

## Credit Card Convenience Fees

Credit card processing fees are eating me alive. A few vendors are pushing me to charge 3.5% convenience fee so I no longer have to pay the credit card processing fees. I have been opposed to this until now. This fee has gone from being a "too small to worry about" fee to significant now that most clients pay by credit card. What are your thoughts on convenience charges?

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This has been discussed in the past on Solosez and other listservs I belong to. Somewhere buried in the agreements you sign with the processors is a statement that you are agreeing to not charge any convenience fee. However, I've never heard of anyone who has ever been dinged for this by the credit card companies. Of course, I would certainly like to hear stories from others.

For A/R balances, I just eat the fee. However, I will sometimes ask for a convenience fee if someone is making a large deposit into my trust account at the beginning of the case. Overall, I just factor in the cost of credit card processing in my hourly rate.

Ryan Young, Virginia

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I'd recommend raising your fees by 5% and giving a discount for payment in cash.

People feel better about getting a discount (or choosing not to) than they do about paying an additional fee.

Cynthia V. Hall, Florida

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I've tried adjusting my rates to account for it, and may still do that. However, I feel I am overcharging those that pay by check. I am struggling with the added charge though. Someone suggested I offer a cash or check price and a credit card price. I am toying with it.

Robert "Robby" W. Hughes, Jr., Georgia

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It irritates people. Raise your fees 10% for the hassle factor would be my recommendation.

You also need to aggressively shop the fees on your merchant account.

Darrell G. Stewart, Texas

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Darrell suggested that we "aggressively shop the fees on your merchant account."

I don't do a lot of credit card transactions so I haven't really spent much time thinking about this, but when I set up my credit card processing service I (perhaps naively) assumed that there were only two or three companies out there (LawPay, LawCharge, etc.) who could process lawyers' transactions properly (e.g. not deducting transaction fees from deposits into a trust account). Is the advice to aggressively shop the fees between those few providers, or are there a whole lot more providers out there servicing lawyers than I realized?

Andrew C. McDannold, Florida

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I don't accept CC or Debit payments for the reasons that Andrew set out (Florida bar is quite strict about CC fees going into trust accounts; you can do it but 1) every dime better find its way into trust account, and any charges come out of business account and 2) Florida Bar says you can accept this for convenience of client but you cannot charge extra, i.e. no CC convenience fees; even if it's earned upon retainer, and not going onto Trust account. so, with me it's strictly cash or check)

However IF I did, then I'd just raise my rates a little, I do know retailers who charge CC convenience fees (actually, they offer discount for cash/check) but they're pawn shops and gun stores; and have the retail ethics that you would expect from a pawn shop. Clients go nuts over the nickel and diming by lawyers; the charges for postage, small scale copying fees, stuff like that. I'd eat it; and simply raise my fees a bit to cover it.

Ronald Jones, Florida

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I initially had my credit card processing through BB&T. They had it set up to deduct the fees from my operating account. I think most big banks could do that for you. I only switched to LawPay because they had compatibility with various practice management software.

Ryan Young

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Some attorneys only take credit cards on work already performed. If so, funds can go direct to operating account (here at least). In such a case, any merchant account will do and you are shopping for the service/fee equation that makes sense to you. Some mention Square, which would be an example of a vendor where this would work. Others use merchant accounts with Costco or Sam's Club, while others shop the account through third parties.

If you are looking at taking credit cards on retainers, and putting funds in your trust account, I agree that LawCharge and LawPay are the only ones to my knowledge. I personally don't like the dance on work yet to be performed.

Some talk about Paypal and Zelle, which also properly to my view deal with receiving funds for work already done. Zelle does have an enrollment option for business, but still says it “Zelle is a fast, safe and easy way to send and receive money with friends, family or others in minutes, between domestic bank accounts at U.S. financial institutions. Using just their U.S. mobile number or email address you can send money directly to their bank account right from yours with no fees” per its FAQ. Business accounts appear an afterthought with Zelle.

Paypal signup: <https://www.paypal.com/us/home>

Zelle signup: <https://www.zellepay.com/get-started>

Square signup: <https://squareup.com/signup>

I don't have my accounts at a participating bank for Zelle, so I don't know how to sign up there. I am happy to be illuminated. I speak from my research and experience only. Others may have more particularized details.

Darrell G. Stewart

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Have you used a credit card within the past week? Of course, you did. You went to the gas station, you bought groceries, maybe you even bought something from Amazon or Macy's. Did you pay your ABA dues? I'm betting you used a credit card instead of shelling out cash or writing a check for those purchases. Of course, you did. And you like the cash back, the miles, the 21st century S&H Green Stamps that accompanied each purchase. Just how many of those vendors offered you a cash discount? How many of them imposed a convenience charge? None of them, right.

So, why should you be any different? You're accepting credit cards for the convenience of your clients and as a marketing tool. It's a cost you'll have to eat, just like the coffee your clients may have consumed. You don't have a pay toilet in your office, do you? If clients start crying, do you charge them for a tissue?

jennifer j. rose, Mexico

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And some states, like Kansas, don't allow you to charge the convenience fee back to the client/customer (unless you are a government entity).

Joseph A. DeWoskin, Kansas

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I've paid a convenience charge both times I used a credit card at car dealerships. A litigation initial retainer is more in-line with a vehicle purchase down payment than the cost of a tissue.  $\$10,000 \times .035 = \$350$ .

Ryan Young

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Convenience fees not allowed in Colorado (except that government entities may impose them).

David Masters, Colorado

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S&H Green Stamps? Boy—that brings back memories of sitting in my grandmother’s kitchen and pasting those things into books. But back to the present day....

Many of the gas stations in California have two prices posted—one for debit or credit cards, and another for cash. Typically, the cash price is 10¢ a gallon cheaper, and people tend to look at that number in picking stations, even though they plan to pay with a card. It used to be that the stations would give a “discount for cash” (and only post the “cash” price), but now they show both. I think that reflects a change in one of the federal banking regs, that no longer prohibits charging for use of a credit/debit card.

And, I’ve also noticed many smaller businesses that have a small sign (typically hand-lettered) saying there is a charge of \_\_\_\_¢ to use a credit or debit card for purchases under \$\_\_\_\_\_. I think that’s a function of people using their cards for every purchase, even to buy a pack of gum.

Brian H. Cole, California

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I thought that some cc processing companies also had something to that effect in their contracts with merchants. That may have changed though in the past few years.

IAE, I initially was getting killed on CC fees myself, but then found another vendor who worked with me and I've got a much better deal now although I do pay a flat monthly fee and a much, much smaller percentage fee. Overall, I'm pretty happy and I do quite a bit of CC processing. They had no problem working with the bank to ensure that the fees came out of my operating account and not my IOLTA.

As for the young lady who abused her parents credit card, they could scare her by filing the charges against both of them. Boyfriend may have an out though as he could claim he thought she had permission. They could later drop charges or it's likely to be plea dealed down to nul pross. I had something similar years ago, and so I went to the prosecutor and judge and said that it was wrong to ruin this kid's life, but if you just scared the hell out of him, it would do a lot of good. It was a very effective technique. Case was nul prossed and kid got his act together and last I heard is doing very well. Of course the judge scared me too.

Sterling L. DeRamus, Alabama

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I'll chime in on Zelle.

Wells Fargo is the only large bank that I know of that allows Zelle for business. and that requires that the sender also have to wells Fargo account. to my knowledge, there is no Zelle for business between institutions yet.

Venmo for business is not allowed for services.

Dan Nguyen, California

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The link I posted for Zelle has a list of participating banks.

Darrell G. Stewart

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There were several simultaneous cases going on in CA (perhaps one fed and one state, or maybe a certified question?) and a law change re: passing on credit card fees to a buyer. Previously, saying it was 7 for cash, but 10 for card as a "discount" for the cash folks was okay, but saying it was 7 for cash and 10 for card as a "convenience fee" for the card was not okay.

The merchants successfully argued it was a 1st amendment issue, since the dollar amounts were the same.

The final result here was that, as long as the two prices are adequately disclosed, you can call it whatever you want.

Check your jx re: what you can and can't pass on to your clients. As a general LPM rule, though, if you aren't making what you need to make, you need to bill your time differently or lower expenses. Maybe that means passing on the fees to the clients, maybe that means increasing your rate, maybe that means decreasing your overhead someplace else so that there is room for the credit card fees.

Who doesn't accept cards, but whose work neighbors (also attorneys) do.

Corrine Bielejeski, California

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Be aware of using Zelle. From what I read, it does not have any of the consumer protections from fraud or misuse that other services have.

Mitchell P. Goldstein, Virginia

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There was a recent (I want to say November 2018) federal court case in Texas that ruled that Texas law prohibiting passing on convenience fees to customers was an unconstitutional restraint on merchants (ironically, state government entities were allowed to make the surcharge for themselves).

Here is an article discussing this --

<https://www.dallasnews.com/news/watchdog/2018/11/21/texas-law-banning-surcharges-for-credit-card-payments-was-overturned-now-youll-pay-more/>

I know there were cases from around the country on this issue, and that is why Texas followed suit. So, I think it would be difficult for such a prohibition to stand, except via contract or bar rules. We have included the right to charge this amount on retainers in our engagement letter, and pay it by ear if a client will pay (or will balk completely). It is also a convenient way of "giving a discount" instantly by telling the client to pay with check.

Separately, we got burned by a client (paid via a third party) disputing a charge around this time, so LawPay had some helpful forms on this issue of chargebacks too. This is one reason to use a lawyer-dedicated service, otherwise it would be a nightmare for funds to be withdrawn by a big bank from your IOLTA.

Murtaza Sutarwalla, Texas

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Anyone have a link to the Texas case or other cases? I have a client who might want to challenge the Colorado law that prohibits credit card convenience fees.

David Masters

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The Texas case is Rowell v. Paxton -

<https://casetext.com/case/rowell-v-paxton>

Here is an article on the other cases from around the country --

<https://tfmlaw.com/2019/03/01/surveying-surcharges/> -- including the SCOTUS case that kicked it all of.

Murtaza Sutarwalla

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U.S. Supreme Court case from 2017 - Expressions Hair Design v.

Schneiderman, 137 S. Ct. 1144

Italian Colors Restaurant v. Becerra, 878 F. 3d 1165 - Court of Appeals, 9th Circuit 2018- from CA  
Both are on Google Scholar

Corrine Bielejeski

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LawPay works well.

Discount for prompt payment works sometimes.

Roger M. Rosen, California

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It's a cost of doing business. A write off for all of the income we generate!!

David Crosson, Pennsylvania

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Right, but right now Zelle is for personal transactions only; of those banks that do offer Zeller, only a select few, if any, offer Zelle for business (meaning, it will work on your business account).

Dan X. Nguyen

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