It’s a solid business decision, and one LOMAS endorses as a best practice.

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