

Taking Charge: Accepting Credit Cards for Legal Fees

It's an increasingly cashless society. If your clients want to pay with plastic, will you let them? Credit cards are finding growing acceptance at law firms.

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When Chris Heckert launched his Columbus, Ohio, law firm in 2002, he had a hunch his future clients would want to pay by credit card. One reason was the nascent firm's anticipated concentration in areas such as personal injury, DUI, criminal law, divorce, wills and custody cases. People requiring help in such areas, Heckert figured, would often benefit from early counsel but lack the requisite cash.

Heckert's hunch was on the money. Credit card transactions now account for a whopping 50 percent of revenues at Heckert & Hockensmith, exclusive of court-appointed work. The firm's acceptance of MasterCard and Visa has allowed clients to enter into a kind of unstructured payment plan while reducing financial risk to the firm. As Heckert explains, "Our clients are able to put their fees on their cards and then pay off the balance as they are able."

At the Dallas firm Leon & Schulman, a two-partner firm that handles estate planning, probate and business cases, credit card transactions account for nearly 20 percent of revenues. Even the firm's small corporate clients often opt to pay by card to collect frequent flyer miles or avoid involved approval procedures back at the office. "You need to give clients as many options as possible," says partner David L. Leon. "You don't want to do anything that puts an impediment in the way of using your services."

These two firms are not alone in their fondness for plastic transactions as payment for earned fees. Lawyers everywhere are taking a new look at the benefits of credit cards—and much of the interest is driven by client demand.

Why Clients Like the Card Option

Smaller firms serving consumers are most likely to have clients who favor credit cards as supplements. And cards provide some added protection over cash payments, since payments can, on occasion, be mislogged in small and busy law offices. "Credit card statements give the consumer a record of what transpired," says Heckert. "Consumers also benefit in that credit card companies will assist with any disputes down the line."

Card usage has also increased in tandem with a decline in long-term lawyer-client relationships. "Because attorneys are specializing more than ever, people no longer go to the same lawyer for every issue that turns up," Heckert points out. "Since there is not much return clientele today, attorneys are saying they want their money up front." This can be difficult with clients who lack regular paying jobs or who have not saved up for a rainy day. "I don't know anyone who budgets for unanticipated legal expenses."

Not to be overlooked as a motivating force is the larger societal shift in credit usage that seems to have reached a tipping point in recent years. “The popularity and growth of America’s credit card industry is exceptional,” says Dan Hudson, an account executive at Englewood, Colorado-based First Data Corporation, one of the nation’s largest credit card processing companies. “The Federal Reserve reported in December 2004 that annual electronic payments have exceeded check payments for the first time.”

Ways Plastic Can Enhance the Revenue Stream

In addition to retaining clients who might otherwise jump to competing firms if required to pay cash, card-taking lawyers benefit in a number of other ways. For one, there is the increased profitability that results when fewer clients default on fee payments and the number of bounced checks dwindles.

Plus, there is the greater liquidity and higher interest earned from money received earlier. Cash from credit card transactions is typically available in the law firm’s bank account within two business days—quite an improvement from the weeks that often transpire before some clients drop their checks in the mail.

Indeed, it’s the overall certainty of obtaining client money reliably and rapidly that gets lawyers excited about the card option. That’s the primary reason the Kansas City-based Wirken Law Group hopped on the bandwagon quickly when the Missouri Bar issued an opinion in 2000 withdrawing objections to the use of credit cards. “One problem lawyers have always had is getting clients to pay their bills,” says partner James Charles Wirken, who has practiced law in Kansas for 35 years. “Any mechanism that facilitates that and gets your cash flow moving is a good thing. MasterCard ... Visa ... Amex ... you name it, we take it.”

How to Get a Merchant Account

Lawyers who want to accept cards must first arrange with a financial institution, called an “acquirer,” for a merchant account into which credit card transactions will be deposited. The lawyer must also have an arrangement with a “credit card processor,” a company that handles the requisite mechanics such as authorizing transactions and clearing and settling payments. These processors come in two flavors.

The first, called “direct processors,” own the processing equipment and have the know-how to actually handle the transactions. There are roughly 100 of these organizations in the United States.

The second, consisting of thousands of smaller outfits called “resellers”—also known as “independent sales organizations” or ISOs—are virtually indistinguishable from direct processors by the end-user, but they operate primarily as sales agents, farming out the work to their favored direct processors.

In practice, you may set up an account by approaching either an acquirer or a credit card processor, since the companies usually develop working partnerships—the banks maintain lists

of their favorite credit card processors and vice versa. Most lawyers opt for the route chosen by Leon, who approached the bank that already maintained his law firm's working account with questions about credit cards. "They had their own system so they took care of the details," he says.

Leon's firm is able to accept Visa, MasterCard, American Express and Discover under a commonly encountered fee structure: an \$8 monthly flat fee and also a percentage of each transaction, which varies from around 2 percent to 3 percent, depending on the card the client uses. At the law firm's end, the technology involves keying card data and the firm's assigned codes into a touch-tone phone.

Lawyers whose regular banks offer no merchant accounts and who come up short on recommendations—or who just like to shop around—can ask other lawyers and firms for referrals or start by searching the Internet for "merchant account" or "credit card processor." Heckert & Hockensmith assigned a secretary to spend the better part of a day doing just that, comparing prices and service packages. While all services offered pretty much the same combinations of equipment and processing capabilities, the quoted monthly fees and equipment charges varied. What proved even more important, however, was the variance in telephone support. "We signed up with a company that seemed to have excellent customer service, even though its rates were a little higher than the cheapest available," Heckert says.

(For guidance on developing a price comparison matrix for merchant accounts, see the "Shopping Pointers" sidebar.)

Methods of Acceptance

So what do you actually do when the client hands you a credit card? Lawyers have an array of transaction-input devices to select from, including the following:

- **Touch-tone processing.** Designed for low-volume transactions, this is the method favored by law firms interviewed for this article because of the ubiquity of touch-tone phones and the lack of need to purchase or lease additional equipment. Law firm staff simply key in dollar amounts and account codes.
- **Electronic card swiper.** Commonly seen in retail stores, these devices can efficiently handle hundreds of daily transactions. Prices typically vary from \$100 for a refurbished unit to \$200 to \$300 for a new one. (The older mechanical swiper, which takes paper slips, is still available but is mostly used by organizations conducting sales in remote locations such as trade shows.)
- **PC-based software.** This method involves installing a program on your computer, to which you can then optionally attach card readers and PIN pads. This allows you to establish databases of transactions, facilitating recordkeeping. Prices typically vary from \$100 to \$200.
- **Web-based payment processing.** Often referred to as an "Internet virtual terminal," this method allows clients to key in payment information at any terminal connected to the Internet. "Attorneys who use this method add a 'Pay Here' button to their firm's Web site," explains First Data Corporation's Hudson. "That enables clients to log on and pay

their bills. The firm is then automatically notified of the electronic payment.” Requisite software may vary in cost from \$200 to \$300.

One particularly intriguing acceptance method is PayPal, an online service that provides a way to accept credit cards via your Web site. Alex T. Roshuk, a Brooklyn-based solo practitioner concentrating in matrimonial matters, real estate-related litigation and a host of other largely consumer-oriented areas, is a PayPal user. Roshuk, who has been practicing for nearly eight years, started taking credit cards two years ago when he launched his firm’s Web site. “It’s just another way to show I am there for my clients,” he explains. “Anything I can do to make it easier for them makes me more successful.” While most clients still pay by check, some like the convenience of going to Roshuk’s site and clicking on the PayPal button. “My clients who are long-distance or international find it especially convenient to pay that way.”

PayPal’s processing fee of 2.9 percent plus 30 cents per transaction is not the cheapest around. But on the upside, there is no monthly fee, no minimum and no fee for a separate terminal, since transactions require nothing more than the client having a computer with an Internet connection and a working e-mail address. And then there’s the ease of use to consider. A lawyer can arrange for PayPal capability simply by entering required information on the vendor’s Web site. And the client can pay through the service without even having a PayPal account.

What’s on the Flip Side? The End Balance

Nothing good comes without cost, of course. A downside to credit card use is the added overhead. Even though card-taking firms receive merchant account statements monthly and can monitor their transactions on the Web, the card payments still represent a separate revenue stream that needs to be carefully tracked and recorded. “We keep detailed documentation on our computer and we have an accounting firm check the files every month and create reports on who pays what and when for what services,” says Chris Heckert. “Clients appreciate the documented reports we send them with records of their payments.”

That aspect is a plus, but nonetheless, it all adds to the time required for administrative tasks. And as it is, says Heckert, “When you are running a small firm, you essentially take one day off from legal work every week to run a small business.”

Then there is the issue of charge-backs, which are the charges a credit card merchant pays to a customer after the customer successfully disputes an item on his or her card statement. That amount is “charged back” against the account to which it was originally credited. Although none of the lawyers interviewed for this article reported a problem with charge-backs, there is certainly the possibility that they may occur. “There is some uncertainty involved with credit card payments,” admits Alex Roshuk. “The client who pays by check would have to file a suit against you in the event of a dispute. With credit cards, though, you are operating under another set of rules.”

Thankfully, charge-backs seem to be a rare occurrence and can be made still rarer when the lawyer takes care to make sure clients are satisfied with work accomplished. “I’ve had one charge-back in nine years,” reports David Leon. “It was for computer equipment I sold to a guy

who didn't realize he was buying it from a law firm. Took about a month to clear it up. In contrast, I have had far more bad checks given to me."

Last but not least, in the area of ethics, there is the tricky matter of avoiding any commingling of client and lawyer funds that violates the ethics rules of state bar associations. That potential risk arises when lawyers want to accept credit card payments for retainers. You want to check with your local bar association to see what rules and opinions govern in this area. (See the sidebar "Ethics Pitfalls of Credit Card Use.")

Yet do any of the downsides really represent deal-breakers for the plastic option? No, apparently not. Despite the added overhead and hassle, it seems nearly certain that more lawyers will be hopping on the credit card bandwagon as the cashless society grows and clients look for new ways to stretch their budgets.

As for the cut of every transaction that the credit card companies take, it seems small potatoes for those lawyers who are looking to solve the age-old problem of getting paid quickly. "Whatever fees are involved are so de minimis that they are not worth talking about," says James Charles Wirken. As he pithily sums it up, "Happiness is a positive cash flow."

LP

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Shopping Pointers

Expenses Involved in Accepting Credit Cards

Prices vary among merchant accounts, so it pays to shop around. When you're doing so, compare prices for the following items.

Discount Rate

The percentage that is deducted from each sale can vary from less than 2 percent to nearly 3 percent, depending on the card accepted, monthly transaction volumes and the deal you strike.

Per-Item Transaction Fees

Every sale is typically subject to a service fee that often falls between 30 and 50 cents.

Monthly Minimums

Monthly fees for maintaining the account come in a wide range, although \$8 is a frequently encountered figure.

Terminal Lease or Purchase Fees

If you opt for an input method other than touch-tone dialing, you will encounter fees ranging from \$100 to \$300.

Statement Fees

Look for any recurring charges that go under names similar to this.

Fees for Supplies

This one is usually not a factor, but it will be if you are using the mechanical swipers with paper slips that must be purchased.

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Ethics

Pitfalls of Credit Card Use

Accept credit cards for payment of earned fees and you're on pretty solid ground. Start accepting cards for retainers, though, and things get dicey. Retainer funds really belong to the client.

So lawyers are faced with a conundrum: When all credit card transactions go into the same merchant account, maintaining separate accounts for client and attorney funds would seem to be impossible.

What's the solution? Prudent law firms develop procedures that conform to the guidelines of their state bar associations.

One firm that has done so is Heckert & Hockensmith of Columbus, Ohio. When a client wants to use a card to advance a retainer payment, the firm first writes its own check for the specified amount on its general operating account and deposits that check into its trust account. Then the client's credit card is swiped through the terminal for the equivalent amount, in effect replacing the funds that had been migrated from the general operating account. While this process is a little awkward and requires careful documentation, partner Chris Heckert feels it is worthwhile to avoid any semblance of commingling. "We think it's better to take the slow road and do everything correctly."

Brooklyn lawyer Alex Roshuk has a different solution. Roshuk accepts credit card payments online through PayPal. Because PayPal operates as a bank and establishes an account for every vendor using its service, it provides an easy way to park funds until they can be allocated. "Once retainer money gets transferred from my client to my PayPal account, I can transfer it to my bank

trust account,” he explains. “Since PayPal automatically sends me an e-mail and posts it to my account statement when the funds are transferred, there is a paper trail to keep track of the funds.”

Lawyers have considered a number of other solutions, one of which is to create separate merchant accounts for client and lawyer funds. However, this is costly and the financial institution may not allow more than one account.

Another solution is simply to limit card payments to earned fees. One firm that has taken this route is Dallas’s Leon & Schulman. Most of the firm’s work is done on a flat-fee basis or billed at month’s end. The occasional retainer is handled via cash transaction or by check to avoid commingling the funds. This obviates ethical pitfalls (although from a practical standpoint, it may be difficult for many lawyers to turn down a client’s request to pay a retainer by credit card).

Finally, there are two additional ethical issues regarding credit cards and retainer accounts.

- **First**, service fees and bank charges on the lawyer’s merchant account might get deducted from a client’s retainer money. One possible solution is to deposit money from the operating account into the trust account in anticipation of such fees—if the state bar association permits.
- **Second**, a client might call for a charge-back, in which case another client’s money in the trust account will be used to cover the refund. A potential solution here is to have your bank deduct charge-backs from the operating account.

In all these areas, to sound anew a common theme, lawyers must carefully study their state bar associations’ published opinions and develop conforming procedures.

For more on this topic, read K. William Gibson’s “Ask Bill” column in the September 2005 Law Practice (available to LPM Section members only -- requires login). Also see the American Bar Association’s Formal Ethics Opinion 00-419, “Use of Credit Cards for Payment of Legal Fees” (2000), available for \$7.50 at www.abanet.org.