The New Future Of Legal Payments: 4 Ethical Considerations Surrounding Online Payment For Law Firms

By Sarah Schaaf
Your clients will pay faster and more often when given an easy and secure way to do so, and their satisfaction with your firm is directly linked to how convenient you make the payment process. When done correctly and compliantly, offering online payment can be incredibly simple and result in a major ROI.
the inability for most payment tools to comply with attorney’s ethical and professional responsibilities, and the time and effort required by firms to make the switch.

Given the rising ubiquity of online payments across all industries, it’s safe to say that attitudes have changed and lawyers should feel hard pressed to adjust to the times. Consumers now pay the majority of their bills online including professional services, and they’d prefer to pay their attorney online as well. Let’s move on to discussing the ethical considerations you should be aware of and how you can modernize your payments as painlessly as possible.

4 Ethical Considerations For Law Firms Before Accepting Online Payment

Although it may seem confusing or overwhelming at first, attorneys can comply with the rules we are about to discuss with little or no effort by choosing the right payment tool for their firm. Although these rules are discussed generally, attorneys should be sure to check with their state bar to ensure compliance with their local jurisdiction.

Reason #1: Commingling Client Funds

Let’s start with a rule you’re already familiar with and definitely remember from your ethics class in law school. Rule 1.15 of the ABA Model Rules of Professional Conduct prohibits attorneys from commingling clients’ funds with their own. Essentially, if you are going to be holding unearned client funds they must be kept in a trust account totally separate from the operating account where you keep earned fees.

Seems straightforward enough: earned fees must be deposited into an operating account and unearned fees directly into a totally separate trust account. But what about the implications of accepting online payment to both trust and operating accounts, including during the online transmission process when the client funds are being electronically sent to your account? How can you be sure that unearned funds are segregated even during the online transmission process?

Therein lies the issue with off-the-shelf payment tools not made specifically for lawyers and the legal industry. Traditional credit card and eCheck processors don’t have an option to have funds deposited into separate trust and operating accounts once dispersed, let alone guaranteed segregation during the electronic transmission process itself. This offers a major ethical issue if you’d like to find an online solution that will allow you to compliantly accept payments for both earned (operating) and unearned (trust) funds.

Bottom line: don’t use a non-legal industry specific payment tool to facilitate online payments of unearned funds, period. Choose a payment tool made for lawyers and law firms that allows you to link both your trust and operating accounts and protects earned and unearned funds from commingling even during the online transmission process.
**Reason #2: Chargebacks**

Moving on to a consideration that may not be as familiar to attorneys, the ethical issue surrounding a chargeback or return request for a payment submitted electronically.

Under the Truth in Lending Act ("TILA") and Regulation Z, consumers (aka clients) have a certain period of time to dispute a charge made by credit card or eCheck, also called a "chargeback" or "return request". When a client disputes a charge, the payment system (credit card authorizer or bank facilitating the eCheck transfer) initiates a chargeback reversing the charge pending resolution of the dispute and impending investigation.

Under Rule 1.15 attorneys must appropriately safeguard client property. This can come into contrast with the rules dispelled under TILA and Regulation Z if a chargeback is allowed from an attorney's trust account, thereby putting unearned client funds at risk. To put this in clearer terms, if an attorney accepts an online retainer from a client and then the client requests a chargeback, the funds will be debited from the attorney's trust account thereby breaking Rule 1.15.

Luckily, there is an easy solution. Headnote deals with this issue by debiting any debits or chargebacks from your operating account instead of your trust account, even if the funds were originally deposited into your trust account. As such unearned funds are always protected from chargeback and you remain totally compliant with Rule 1.15.

Bottom line: chargebacks may seem confusing, but you can easily and simply avoid any issues by choosing a payment tool made for lawyers and law firms.

**Reason #3: Handling of Fees and Surcharges**

Similar to the chargeback consideration, Rule 1.15 disallows any third party to have access to client funds, including the prohibition of any fees or surcharges to be debited from client funds or a trust account. Let's break this down to understand the concerns.

Offering and accepting online payment generally comes with some fees attached. These fees vary across payment tools. Some charge setup and/or monthly fees in addition to transaction and/or processing fees for every payment successfully completed. Whether nominal or not, there are always some fees associated with making or accepting an online payment.

For instance, standard rates for credit card processing for any industry are normally between 2.95% and 3.5%. Depending on the industry or the services provided, these fees may be paid by the merchant or the consumer. In either case, these fees are generally taken out of the transaction at the time it’s processed and paid to a third party service facilitating the underlying online payment (Visa, Mastercard, Amex, CitiBank, PayPal, etc.).

Now let's consider the ethical consequences if fees are permitted to be taken from unearned funds or deducted from a trust account. Because these fees would be deducted from client funds it would amount to a failure on the attorney's part to safeguard client property under Rule 1.15. Thus, fees of any sort can never be deducted from unearned client funds or from your trust account for any reason. If fees are going to be deducted they must always be deducted from an attorney's operating account so that they are taken from earned fees.
belonging to the attorney at the time of the transaction.

Bottom line: It can be problematic for attorneys to use an off-the-shelf payment tool due to the rules surrounding the collection of fees from unearned funds and trust accounts. As such, attorneys need to use a payment tool that automatically deducts any and all fees from the operating account and never allows fees to be drawn from a trust account or unearned funds.

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**Reason #4: Protecting Client Information**

The last consideration we’ll be examining in this guide relates to an attorney’s duty to protect confidential client information under Rule 1.6 which extends to any client information necessary to facilitate an online payment.

It seems self-explanatory in this day and age that when you make an online payment for anything via any means, some amount of identifiable information is going to be transmitted electronically in order to process the payment or resolve disputes. Whether you buy milk at the grocery store with your debit card or make an online Amazon purchase with your Visa card, basic information including your name and payment information is going to be transmitted electronically, even if it’s protected by being encrypted and tokenized.

Despite this perceived common knowledge, the ABA’s Model Rules of Professional Conduct still apply. As a result, attorneys are advised to get their client’s informed consent prior to allowing them to pay online.

Bottom line: firms should inform clients about their use of online payment and obtain their consent when they engage the client and/or when the client submits an online payment.

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**Closing Consideration: Making The Best Choice For Your Firm**

Now that you’re an expert on the ethical considerations surrounding accepting online payment, it’s time to decide the best course of action for your firm. You know your clients want it and it’s time to offer them a better choice than mailing a check. By now it should be clear that your best and safest bet is to choose a payment tool made specifically for you - but how much time, money and effort will be involved with making the switch to online payment?

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**How To Easily Get Started**

Headnote is a payment tool made by lawyers and technologists specifically for law firms and the legal community. Headnote allows attorneys and firms of any size to start accepting online payment without changing any of their current software or processes. Easily create a unique and secure payment request link, then send using whatever software, email or system you’re currently using for invoicing, including legal or accounting software like Quickbooks, Clio, PracticePanther, Bill4Time, TimeSolv, Tabs3 and many more.

Signing up for Headnote takes less than 5 minutes and there are never any setup or monthly fees - you’ll only ever pay transaction fees with Headnote (as low as 1.9%) when you receive a payment. Headnote’s
exclusive flow of funds allows attorneys to accept online payment to both operating and trust accounts with 100% compliance with IOLTA and the ABA’s Model Rules of Professional Conduct. There is simply no other legal payment tool that rivals Headnote in terms of compliance, security, affordability and client experience.

Visit headnote.com to learn more, and if you’d like to set up a demo please email help@headnote, live chat us from our website, or call 888.384.3236.

About The Author

Sarah Schaaf is a “reformed” attorney licensed in the State of California. Sarah attended Loyola University Chicago School of Law where she served as President of the student body and was an editor and author for the International Law Review. After graduating in 2008, she worked at medium and large firms before taking an in-house position at Google. Sarah left Google to become an entrepreneur and founded Headnote in 2016. She lives in San Francisco with her husband, son, and rescue dog, and loves the podcast More Perfect about the US Supreme Court.
References


² Id.

³ Id.

⁴ Model Rules of Professional Conduct r. 1.15 (AM. BAR ASS'N 2009).


⁶ Model Rules of Professional Conduct r. 1.15 (AM. BAR ASS'N 2009).

⁷ It should be noted that some states allow or prohibit transaction and processing fees for online payment to be passed onto an attorney’s client. Attorneys should check with their state and local rules to make sure they are complying with their responsibilities before deciding whether to pay these fees themselves or charge them to the client.

⁸ Model Rules of Professional Conduct r. 1.6 (AM. BAR ASS'N 2009).

⁹ Model Rules of Professional Conduct r. 1.6, 1.1 and 1.4 (AM. BAR ASS'N 2009).