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## Charge It: New OSB Opinion on Credit Cards

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Lawyers have been able to accept credit card payments for a long time. As banks and other financial companies in recent years have offered “reward” programs tying everything from “air miles” to college saving plans to their cards, clients have increasingly used credit cards to pay for legal services.

So what’s the rub? Lawyers are required by the trust account rule—DR 9-101—to have two kinds of bank accounts: (1) a business account for funds belonging to the lawyer; and (2) a trust account for funds belonging to the client. But some banks only allow credit card payments to be deposited into one account. Which one?

If a lawyer only accepts credit card payments for completed services, then the answer is easy—the payments received should go into the lawyer’s business account. Many lawyers, however, accept credit card payments for both earned fees *and* advance deposits. The former are clearly the lawyer’s and the latter are clearly the client’s until the fees have been earned.

The Oregon State Bar recently issued an ethics opinion addressing the “which account” question and a number of other practical issues on accepting credit card payments. The new opinion—2003-172—is available on the Bar’s web site at [www.osbar.org](http://www.osbar.org).

On the “which account” question, Opinion 2003-172 begins by noting that if a lawyer’s bank will allow credit card payments to be deposited into two separate accounts, then the lawyer should direct earned fees into the lawyer’s business account and advance deposits into the lawyer’s trust account. However, if the lawyer’s bank will only allow credit card payments to be linked with one account *and* the lawyer accepts credit cards for advance deposits, Opinion 2003-172 concludes that the payments should be deposited into the trust account as long as the portion reflecting earned fees is then transferred promptly into the lawyer’s business account.

Another important practical issue that Opinion 2003-172 covers is credit card service fees. Lawyers are permitted to deposit their own funds into trust accounts to cover service fees. An earlier Bar opinion—1996-145—cautioned, however, that lawyers are not permitted to deposit funds above and beyond service fees into their trust accounts as a “cushion” to avoid overdraft notification to the Bar. Opinion 2003-172 strongly suggests that lawyers use transfer programs where funds are moved automatically from the lawyer’s business account to the trust account to cover service fees as they are incurred. If the lawyer’s bank does not offer this service, then the lawyer must make sure that funds sufficient to cover service fees—but no more—are timely transferred to the trust account so that client funds aren’t inadvertently used to pay this expense.

In a “plastic economy,” the ability to accept credit card payments offers lawyers an important tool for keeping clients happy. At the same time, credit card payments intersect with a particularly sensitive and strict professional obligation—proper handling of client funds. Opinion 2003-172 offers Oregon lawyers practical and thorough advice to navigate safely through this intersection.

### **ABOUT THE AUTHOR**

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. He is a past member of the Oregon State Bar’s Legal Ethics Committee, is a past chair of the Washington State Bar Rules of Professional Conduct Committee, is a member of the Idaho State Bar Professionalism & Ethics Section and is a co-editor of the OSB’s Ethical Oregon Lawyer and the WSBA’s Legal Ethics Deskbook. Mark also writes the monthly Ethics Focus column for the Multnomah (Portland) Bar’s Multnomah Lawyer, the quarterly Ethics & the Law column for the WSBA Bar News and is a regular contributor on risk management to the OSB Bar Bulletin, the Idaho State Bar Advocate and the Alaska Bar Rag. Mark’s telephone and email are 503.224.4895 and Mark@frllp.com.