# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY


**OPINION 2007-3**
Issued April 13, 2007

**SYLLABUS**: A lawyer may accept credit card payments from clients for earned legal fees, reimbursement of legal expenses, advances on unearned legal fees, and advances on future expenses. Credit card payments for earned fees and reimbursement of legal expenses belong in a business account, whereas, credit card payments for advances on unearned legal fees and advances on future legal expenses must go into a client trust account. Preferably, a lawyer would maintain two credit card merchant accounts, one used for credit card payments to a business account and one for credit card payments to a client trust account. But, because two merchant accounts may not be feasible or practical, it is acceptable for a lawyer to maintain one merchant account with the credit card payments all going into a client trust account, provided that the credit card payments for earned legal fees and reimbursements of expenses are promptly transferred from the trust account to a business account.

A lawyer may place his or her own funds into a client trust account to pay brokerage and credit card service charges. Credit card service charges are the responsibility of the lawyer and may not be deducted from the interest earned on a client trust account.

**OPINION**: This opinion addresses questions regarding credit card payments by clients.

1. May a lawyer accept credit card payments from clients for earned legal fees, for reimbursement of expenses, for advances on unearned legal fees, and for advances on future expenses, and, should these credit card payments go into a client trust account or a business account?

2. May a lawyer deposit his or her own funds into a client trust account to pay the service fee charged by a credit card company on a client's credit card transaction?

Question 1

The Ohio Rules of Professional Conduct do not prohibit a lawyer from accepting credit card payments from clients. But, like any other method of payment, a lawyer must handle the funds in a manner consistent with Rule 1.15 of the Ohio Rules of Professional Conduct.

Rule 1.15 governs the safekeeping of funds and property. Comment [1] to Rule 1.15 explains "[a] lawyer should hold property of others with the care required of a professional fiduciary."

Lawyers should thoroughly familiarize themselves with all the requirements of Rule 1.15. For example, Rule 1.15(a) establishes detailed requirements for holding funds of clients (or third persons) in a separate interest-bearing account in a financial institution. The rule requires, inter alia, that "[t]he account shall be designated as a 'client trust account,' 'IOLTA account,' or with a clearly identifiable fiduciary title," that certain records be kept, and that records be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds, whichever comes first.

But, most pertinent to this opinion is the first sentence of Rule 1.15(a) and Rule 1.15(c) in its entirety.

> Rule 1.15(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
>
> Rule 1.15(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance [by the client], to be withdrawn by the lawyer only as fees are earned or expenses incurred.

Pursuant to Rule 1.15(a), payments from a client for earned legal fees and for reimbursement of expenses advanced by the lawyer go into a lawyer's business account.

Pursuant to Rule 1.15(c), payments from a client made as advances on unearned legal fees and as advances on future expenses go into a client trust account.

The question arises how a lawyer who has only one merchant account for credit card payments may properly accept credit card payments for some funds that belong in a client trust account and some funds that belong in a business account.

The ideal solution would be for the lawyer to establish two merchant accounts for credit card payments, one crediting payments to a client trust account and one crediting payments to a business account. But, this may not be practicable or feasible.

There is an alternate solution. If a lawyer wants to accept all types of payments (for earned and unearned fees as well as for expense reimbursement and future expenses) and it is not practicable or feasible for lawyer to set up two merchant accounts, one where the credit card payment would go into a client trust account and one where the payment would go into a lawyer's business account, the lawyer should set up a single merchant account as a client trust account. Under this alternate solution, all credit card payments would go into a client trust account, but the earned fees and reimbursement for expenses would be withdrawn from the trust account promptly and placed into the business account. This is the approach taken by several states. See Kansas Bar Assn, Op. 01-2 (2001), Maryland State Bar Assn, Op. 03-06 (2003), Missouri SupCt., Advisory Comm. Informal Op. 20000202 (9/00-10/00), North Carolina State Bar, Op. RPC 247 (1997), Oregon State Bar, Formal Op. 2005-172 (2005).

In this Board's view, this is an acceptable approach because the lawyer's fiduciary duties are fulfilled. All the credit card payments would go into the client trust account, bout the earned fees and reimbursement for expenses would be withdrawn promptly from the trust account and placed into the business account. This arrangement honors the strict requirement of Rule 1.15(c) that legal fees and expenses that have been paid in advance go into a client trust account, and accommodates Rule 1.15(a) by the prompt transfer of the earned fees and expense reimbursement into the business account.

In conclusion to Question 1, the Board advises as follows. A lawyer may accept credit card payments from clients for earned legal fees, reimbursement of legal expenses, advances on unearned legal fees, and advances on future expenses. Credit card payments for earned fees and reimbursement of legal expenses belong in a business account, whereas, credit card payments for advances on unearned legal fees and advances on future legal expenses must go into a client trust account. Preferably, a lawyer would maintain two credit card merchant accounts, one used for credit card payments to a business account and one for credit card payments to a client trust account. But, because two merchant accounts may not be feasible or practical, it is acceptable for a lawyer to maintain one merchant account with the credit card payments all going into a client trust account, provided that the credit card payments for earned legal fees and reimbursements of expenses are promptly transferred from the trust account to a business account.

Question 2

Rule 1.15(b) states: "A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose."

Comment [2] to Rule 1.15 explains that it is proper for a lawyer's own funds to be placed into a client trust account to pay brokerage and credit card service charges.

> While normally it is impermissible to commingle the lawyer's own funds with client funds, division (b) provides that it is permissible when necessary to pay or obtain a waiver of bank service charges on that account. The following charges or fees assessed by an IOLTA depository may be deducted from account proceeds: (1) bank transaction charges (*i.e.*, per check, per deposit charge); and (2) standard monthly maintenance charges. The following charges or fees assessed by a client trust account depository may not be deducted from account proceeds: (1) check printing charges; (2) not-sufficient-funds charges; (3) stop payment fees; (4) teller and ATM fees; (5) electronic fund transfer fees (*i.e.*, wire transfer fees); (6) **brokerage and credit card charges**; and (7) other business-related expenses, which are not part of the two permissible types of fees. Accurate records must be kept regarding which part of the funds are the lawyer's. [Emphasis added.]

In application, a lawyer is responsible for the credit card fees incurred from a client's payment by credit card. Unlike some service charges (such as normal monthly maintenance fees or deposit and check transaction charges) that may be waived by the bank or that may be deducted from the interest earned on an IOLTA account, a charge or fee associated with the use of a credit card may not be deducted from the interest.

For related guidance see rules promulgated by the Ohio Legal Assistance Foundation pursuant to R.C. 120.52, in particular, Rule 120.51-1-03(R), Rule 120.51-2-01(C)(2), and Rule 120.51-2-02(C). See also, www.olaf.org (last visited 2.7.2007) under Frequently Asked Questions. "May I use a credit card to accept payment from a client?" and "What about service charges?" (stating that credit card brokerage fees are the account owner's responsibility and may not be deducted from the interest earned).

In answer to Question 2, the Board advises as follows. A lawyer may place his or her own funds into a client trust account to pay brokerage and credit card service charges. Credit card service charges are the responsibility of the lawyer and may not be deducted from the interest earned on a client trust account.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Ohio Rules of Professional Conduct, the Ohio Code of Judicial Conduct, and the Attorney's Oath of Office.**