

ISSUE OUTLINE FOR 19-0001

I. ISSUE

- May an attorney accept credit card payments for not just payment of owed fees, but also as an advance for fees and/or costs?
- If so, how must an attorney handle charges for credit? Can those charges be passed on to the client?
- In which account may/must advance fees and costs be deposited (operating or trust)?
- How must an attorney handle a chargeback, where a client disputes a credit card charge after it has already been deposited?

II. AUTHORITIES

1. California Rules of Professional Conduct 1.4, 1.5, 1.6, 1.15
2. Business and Professions Code 6068
3. COPRAC Opinion 2007-172
4. Several sister state ethics opinions

III. ANALYSIS

While initially slow to gain acceptance, it is now widely understood that attorneys may be paid for services rendered by credit card. Many state ethics committees, including COPRAC, have opined on various different iterations of payment, including for services already earned, advances on fees, advances on costs, whether the service charges can be passed on to a client, and how to handle chargebacks. In addition, at least one credit card service has been sponsored by the ABA and many state bars. California, however, is not one of those bars (although several county bar associations within California are).

More than a decade ago, COPRAC Opinion 2007-172 opinioned that payment for fees – advanced and earned, could be accepted by credit card, but not costs because those had to be deposited directly into a trust account, and that was not possible with a credit card because they would have to be paid through a merchant account subject to invasion.

If there is a reason to reconsider this opinion in light of advances to the credit processing industry, then there are a host of other issues that should be addressed, including:

- Passing fees for credit card processing on to the client;
- How to handle processing fees to the extent they are taken directly from a client trust account;

- Can an attorney keep extra funds in the trust account to cover any such fees?
- How to handle chargebacks – both before fees have been earned, and after those fees have been earned and paid to an attorney from a trust account;
- Must a payment for advances on fees and/or costs be placed directly into a trust account or may the deposit be put into an operating account and then immediately transferred to the trust account, to avoid the charging of fees and/or chargebacks from a trust account?
- Privacy and other fraud concerns associated with credit card processing;
- Safeguarding of trust account funds specifically.