

Peer-to-Peer Payment Platforms (“P2P”) : How They
Work, Claims Implications, Part 2

Friday, September 20, 2024



Cash App



Presenter: Gabe Huertas, Deputy Counsel
New York Lawyers' Fund for Client Protection

Prepared for the 2024 National Client Protection
Organization Regional Workshop in Virginia Beach, VA

P2P Basics Recap

P2P platforms are used for the electronic transfer of funds between two parties.

Most commonly used platforms: CashApp, PayPal, Venmo, and Zelle.

Up and coming platforms: Apple Pay, Amex Send & Split

All platforms require web access. Transactions are done by smartphone application or web page visit using unique identifiers and passwords. There are no brick and mortar locations to visit.

Claims Implications

P2P platforms allow for user anonymity that prevent Funds from properly investigating thefts thereby resulting in the administrative dismissal or Board denial of claims for lack of evidence.

Certain P2P platforms do not require a user's first and last name, business entity name, home or business address, date of birth or social security number. Some platforms only require a phone number and email to begin transacting.

Certain P2P platforms do not provide transaction receipts to its users. For the platforms that do, these receipts in most cases only identify the users in the transaction by their assumed username with no other information. Most transaction receipts only identify the transfer of funds from one user's ledger to another user's ledger, they do not identify linked banking institutions and account numbers.

Some P2P platforms do not have to be linked to a banking institution at all, but instead funds can be used at any place that accepts "tap to pay" or a Visa or Mastercard charge card issued by the P2P platform.

Ethical Implications

Rule 1.6(c) of the New York Rules of Professional Conduct requires a lawyer to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure or use of, or unauthorized access to” the confidential information of current, former and prospective clients.”

Rule 1.15 of the New York Rules of Professional Conduct:

- (a) Prohibits the commingling of funds; and
- (b) Requires funds be maintained in an approved banking institution that agrees to provide bounced check/overdraft notices to the Lawyers’ Fund; that the account be properly identified as an attorney trust account, escrow account or special account; and that a lawyer maintain proper bookkeeping records.

Ethics Opinions

Washington State Bar Association Advisory Opinion 2108 :

Lawyer can use web-based payment service (PayPal) to accept funds belonging to the lawyer, not client funds.

Florida Bar Ethics Opinion 21-2:

Lawyer may accept funds via web-based payment service such as PayPal or Venmo including client funds as long as confidentiality is kept and for the safeguard of client funds that are entrusted to the lawyer.

South Carolina Bar Ethics Opinion 18-05:

PayPal account may be used for nominal amounts or short-term but must be transferred promptly to an attorney trust account.

Board of Professional Responsibility of the Supreme Court of Tennessee Formal Ethics Opinion 2023-F-170:

Paypal, Venmo and other payment services can be used for payment of fees including unearned fees so long as Tennessee Rules of Professional Conduct are followed regarding confidentiality, treatment of transaction fees and security of client funds.

Recap of Hypotheticals from 2023 Workshop

Legal Fee Claim

Retainer claim where advanced legal fee was paid by Cash App. Claimant had no bank records showing the transfer of funds from her bank account to Cash App account. Claimant only had a CashApp screenshot of the transfer that gave a date, amount and the receiving parties username, "World's Best Lawyer".

Satisfactory proof of payment?

Settlement Claim

Personal Injury claim where the settlement funds were first deposited to an attorney's trust account, and with the client's consent, then transferred to CashApp. Lawyer then died with the funds parked in his CashApp account without ever sending the funds to the client. The lawyer's CashApp account was later found depleted.

Reimbursable loss?

Deeper Dive

Settlement Claim of John Doe

Claimant was involved in a car accident. He retains lawyer to file a personal injury action. Lawyer successfully settles action for \$9,000. Settlement check is paid to lawyer which he deposits to his Chase attorney trust account.

Client requests that the \$6,000 net proceeds be transferred to his Paypal account. Lawyer maintains a Paypal account which is linked to his American Express law office credit card, and his Chase operating and trust accounts.

Transfer#1: With his iPhone Paypal App, lawyer initiates a transfer of the \$6,000 using his linked American Express credit card instead of his linked trust account; meaning the funds were drawn as a charge to his American Express credit card instead of a debit to his Chase trust account.

Seconds later, lawyer has a \$6,000 available balance on his Paypal account.

Transfer#2: Again using his iPhone Paypal App, lawyer then initiates a transfer of the \$6,000 available balance to a Paypal username given to him by the client in a text message.

A day later, client advises lawyer he has not received the funds to his Paypal account. Lawyer then realizes client gave him the wrong Paypal username meaning the funds were sent to an unknown person. Lawyer contacts Paypal to reverse the transaction but is told it can't be undone.

Lawyer in his conversation with Paypal also realizes that he accidentally used his American Express credit card to fund his Paypal account. Lawyer checks his Chase attorney trust account and sees the \$6,000 net proceeds still intact. Instead of disclosing this to the client, lawyer uses the funds from his trust account to pay the now \$6,000 balance on his Amex credit card.

Claimant files application with your fund alleging a theft.

Recommendations

Lawyer should maintain separate P2P accounts for operating and trust accounts.

P2P accounts holding client funds should only be linked to an attorney trust account - absolutely no linkage to operating accounts or credit cards.

P2P accounts should be properly labeled meaning usernames should include attorney's first and last name or law practice name and be labeled either operating account or trust account.

Account identifiers (usernames, telephone numbers, & email addresses) should not be shared between P2P operating and trust accounts.

All client fund transfers to P2P platform should be as brief as possible.

Prohibition on P2P account tap to pay feature or P2P account Visa or Mastercard charge cards.

Only use P2P platforms that can provide detailed records.

Consent/authorization forms with FAQs.

Recommendations

Law Offices of Vinny Gambini
352 Bedstuy Avenue
Brooklyn, NY 12210
718-321-4567
VinnyGambini@LawOfficesofVinny.com

Peer-to-Peer Payment Authorization/Consent Form – Operating Account

P2P Platform: (Zelle, Venmo, Cashapp, Paypal, Etc.)

Attorney Username: VinnyGambiniEsq.Registration#123456-Operating

Attorney's Unique Identifiers:

Username: VinnyGambiniEsq.Registration#123456-Operating

Phone Number: 718-123-4567

Email Address: VinnyGambiniOperating@LawOfficesofVinny.com

Attorney's Linked Account: Vinny Gambini Citibank Operating Account

Client First and Last Name: _____

Client's Username: _____

Client's Unique Identifiers:

Username: _____

Phone Number: _____

Email Address: _____

Acknowledgement

Parties certify that the information provided above is accurate and complete. Parties consent to the usage of the above p2p platforms for the payment and refund of legal fees.

Attorney Signature: _____

Date: _____

Client Signature: _____

Date: _____

Law Offices of Vinny Gambini
352 Bedstuy Avenue
Brooklyn, NY 12210
718-321-4567
VinnyGambini@LawOfficesofVinny.com

Peer-to-Peer Payment Authorization/Consent Form – Trust Account

P2P Platform: (Zelle, Venmo, Cashapp, Paypal, Etc.)

Attorney Username: VinnyGambiniEsq.Registration#123456-Trust

Attorney's Unique Identifiers:

Username: VinnyGambiniEsq.Registration#123456-Trust

Phone Number: 718-765-4321

Email Address: VinnyGambiniTrust@LawOfficesofVinny.com

Attorney's Linked Account: Vinny Gambini Citibank Trust Account

Client First and Last Name: _____

Client Username: _____

Client Unique Identifiers:

Username: _____

Phone Number: _____

Email Address: _____

Payor: _____

Payee: _____

Date of transaction: _____

Amount of Transaction: _____

Memo: _____

Acknowledgement

Parties certify that the information provided above is accurate and complete. Parties consent to the usage of the above p2p platform for the payment and refund or disbursement of client funds.

Attorney Signature: _____

Date: _____

Client Signature: _____

Date: _____

Subpoenas

Zelle:

Early Warning Services, LLC
Attn: Subpoena Processing
16552 N. 90th Street
Scottsdale, AZ 85260

PayPal:

PayPal, Inc.
Attn: Global Investigations Team
2211 North First Street
San Jose, CA 95131

Venmo

PayPal Inc. – Venmo (a PayPal Inc. Service)
Attn: Global Investigations Team
2211 North First Street
San Jose, CA 95131

CashApp:

Block, Inc.
1455 Market Street, Suite 600
San Francisco, CA 94103

Gabe Huertas, Deputy Counsel

New York Lawyers' Fund for Client Protection

Telephone: (800) 442-3863

Email: ghuertas@nylawfund.org