

MARYLAND STATE BAR ASSOCIATION, INC.

COMMITTEE ON ETHICS

ETHICS DOCKET 03-06

May credit card payments of retainer fees be deposited into an operating account if unearned fees are transferred on a daily basis into a trust account?

You advise that your firm accepts credit card payments for fees for services already performed as well as for retainers for fees not earned at the time of payment. You inquire as to whether you can accept the credit card payments into the firm's operating account assuming you transfer retainer payments into the firm's trust account on a daily basis. Alternatively, you ask whether the firm could have all credit card payments deposited to the trust account with the funds for earned fees being promptly transferred to the operating account.

The Committee has previously concluded that the Maryland Rules of Professional Conduct permit attorneys to accept credit card payments for fees for legal services performed and for retainers for fees not yet earned. Ethics Docket 01-15. However, because of the possibility of service fees or transaction rescissions when accepting credit card payments the Committee has qualified its general endorsement of that practice. *See* Ethics Dockets 01-15 and 97-14.

Rule 1.15 of the Rules of Professional Conduct requires Maryland attorneys to comply with Title 16 of the Md. Rules in holding property of clients¹. The Committee is not authorized to advise you concerning the proper interpretation of Title 16 of the Maryland Rules. Instead it interprets your obligations under Rule 1.15 of the Rules of Professional Conduct and in so doing makes inferences concerning the meaning of that Rule based upon the language of Title 16.

Rule 16-604 of the Md. Rules states, in essence, that all funds received from a client shall be deposited in a trust account, unless the funds were received as payment of fees owed or reimbursement of expenses advanced. Rule 16-607 addresses commingling of funds and permits an attorney to deposit funds to pay fees levied by the financial institution for maintaining the account. It also permits the deposit of funds that belong in

¹The Maryland Court of Appeals has appointed a special committee (informally known as the Rodowsky Committee) to review and, where appropriate, suggest changes to the Maryland Rules of Professional Conduct. That Committee has proposed various revisions to the Rules, including some pertaining to Rule 1.15. The Committee's full report can be found at www.msba.org. Comments on the proposed revisions are being received through July 15, 2003. This Opinion is based on the current version of Rule 1.15.

part to the client and in part to the lawyer into trust accounts.

The Committee believes that the Maryland Rules of Professional Conduct prohibit accepting credit card payments into operating accounts for retainers paid but not yet earned, regardless of how promptly such payments are transferred to a trust account. Rule 16-604, otherwise made binding upon Maryland lawyers by Rule 1.15 of the Maryland Rules of Professional Conduct, states in pertinent part that all such funds “shall be deposited in an attorney trust account...” No exception is made for temporary deposits into other accounts. As for Md. Code Ann. Bus. Occ.& Prof. Section 10-304, noted in your letter, we note only that it does not specifically authorize payment of client funds into non-trust accounts.

You inquire whether Ethics Docket 97-14 requires that credit card payments of unearned retainers be paid into an operating account because they may not be paid into a trust account given the possibility of charge backs. To the contrary, Ethics Docket 97-14 approved the use of trust accounts to receive such payments as long as adequate safeguards were implemented to avoid the possibility of client funds being charged for account fees, charge backs or transaction rescissions.

The alternative you pose, i.e., depositing all credit card payments to a trust account with prompt transfer of earned fees to an operating account does, with certain safeguards, comply with the Maryland Rules of Professional Conduct. Specifically, Rule 1.15, subject to the limitations of Rule 16-604 and 16-607(b)(2), would be satisfied in that unearned retainer fees are deposited into a trust account and earned fees are promptly withdrawn. However, this method of receiving credit card payments will require your firm to deposit and maintain sufficient funds to cover all potential account fees, charge backs and transaction rescissions. See, Ethics Docket 01-15 and 97-14.