



ALL MERCHANT ACCOUNT PROVIDERS ARE NOT THE SAME

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This is a cautionary tale. A true story. A PBA member shared the details of her worrisome and frustrating experience just yesterday. She gave me permission to share this story with others. My hope is that by doing so you may avoid the same experience.

We begin when the attorney decided to allow clients to pay retainers and invoices by credit card. I was not given specific detail as to what due diligence was employed in selecting the vendor. But based on aspects of our conversation, I suspect that the fee structure was a primary factor in their selection. Based on when the services were engaged, I also suspect that there weren't a large number of contenders from which to choose. Why? Because most merchant account providers back then would only deposit money into one account, not two.

Three years ago, a client paid a \$3,000 retainer by credit card. Work progressed in fits and starts as is typical of the particular area of practice. The client was unhappy with the delays and lack of progress, none of which were controllable by counsel. And of course, as things dragged on, fees were incurred unhappily by the client.

The client was described as difficult, and at times unreasonable and bordering on irrational. The client was responsible for some of the delays by failing to be "accurate" about details, failing to provide documentation in a timely fashion, and more. Many of you are probably feeling a chill creeping up your neck as you read this, recalling similar clients of your own that you've had to deal with over the years. As you know, they rarely accept responsibility for their contribution to any of the difficulties encountered in the representation. They are quick to assign blame. They are usually those who complain the most about the cost of representation, as well. Sigh!

Unrelated to the client's representation, the lawyer changed merchant account service providers in year two of the representation. I did not ask why that change was made. The attorney continued to allow clients to pay by credit card, with the change being of no consequence and transparent to clients.

Somewhere in the third year of representation, the matter heated up again. The attorney properly communicated to the client as to what to expect in terms of fees and costs. The client was totally exasperated by the duration of the matter, as well as the additional fees on the horizon. He decided to represent himself pro se. In communicating that decision to the attorney, the client wrote that he was not in any way unhappy with the work the attorney had performed to date, but simply did not feel he could pay additional fees.

The attorney promptly provided the client with his file, and a refund of under \$200; the remaining balance of his money in the trust account. She was privately relieved when she filed the order to withdraw, and closed the file.

Fast forward approximately 6 months to a week ago. The attorney received a letter from the former merchant account service provider. It stated that the former client was disputing the 3-year-old charge of his \$3,000 retainer for “failing to provide services,” and further informed the attorney that it had taken that money back from the trust account. A call to the bank verified the money was gone.

Yes, you read that correctly. No phone call. No preliminary opportunity to respond. Can you imagine the panic you would feel if money was unjustly removed from your trust account, and you only found out about it after the fact by letter? Especially when you know that one hundred percent of the funds removed belongs to other clients!

Upon calling the merchant, the attorney was bounced around a bit. When she finally got someone who would speak with her about the matter, she was pretty steamed. She demanded to see what the client submitted, and to be able to respond. She was told that she had to go through her portal to do so. Not being a current customer, she no longer had access to the portal. They said they would not provide access any other way; not even by mail.

Yes, your blood pressure is rising just reading about this. Rightfully so. This is no way to do business, and left the attorney temporarily powerless to restore missing client funds to the trust account. Urgent calls were placed to the Ethics Hotline, and the Malpractice Avoidance Hotline at the professional liability insurance company. There were many sleepless nights, and unproductive days which followed.

Interestingly, one other call was made by the attorney. She called LawPay. They are the bar-endorsed merchant account service provider. She asked them how



they would handle a hypothetical client dispute. The answer was an eye-opener. First, they would immediately pick up the phone and call the attorney. They would never take money out of the account without revealing details of the dispute, and allowing the attorney to respond. The client would then have to respond to the attorney's statement and any submitted supporting materials, like invoices, to prove the money should in fact be returned. If a determination was made that the refund should be made for the disputed charge, the attorney would be advised of that fact and only then would the deduction be made. Now that, folks, is how it's done properly!

If you've ever disputed a charge yourself, you know that merchant account providers (credit card issuers) don't all have the same cardholder agreement terms. Back in the day American Express had the strongest pro-cardholder agreement. It entitled the cardholder to get an immediate credit for any dispute. It was up to the seller to satisfactorily prove the dispute lacked merit. Similarly, their agreement with vendors who signed on to accept American Express payments had to agree that their account would be immediately debited for any disputed charge, and they would have to defend the dispute to get the money returned.

With my MasterCard agreement, I could dispute a charge, but it was up to me to prove my case before a credit went on my statement. I found out to my dismay that the agreement they had on the back end restricted them from taking the money back without the agreement of the vendor. That rarely happens. This is the other extreme.

The type of agreement that was in play with this attorney's former merchant account service provider was similar to that old American Express agreement. Fortunately, it was not quite as unfriendly to the "vendor" (the attorney). With Herculean effort and a lot of lawyerly persuasion, the attorney got the money restored to her trust account. However, the matter is still pending, and she knows that the money is still at risk. But at least if she loses the dispute, she will have the opportunity to avoid taking of other client's funds.



Depending how it goes, the attorney may wind up paying close to \$200 (the refunded amount to the client) and having worked for free for over two years for a difficult client. Choose your merchant carefully!

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