

ATTACHMENT*

RULES OF THE SUPREME COURT

Rule 42. Arizona Rules of Professional Conduct

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ER 1.15. Safekeeping Property

(a) [No change in text.]

(b) A lawyer may deposit the lawyer's own funds in a client trust account only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

(1) to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account; or

(2) to pay any merchant fees or ~~charges related to credit card transactions~~ transaction fees or to offset debits for credit card chargebacks.

(3) Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

(c)-(e) [No change in text.]

* Changes and additions to text are indicated by underscoring; deletions from text are indicated by ~~strikeouts~~.

Comment [2009 Amendment]

[1] The 2009 amendments to E.R. 1.15 correspond with the 2009 amendments to Supreme Court Rule 43 on Trust Accounts. Supreme Court Rule 43 and the 2009 comments thereto contain additional requirements and procedures governing credit card transactions.

[2] For purposes of this rule, “merchant fees” and “credit card transaction fees” are fees that are deducted from the amount of the credit card charge to pay the company that issued the client’s credit card, the lawyer or law firm’s credit card processing service, ~~and~~ the credit card association (e.g., Visa, MasterCard), and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or law firm, reduces the amount that can be credited to the client’s account. A “chargeback” (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer’s or law firm’s account is debited an amount equal to the disputed amount, plus a chargeback fee.

~~Three methods of accepting credit card payments are permitted: (a) the lawyer or law firm may accept credit card payments for earned fees and the reimbursement of costs or expenses, in which case the funds must be deposited into the lawyer’s or law firm’s operating or business account (*see infra* for only exception); (b) the lawyer or law firm may accept credit card payments for advance fees, costs or expenses, in which case the funds must be deposited into the lawyer or law firm’s trust account; or (c) the lawyer or law firm may use a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction should be deposited (i.e., the lawyer or law firm must direct the deposit of funds for advance fees, costs or expenses into the trust account and the deposit of funds for earned fees and the reimbursement of costs or expenses into an operating or business account). Nothing in this rule prohibits lawyers from using one credit card account for the payment of earned fees and reimbursement of costs or expenses (with deposits made into an operating or business account) and another credit card account for the payment of advance fees, costs or expenses (with deposits made into the trust account).~~

~~Earned fees and funds for reimbursement of costs or expenses may be deposited into a lawyer’s or law firm’s trust account only if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses. In such case, the earned fees and funds for reimbursement of costs or expenses must promptly be withdrawn from the trust account. When a lawyer or law firm uses a credit card~~

~~processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction will be deposited, earned fees and funds for reimbursement of costs or expenses may never be deposited into the trust account (a separate credit card transaction should be conducted for the payment of any earned fees or the reimbursement of costs or expenses). To further protect client and third-party funds, lawyers and law firms should strive to use a credit card processing service that deposits advance fees, costs and expenses into the trust account but which debits the operating or business account for all fees and charges related to credit card transactions (e.g., merchant or credit card transaction fees, chargebacks and fees associated therewith, other charges or fees related to credit card transactions).~~

~~Lawyers are responsible for knowing whether the company issuing a client's credit card allows charges for future services. If the company issuing a client's credit card does not permit the client to use the card for payment of future services, then the lawyer may not accept payment for advance fees or anticipated costs or expenses using that credit card.~~

[3] Lawyers and law firms are permitted, and in some cases may be required, to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain sufficient funds of their own in their trust accounts to ensure that no bank or credit card fees or charges results in the conversion or misappropriation of funds belonging to clients or third parties. ~~A lawyer violates this rule by failing to make the required deposit within three business days of receipt of notice or actual knowledge that a chargeback has been made to the trust account. When lawyers and law firms are required to maintain their own funds in their trust accounts to reimburse the account for trust account and credit card fees and charges, such funds must be deposited into their trust accounts before such fees or charges are imposed. Lawyers and law firms must maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all credit card fees and charges (e.g., merchant and credit card transaction fees, chargeback fees, minimum monthly transaction fees, address verification fees) and related charges.~~ Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. ~~Lawyers who maintain an unreasonable amount of their own funds in their trust accounts will be subject to a finding of misconduct.~~ Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to cover those charges, since no client or third-party funds will be at risk due to debits from the trust account. ~~When credit card funds are appropriately deposited into a trust account,~~

~~the merchant or credit card transaction fees paid by the client as part of the credit card transaction must remain in the trust account until those funds are debited from the account. A lawyer or law firm, however, may agree to pay merchant or credit card transaction fees for the client. In that event, the lawyer or law firm must have funds of their own in their trust account in an amount at least equal to the merchant or credit card transaction fees before conducting the transaction. A failure to do so will result in the conversion or misappropriation.~~ Lawyers should consult Rule 43 on the circumstances when lawyer funds are required to be maintained in a trust account to avoid misappropriation or conversion of client or third-party funds when the merchant or credit card transaction fees are debited from the trust account.

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Rule 43. Trust Accounts

(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer. Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept separate and apart from the lawyer's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The location of the trust account shall be controlled by the provisions of ER 1.15(a). No trust account required by this rule may have overdraft protection. No funds belonging to the lawyer or law firm shall be deposited into a trust account established pursuant to this rule except as follows:

1. [No change in text.]

2. Funds to pay merchant fees or ~~charges related to credit card transactions~~ transaction charges or to offset debits for credit card chargebacks, but only in an amount reasonably estimated to be necessary for those purposes may be deposited therein.

3. Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

4. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm must be withdrawn when due and legally available from the financial institution, or within a reasonable time thereafter, unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the lawyer shall comply with ER 1.15(e).

(b) Trust Account Requirements.

1. *Standards of Performance.* [No change in text.]

2. *Trust Account Records.* [No change in text.]

3. *Deposits from Credit Card Transactions.* A lawyer or law firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if:

A. the lawyer has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges;

~~B. Permitting the deposit of funds from a credit card transaction into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees is at the risk of the lawyer permitting the deposit. If a debit is made from a lawyer's or law firm's trust account due to a credit card chargeback, the lawyer permitting the deposit must, within three business days of receipt of notice or actual knowledge that a chargeback has been made, act to protect the property of the lawyer's or law firm's clients and third persons by depositing deposits into the trust account his or her own funds in an amount equal to the amount of the chargeback that exceeds the client's credit card funds remaining in the trust account, and any fees or charges associated with the chargeback. If within three business days of receipt of notice or actual knowledge that a chargeback has been made a lawyer uses his or her own funds to replace funds debited from the trust account, as set forth above, the lawyer will not be considered to have committed professional misconduct based upon placement of those credit card funds into the client trust account.; and~~

C. the trust account contains sufficient funds of the lawyer or law firm at the time of the transaction to pay all merchant and credit card transaction fees, except to the extent such fees are paid by the client as part of the transaction.

4. *Disbursement Against Uncollected Funds.* [No change in text.]

5. *Methods of Disbursement.* [No change in text.]

(c)-(j) [No change in text.]

Comment [2009 Aamendment]

[1] In an attempt to balance the need to safeguard client and third-party property and encourage access to legal services to those who need them, lawyers may allow funds from credit card transactions to be deposited into their client trust accounts for advance fees, costs or expenses, and merchant or credit card transaction fees related thereto. Lawyers who choose to accept credit card payments for advance fees, costs or expenses must comply with the procedures and requirements in this rule. Permitting the deposit of funds from a credit card transaction into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees is at the risk of the lawyer permitting the deposit.

[2] For purposes of this rule, “merchant fees” and “credit card transaction fees” are fees that are deducted from the amount of the credit card charge to pay the company that issued the client’s credit card, the lawyer or law firm’s credit card processing service, ~~and~~ the credit card association (e.g., Visa, MasterCard) and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or law firm, reduces the amount that can be credited to the client’s account. A “chargeback” (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer’s or law firm’s account is debited an amount equal to the disputed amount, plus a chargeback fee.

[3] ~~Three methods of accepting credit card payments are permitted: (a) The rule prohibits funds belonging to the lawyer or law firm may accept credit card payments for from being deposited into a trust account except in limited circumstances. The rule allows earned fees and the funds for reimbursement of costs or expenses, in which case the funds must to be deposited temporarily into the lawyer’s or law firm’s operating or~~

~~business trust account (*see infra.* for only exception); (b) the lawyer or law firm may accept credit card payments for advance fees, costs or expenses, in which case the funds must be deposited into the lawyer or law firm's trust account; or (c) the lawyer or law firm may only when those funds are part of a single credit card transaction that includes payment of advance fees, costs and expenses, and the lawyer does not use a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction should be deposited (i.e., the lawyer or law firm must direct the deposit of funds for advance fees, costs or expenses into the trust account and the deposit of funds for earned fees and the reimbursement of costs or expenses into an operating or business account). Nothing in this rule prohibits lawyers from using one credit card account for the payment of earned fees and reimbursement of costs or expenses (with deposits made into an operating or business account) and another credit card account for the payment of advance fees, costs or expenses (with deposits made into the trust account).~~

~~[4] Earned fees and funds for reimbursement of costs or expenses may be deposited into a lawyer's or law firm's trust account only if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses. In such case, the earned fees and funds for reimbursement of costs or expenses must promptly be withdrawn from the trust account. When a lawyer or law firm uses a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction will be deposited, earned fees and funds for reimbursement of costs or expenses may never be deposited into the trust account (a separate credit card transaction should be conducted for the payment of any earned fees or the reimbursement of costs or expenses). To further protect client and third-party funds, lawyers and law firms should strive to use a credit card processing service that deposits advance fees, at the lawyer's direction, will deposit advance fees, costs and expenses into the trust account but which debits and will debit the operating or business account for all fees and charges related to credit card transactions (e.g., merchant or credit card transaction fees, chargebacks and fees associated therewith, other charges or fees related to credit card transactions).~~

~~Lawyers are responsible for knowing whether the company issuing a client's credit card allows charges for future services. If the company issuing a client's credit card does not permit the client to use the card for payment of future services, then the lawyer may not accept payment for advance fees or anticipated costs or expenses using that credit card.~~

~~[5] Lawyers and law firms are permitted to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by~~

credit card for advance fees, costs or expenses must at all times maintain sufficient funds of their own in their trust accounts to ensure that no bank or credit card fees or charges results in the conversion or misappropriation of funds belonging to clients or third parties. A lawyer violates this rule by failing to make the required deposit within three business days of receipt of notice or actual knowledge that a chargeback has been made to the trust account. ~~When lawyers and law firms are required to maintain their own funds in their trust accounts to reimburse the account for trust account and credit card fees and charges, such funds must be deposited into their trust accounts before such fees or charges are imposed. Lawyers and law firms must maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all credit card fees and charges (e.g., merchant and credit card transaction fees, chargeback fees, minimum monthly transaction fees, address verification fees). Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Lawyers who maintain an unreasonable amount of their own funds in their trust accounts will be subject to a finding of misconduct. Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts since no client or third-party funds will be at risk due to debits from the trust account.~~

[6] When credit card funds are appropriately deposited into a trust account, ~~the~~any merchant or credit card transaction fees paid by the client as part of the credit card transaction must remain in the trust account until those funds are debited from the account. A lawyer or law firm, however, may agree to pay merchant or credit card transaction fees for the client. In that event, the lawyer or law firm must have funds of their own in their trust account in an amount at least equal to the merchant or credit card transaction fees before conducting the transaction. A failure to do so will result in the conversion or misappropriation of client or third-party funds when the merchant or credit card transaction fees are debited from the trust account. Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay such fees and charges. Lawyers who maintain an unreasonable amount of their own funds in their trust accounts may be subject to a finding of misconduct.

[7] Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to pay such fees and charges, as no client or third-party funds will be at risk due to debits from the trust account.