



Credit Card Processing: LawPay is In, Beacon is Out

Accepting credit cards is a painless way to improve collection of your accounts receivable. Unfortunately, many lawyers shy away from setting up a merchant account. Why? Cost – first and foremost. Some Oregon banks are charging as much as 5% per transaction to process credit cards. (Do the math! This translates to a \$50 bank fee to process a \$1,000 retainer.) Additionally, the ethical requirements imposed by [OSB Formal Opinion No. 172](#) can be intimidating. But *don't* be daunted. If you use a private credit card processor you can kill two birds with one stone. Let me explain how.

How to Save Money on Fees

For many years I steered attorneys to Beacon Processing, a tried and true [ABA TECHSHOW](#) vendor providing private credit card processing exclusively to attorneys and physicians. Beacon employed nice people, had incredibly low fees when compared to the typical bank, and did a great job. I am sad to report that Beacon has been transformed into [PracticeDock](#), which now caters exclusively to the medical profession.

Where Do I Go Now?

[LawPay](#) is now the big game in town. [LawPay](#) merchant services are offered as a member benefit by over 60 bar associations. However, you *don't have to be a member* of the listed bar associations to use [LawPay](#) as your credit card processor.

How does [LawPay](#) work?

- Lawyers using [LawPay](#) save up to 25% on credit card processing fees compared to typical bank charges for the same service.
- Fees are deducted exclusively from the operating account (no client money is ever taken).
- Funds are never commingled between the operating and trust account.
- You are in control of your deposits. If you take a credit card for a retainer, simply direct [LawPay](#) to deposit the funds in your trust account. If you accept a credit card for fees you have already earned, direct [LawPay](#) to deposit the proceeds into your operating account. Your ability to “direct traffic” ensures that funds are always properly separated.
- Transactions can be processed traditionally or via virtual terminal (i.e., over the Internet).

Tackling the Ethics

With [LawPay](#) funds are not commingled and client money is never touched to pay merchant fees. This approach removes about 80% of the [ethical barriers to accepting credit cards](#). What remains?

I've [blogged about this before](#), but as a reminder: one risk of taking credit cards is the possibility of a chargeback. To quote from [OSB Formal Opinion 2005-172](#):

One additional issue relating to credit card payments is the practice referred to as a "chargeback." Credit card issuers generally allow the customer to dispute a credit card payment for some period of time after it appears on the billing statement. On being notified of the dispute, the credit card company "charges back" the payment against the account to which it was originally credited. This practice can put the funds of other clients at risk if the credit card payment has already been earned and have the bank deduct all chargebacks from the lawyer's business account. If the bank is unwilling or unable to debit a separate account, the lawyer should try to arrange for an interaccount transfer process by which funds from the lawyer's business account will be transferred immediately to cover any chargeback to the trust account. However it is ultimately handled, **the lawyer is ethically bound to ensure that any chargebacks that jeopardize other client funds in trust are promptly covered with the lawyer's own funds.** (Emphasis supplied.)

Beware the Truth-in-Lending Act: Do NOT Pass Merchant Fees On to the Client Unless You Are Prepared to Offer Cash Discounts

[OSB Formal Opinion 2005-172](#) also points out the following:

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.

Written Fee Agreements and Credit Card Authorizations

The [Professional Liability Fund](#) offers a sample Fee Agreement and Authorization to Charge Credit Card with accompanying Credit Card Payment Authorization Form. [Read more here](#).

Get a Great Deal

Last year, [LawPay waived start-up fees for the month of August](#). It is possible they will do so again. If you want to approach [LawPay](#) now, you might ask if they have any special offers coming up soon. What the heck, it can't hurt!

A Final Word

Read more about the ins and outs of accepting credit cards [here](#) and attend the [Professional Liability Fund's](#) Trust Accounting CLE at the [Oregon State Bar Center](#) on May 12, 2011. A registration form should be available shortly on the [PLF Web site](#). (Select Upcoming Seminars under the Loss Prevention heading.) Yours truly will be speaking with [Dee Crocker](#) and [Helen Hirschbiel, Oregon State Bar General Counsel](#).

Author's Note: This is not a paid endorsement of [AffiniPay](#) or [LawPay](#). Practitioners should conduct their own independent research when selecting a credit card processor.

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