

Credit Card Language Surcharge for Retainer

A colleague is asking me. Does anyone have any language they use to say they accept a credit card, they add a 2% charge or something of that nature?

They should check the tos to see if the merchant can advertise they charge a cc surcharge.

One way around is possibly offering a cash discount.

Or just raise fees 2%.

Dan Nguyen, California

Sometimes this is violation of state statutes -- You need to be careful as to what kind of charge it is and how to word it.

Rinky S. Parwani, Florida

Not only that, but you need to check your bar rules on this as well; if it's going into trust account you may not be able to do this; Years (Decades) ago I checked with Florida bar on this and it came down to "you can accept credit cards but if client pays \$1000 for your trust account then \$1000 better find its way into your trust account" . Which is why CC processing for lawyers typically provides that the entire amount goes to trust account and any processing fees come out of operating account. Charging 'extra' for surcharge doesn't fix it; if you change 2% processing fee (\$1020 for \$1000 payment) and it goes to trust account, Florida bar will expect \$1020 to be in trust account.

Ronald Jones, Florida

You refer to a “colleague.” Is this another lawyer?

If so, your colleague should be certain to look at the ethics rules of the state(s) in which the colleague practices, because some states do not allow lawyers to impose fees on clients for use of credit cards.

Brian H. Cole, California

But can you charge a 2% processing fee that looks like this:

\$1000 charged and \$1000 goes into trust account.

First bill includes \$20 for processing fee of credit card.

Justin Meyer, Florida

Also, make sure that your state consumer laws allow for you to include a surcharge.

Joseph A. DeWoskin, Kansas

If you use LawPay credit card

service, they have sample retainer agreement language for adding a surcharge.

Lisa M. Knauf, Illinois

That would work; but see, that's not really a "surcharge" over and above the retainer; I think the original poster is talking about adding in the 2% fee at the time of payment.

Now, that doesn't address the question of whether you SHOULD be charging the client the 2%; I, me, myself, personally, don't accept debit or credit cards; for various reasons I won't get into here but the actual CC processing fee is, in my mind, a very

minor issue, it can be gotten around. If you are offering to accept CC's it's in order to gain more clients; while in a sense it's a 'client convenience' you are doing it for your benefit, really, so you can get more or bigger retainers; and I will say, 'nickel and diming' clients drives them nuts. I've told the story before, 30 years ago my mother hired a Florida attorney to handle a small real estate matter; he handled it competently, and quickly, and sent an invoice for \$250 which she thought eminently reasonable; however, what drove her UP THE WALL was the guy including a line item for postage; whatever postage was in 1987, 37 cents times two letters, for 74 cents. So the bill read \$250 for resolving easement; \$.37 X 2 postage to client; amount due \$250.74. She paid the bill but she still moans about how cheap the lawyer was for charging her for postage; he managed to turn an otherwise very pleased client into someone who was quite annoyed. Likewise, lawyers who bill for long distance service (doesn't happen so much nowadays but in the 90's and early 00's I saw a lot of lawyer billing for their long-distance phone calls, \$1, \$2.24, 87 cents). It drives people nuts. Personally, I think lawyer should just eat it. If you want, raise the rates but don't bill this stuff separately. It's one thing when I'm negotiating with a gun dealer to purchase a gun; yeah, we get pretty nitpicky over the price, does it include tax? Call in? Throw in box of ammo or gun case? If I pay cash or debit instead of CC will I get it cheaper? But I'm dealing with someone who has the ethics of a pawnbroker, which is to say about 2 steps below that of a used car dealer. I don't expect a lawyer to do this, or any other professional.

Ronald Jones

I generally look at the credit card fee as being the price I pay for having my money now and not having to bill and wait for the return check.

Somewhat of a different question when the money is an escrow deposit for expenses. Law Charge maintains two sub accounts for attorneys and deposits the escrow deposit in one account and pays the cc fees from the operating account. The number only becomes significant when the amount being charged exceeds \$1,000.00 and even then it's only \$20.00-\$30.00 which is what? Six to ten minutes of billable time? People do not carry money or checkbooks anymore. If paying the credit card fees is such a stumbling block raise your fees 3% to cover it but don't show it as a billing line item. So instead of \$300.00 per hour you bill at \$310.00.

John Martin Miles, Georgia
