

Credit Card "Administrative" Fee

I thought it would be easy to find an answer to the question posed by my client - "may I add a 4% administrative fee to client bills to recoup credit card charges?"

Based on my research so far, it looks like Visa only allows a "convenience fee" with a specific set of restrictions. Other credit cards seem less picky.

Does anyone have a convenient and concise resource on the topic?

Thanks in advance.

Isn't the answer, "I need to review your credit card servicing agreement.

Can you provide me with a copy? It may be a clickthrough agreement, that you'll need to log on or call them to access."

Cynthia V. Hall, Florida

I get that you're the lawyer and your client may only want the legal answer...

But in my opinion, the better BUSINESS answer is - increase your rates slightly and call it a day. Maybe (if allowed), he could then offer a "cash discount" or not increase rates for long time cash-paying customers.

Also, if your client is actually paying 4% to process credit cards, he needs to shop his merchant account around. My rate is 2.2%. Maybe your client is in a high-fraud-risk industry or something.

Andrew Flusche, Virginia

Here is a recent 9th Circuit case, talking about CA's law.

<http://cdn.ca9.uscourts.gov/datastore/opinions/2018/01/03/15-15873.pdf>

As I understand it, most credit card companies make you agree that you will not surcharge their clients, compared with cash, etc. However, some states allow you to provide a discount to your cash-paying clients.

Your mileage may vary.

Corrine Bielejeski, California

Well, at least in Texas, it's because the legislature exempted the state/gov't agencies from the restriction.

<https://statutes.capitol.texas.gov/Docs/BC/htm/BC.604A.htm>

Tim Ackermann, Texas

I just saw this article, published about a month ago, announcing that Florida bar members will soon be able to pass on credit card fees to

clients:

<https://www.floridabar.org/the-florida-bar-news/rules-now-allow-credit-card-fees-to-be-passed-to-clients/>

Time to revise the fee agreement...

Cheers!

Andrew C. McDannold, Florida

I still believe that a client would be more comfortable paying you another

\$5 bucks per hour rather than seeing a line item for a credit card administrative cost. Just my two cents.

Matthew Rosenthal, California

First, I don't believe the original poster was addressing this in a law office context, he inquired about a client asking about this.

Second, even though it might be permitted by the bar rules, I don't know this is a good idea. I've told this story before but once again:

Back when my parents bought the ranch, the county was demanding that we grant an easement and 'clay in' a road for an adjacent neighbor; the easement itself would have been bad enough but claying in a road for them would have cost upwards of \$10,000. I was in Florida and contacted a local RE attorney to handle it; he went to the building department, showed them sort of caselaw and they dropped the demand. Fine. My parents were quite pleased with the result. He invoiced for an hours work, something like \$250. Fine, once again, very pleased, he did the job; no problem with the invoice. However, he ALSO included costs; in 1987 cost of postage was, I think, 36 cents; he included two first class stamps in his invoice. So the invoice was for \$250.72 or something like that.

My mother hit the roof over those lousy stamps. She felt she was being nickled and dimed and frankly, she was.

Then also, long distance used to be expensive; I knew lawyer back in early 90's who would pass along long distance billing to clients; I mean, a dollar or two or whatever, so he'd bill one half hour @ \$300 per hour=\$150; 27 minutes long distance @ 8 cents per minute= \$2.16, please pay \$152.16.

This drives clients NUTS, absolute Bonkers. It's one thing if I have to pay a filing fee, if I have to pay for Fedex, if I have massive copying that I pay for at Office Depot, but passing along 'general overhead' (paper, toner supplies, phone costs, and even your credit card processing fee) to clients alienates clients. They don't mind paying for your time and work but to pass along overhead, it sticks in their craw.

And as far as I know, law offices are the only profession that does this; my physicans don't, every other professional I've dealt with does not do this.

People who do this are, frankly, kind of the low end retail merchants; Pawn shops do this, charge 'administrative fees'; but professional pawn shop ethics make most used car dealers look like saints; Dollar General has pulled (almost) this stunt before; I bought something at Dollar general, used my debit, so long as I was there I figured hey, I'll get some cash back, asked for it, and then realized they'd hit me up for a 'convenience' fee. Publix, Winn Dixie, Walgreens, CVS, Target, even WALMART don't hit me up for a convenience fee when I get cash back. But Dollar General does.

So, I'd really not be in the same company as Shady Bob's Pawn, Guns, Loans and Fence company; if you're going to accept CC's then either eat the fee or raise your rate to cover it. I have to say, this drives people batty.

Ronald Jones, Florida

Thanks for all the replies. Sorry for delay in responding. (What it looks like when solo comes down with flu.)

The client is in the healthcare business and patients charge their \$10 and

\$20 co-pays. Not much per person, but in a year, it adds up to quite a bit of money.

I believe all of the bigs (AmEx, Discover, MC, Visa) have settled cases and no longer prohibit customers from charging, but there are certain restrictions. Was looking to find a way around the restrictions. Charging an administrative fee? or ...

A few excerpts from Visa:

** As a result of a legal settlement to resolve claims brought by a group of U.S. merchants, merchants in the U.S. and U.S. territories may add a surcharge to certain credit card transactions, starting January 27, 2013.

Merchants who choose to surcharge must follow consumer disclosure and other requirements agreed to as part of the settlement.

** Currently, 10 U.S. states have surcharging restrictions including California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma and Texas. Please consult with legal counsel to determine whether your practices comply with relevant state law.

More here

<<https://usa.visa.com/dam/VCOM/download/merchants/surcharging-faq-by-merchants.pdf>>

.Thanks all for responses.

Susan Burns

I have been required to use a particular law firm as outside counsel for my client that bills between \$800-900/hour. The engagement letter states they charge for long distance calls, postage, copying, online research, etc., etc. In one instance I was told not to bother negotiating it, in another I was. The invoices are in the \$10-20,000, plus \$2.00 for LD and \$0.46 for postage. It makes my blood boil!!!

Teri Robins, Illinois

Pretty typical at biglaw.

Shell Bleiweiss, Illinois

Old joke at biglaw was that Mr. Xerox was always the highest biller in the firm.

Roger Traversa, Pennsylvania

I absorb credit card fees for my retainers as a cost of doing business and as a convenience to my clients. The only time I charge for credit card fees are when my clients owe fines to the court and ask me to pay it for them, I do it as a courtesy but I tell them if they pay me the fine via credit or debit card I have to charge them the processing fee, otherwise I'm paying a portion of their fine. If they send me a check or money order or pay via eCheck or cash there's no fee. I think that's fair, otherwise I'm subsidizing their fine.

Glen Kurtzrock

I bumped my rate and now offer discounts for cash/check.

Michael J. Sweeney, Connecticut

ALL of the courts here charge convenience fees to use credit cards or debit cards, and so that gets passed right on to the client as the actual cost of the filing fee.

I do not charge for the fee on when they pay me

Erin M. Schmidt, Ohio