

ACCEPTING CREDIT CARDS

Q: Can I accept payments by credit card?

A: Yes. Accepting credit cards requires extra attention to bookkeeping, particularly when trust funds are involved. Most banks and private credit card processors charge set-up fees, monthly fees, and annual fees besides the convenience fee surcharged on each transaction. These fees must be accounted for ethically, in compliance with substantive law, and under your client fee agreement.

Lawyers who accept credit card payments from clients should carefully review [OSB Legal Ethics Op No 2005-172](#).

Q: What kind of merchant account do I need?

If the bank requires you to designate a *single* merchant account for *all* credit card transactions and you accept credit card payments for earned *and* unearned fees, your merchant account must be a trust account.

Q: Can I designate my business account as my merchant account if I accept credit card payments for *earned fees only*?

A: Yes. This is a good approach if you want to spare yourself the extra bookkeeping involved in transferring funds and covering bank fees. See [OSB Legal Ethics Opinion No. 2005-172](#).

Q. If credit card payments for earned fees are deposited into my trust account, how do I avoid commingling?

A: Any credit card payments deposited to the trust account for services already rendered must be withdrawn promptly from the trust account and transferred to the general or office account to avoid commingling earned fees with unearned fees. [See [OSB Legal Ethics Op No 2005-172](#) and article by George Riemer, "[Charge It? Credit Cards and Lawyer Trust Accounts](#)," Oregon State Bar Bulletin 60, no. 9 (July 2000).] Verify the credit card funds have been collected by your bank prior to disbursing them from your trust account.

Q: Who pays credit card surcharges (merchant fees)?

A: Credit card surcharges are a subject of special concern. In 2013, the U.S. District Court for the Eastern District of New York approved the "Payment Card Interchange Fee Settlement," a class action suit among merchants, Visa, MasterCard, and other defendants involving allegations of excessive credit card surcharges.

Some Oregon law firms have claimed that the "Payment Card Interchange Fee Settlement" (PCIFS) permits them to pass Visa and MasterCard surcharges through to clients. The PLF does not advise lawyers on substantive law. This includes interpreting the applicability of the PCIFS. In addition, lawyers should note this comment in [OSB Legal Ethics Op No](#)

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[2005-172](#): “Some jurisdictions suggest that a lawyer can pass the credit card transaction fee on to the client, if the client agrees. Interpretation of federal and state law on this issue is beyond the scope of this opinion, but we note that charging the client for the transaction fee may implicate Regulation Z of the Truth in Lending Act (12 CFR pt 226), requiring that the lawyer make certain specific disclosures to the client and offer cash discounts to all clients.” The opinion cites *Consumer Law in Oregon* ch 14 (OSB Legal Pubs 2013).

If you elect to pass credit card surcharges on to clients, proceed at your own risk. Keep the following in mind:

- Credit card surcharges are illegal in eleven states. Some experts predict this number will grow.
- Conduct your own legal research regarding Regulation Z.

The safest practice when accepting credit card payments is to treat the merchant fee or surcharge as a business expense. Arrange for the merchant fee to be deducted from your general office account and the client funds to be deposited in your trust account. If the bank will not deduct fees from your general account, you have two options. First, permit the use of credit cards only for earned fees you can deposit immediately in the general account. Because banks will usually not deposit credit card payments into multiple accounts, limit acceptance of such payments to earned fees if you are using the general account. If you receive retainers or other unearned costs and fees by credit card, the trust account is the proper account for deposit of these payments. You then face the problem of accounting for the merchant fee. One correct but very cumbersome method is to calculate the merchant fee on each transaction and deposit that fee into the trust account on the same day the credit card payment is made.

Another approach is to consider using a private credit card processor. Private credit card processors are often more flexible than banks, and will usually allow you to deduct merchant fees from the general account for all your transactions, regardless of which account receives your deposit. Many companies offer this service. Choose wisely. Evaluate each company’s reputation, references, rates, and services. Find a credit card processor experienced in serving the legal profession.

Q: What about set-up fees, monthly fees, or annual fees?

A: Set-up fees, monthly fees, and annual fees assessed by banks and credit card processors are an expense of the law firm and the lawyer’s responsibility. For a discussion of billing client costs, see “Billing Costs,” in the Fee Agreement Compendium handbook. The handbook is included in BarBooks™ and available on the Oregon State Bar website at <https://www.osbar.org/legalpubs/BarBooks.html>.

Q: What happens if a client disputes a fee paid by credit card?

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- A:** If a client disputes a fee paid by credit card, the credit card company will “charge back” the payment against the account to which it was originally credited. This means the disputed funds will be deducted from your account and given back to the client. If the charge back is against the trust account and you have withdrawn the credit card payment as an earned fee, other clients’ money may be at risk. You are ethically bound to ensure that any charge backs that jeopardize other client funds in trust are promptly covered with your own funds. [OSB Legal Ethics Opinion No. 2005-172](#).

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