

Using a credit card to pay bankruptcy filing fees

U.S. Bankruptcy Courts permit bankruptcy filing fees to be paid via credit card by the petitioner's lawyer. However, pursuant to Wisconsin Supreme Court Rules (SCR) 20:1.15(e)(4)e., the credit card used to pay such filing fees cannot be connected in any way with the lawyer's trust account. That rule states, in pertinent part, as follows:

Credit card transactions. A lawyer shall not authorize transactions by way of credit card to or from a trust account.

Similarly, SCR 20:1.15(e)(4)f. prohibits the use of debit cards. That rule states:

Debit card transactions. A lawyer shall not use a debit card to make deposits to or disbursements from a trust account.

These electronic transactions are prohibited under the Wisconsin Supreme Court Rules because, by allowing debit and credit card institutions access to a trust account, a lawyer loses the ability to safeguard funds and properly document the purpose of trust account transactions. That being said, a lawyer may pay filing fees with a credit card, but the lawyer needs to establish procedures to assure that trust funds held in connection with those payments are handled properly and that the transactions involved are fully documented.

First of all, lawyers who represent clients in bankruptcy proceedings should exercise caution in advancing filing fees, i.e., paying a filing fee by credit card before the client's funds relating to that payment have been deposited in the lawyer's trust account, and should review relevant law regarding the discharge of pre-petition debts. Upon receipt of the credit card institution's billing statement, which reflects that a client-related cost has been incurred, the lawyer must disburse the payment of the client's filing fee from the trust account to the credit card institution. [See, SCR 20:1.15(b)(4)].¹ In addition, pursuant to SCR 20:1.15(f)(1)e.1.,² the purpose of the payment to the credit card institution from the lawyer's trust account must be identified on the check's memo line.³ By following these steps, a lawyer properly documents that funds received from a client to pay a filing fee are disbursed for the purpose intended by the client.

While the Bankruptcy Courts provide no specific guidance as to the use of credit cards to pay filing fees for clients, OLR wants lawyers to be aware that, in the event that OLR is required to investigate problems relating to a lawyer's trust account, the lawyer may be asked to produce the credit card billing statement relating to any disbursement from a trust account to a credit card institution. OLR, therefore, suggests that a lawyer who pays filing fees by credit card should retain the credit card statements with the lawyer's trust account records. OLR further suggests that such lawyers carefully review those statements upon receipt and connect each filing fee that appears on the statement to a particular client. By following this procedure, a lawyer can be certain that the credit card statement contains no errors or omissions, such as a double billing, or a lack of payment when the lawyer's records reflect that a filing fee was charged to the credit card.

Finally OLR strongly recommends that lawyers, particularly those who handle a significant amount of bankruptcy work, segregate trust account "expenses" from business and/or personal expenses by maintaining a separate, special purpose credit card to conduct transactions that will have to be paid from the trust account.

¹ SCR 20:1.15(b)(4) **Unearned fees and cost advances.** . . . Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

² SCR 20:1.15(f)(1)e.1. **Checks.** . . . Each check disbursed from the trust account shall identify the client matter and the reason for the disbursement on the memo line.

³ The payment of a single filing fee could be documented on the memo line as follows: "Smith – Ch. 7 Filing Fee". However, if a payment includes numerous filings, the lawyer should identify those filings in a manner that will be verifiable through other records, such as those maintained by the court. For example, the memo line might reflect that the payment relates to: "12 Fees (Ch. 7) & 6 Fees (Ch. 13) (1/7/06 - 1/28/06)."