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The Ethics of Accepting Credit Cards



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Since the 1994 Missouri Informal Opinion 940163, lawyers in Missouri have understood that it is ethically permissible to accept credit cards for payment of legal fees and expenses.

But that opinion did not identify a specific system for an attorney to implement to ethically accept credit cards. Since that time, much has changed as to how credit cards are used and processed. The Advisory Committee has published Informal Opinion 2014-05, which provides lawyers with clear delineation as to where to place funds accepted by credit card.[1] Informal Opinion 2014-05 states:

Question 1: If a credit card processing company will allow deposits and debits out of only one account, is it ethically permissible to allow credit card payments of advanced funds for fees and expenses to be deposited into the operating account and immediately transferred into the trust account?

Answer 1: No. Pursuant to Rule 4-1.15(a) and (c), a client's advance payment of fees and expenses must be deposited in the trust account, and those funds may not be held, even temporarily, in Attorney's operating account. Funds should be withdrawn promptly from the trust account as fees are earned or expenses incurred, pursuant to Rule 4-1.15(c) and Formal Opinion 128.

Question 2: Is it permissible for Attorney to allow the credit card company to take debits from Attorney's operating account only and make deposits in either Attorney's trust account or operating account, as designated by Attorney as either earned fees or advance payment of fees and expenses?

Answer 2: Yes. This method complies with Rule 4-1.15(a) and (c). And, in

accordance with Rule 4-1.15(a)(3), it is not permissible for chargebacks to come from the trust account.

Question 3: Is it permissible for Attorney to place all deposits from a credit card transaction into the trust account but take all debits from the operating account?

Answer 3: Yes, this method complies with Rule 4-1.15, provided Attorney removes from the trust account any funds that represent earned fees within a reasonably prompt period of time.

Lawyers should be mindful in accepting credit cards that, as is the case with any representation, the unearned fees and expenses must be held in the client trust account in accordance with the safekeeping provisions of Rule 4-1.15(a). However, credit card companies should not be able to debit from the trust account, even in the event of a chargeback. Additionally, it is important to ensure that proper records are kept from credit card transactions. Rule 4-1.15(f)(11) requires that you maintain records as "... permitted by law and the payment card industry data security standard." I encourage lawyers to carefully review their procedures for accepting credit cards to ensure that they are being handled properly.

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<http://www.mobar.org/ethics/informalopinions.htm>, and may be searched by keyword, opinion number, or topical index. For information about requesting an informal advisory opinion, please visit the Legal Ethics Counsel Office website at <http://molegalethics.org/requesting-an-informal-advisory-opinion/>.

Endnotes

1 See Mo. Sup. Ct. R. 5.30(c).

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