

How to Safely Pass Credit Card Fees to Your Clients

By Larry Port



One of the best ways for law firms to increase revenue is to accept credit cards. And in doing so, there are additional benefits: the time-consuming process of manual invoicing and collections is replaced with easy, automated electronic processes; collection percentages increase and receivables decrease; keeping cards on file guarantees payments; and you end up with more billables every year.

However, many lawyers don't want to endure the percentage points charged for accepting card payments. On the surface, this hesitation is understandable. It's tough to stomach a 3 percent fee on a \$5,000 invoice (\$150). But when you consider that law firms on average collect on only 71 percent of the work they invoice, any improvement credit cards bring in this regard is worthwhile.

What's more, many mechanisms exist for law firms to recapture most, if not all, of their credit card fees. However, you must be careful to avoid running afoul of not only Visa and Mastercard rules, but also the law. This article aims to clarify how law firms can recoup their fees without getting into trouble. Specifically, we'll explore administration fees, convenience fees, cash discounts, and surcharges.

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But first, a little background on payments

Before we delve into the ways you can recoup credit card fees, here are some terms related to payment processing you should know.¹

Administration fee: A fee that can be added to your invoices to recoup costs. It cannot vary by the type of credit card; it must affect all payment methods equally.

Card networks: Brands such as Visa, Mastercard, and American Express. Also known as "associations."

Cash discount: A cash discount allows you to charge people less if they pay with cash as long as your standard advertised prices are your credit card prices.

Convenience fee: A flat fee that can be added to credit card payments (with a few conditions, as described below). Convenience fees are currently legal in every state.

Interchange: An industry standard on which per-transaction fees are based. It's a percentage of your transaction. The processor and banks involved in the payment transaction will add fees based on the interchange rate, and those fees can vary widely. Factors that can increase your credit card fees include:

- Whether the card is present for the transaction. If a card is not present, that indicates a potential increased risk of fraud which, in turn, increases fees.
- The card network. American Express charges more than other cards.
- If the card offers a rich rewards program, the merchant pays with higher fees.
- The type of service or product you are selling. Products for which there is a higher risk of chargebacks, fraud, or both (such as a vape shop) have higher processing fees.

- Whether you were supposed to accept a card a certain way, but you accepted the card a different way. For example, if you're supposed to swipe a card but type the numbers instead, you may incur a penalty called a "downgrade," which could be as much as a full percentage point.

There are more than 300 different rates for accepting credit cards, and unless your payment processor offers flat-rate pricing, you can be subject to all sorts of fees you're not aware of (up to 4 percent depending on the situation).

Merchant account: An account you set up with a processor. Legal-specific payment processors are experts in setting up operating and trust merchant accounts. This is important—credit card fees *can't* be taken from trust deposits since the money isn't yours. The fees must instead be taken out of the operating accounts.

Payment processor: A payment processor offers the service, technology, and system to receive funds for your legal services. The client pays with a credit card, and the money hits your bank account.

Surcharge: A fee charged to the client when a credit card is used for payment but not charged if another payment method, such as cash or check, is used.

Reclaiming credit card fees

Method 1: Administration fees

The first thing to know about administration fees is that the term is generic and doesn't refer to credit card processing. It doesn't use the words *processing*, *surcharge*, *cash discount*, or *convenience fees*. In fact, administration fees can be called *service fees*, *operational fees*, or anything along those lines as long as they don't refer to a penalty for using a credit card.

For purposes of this article, I'll refer to these generic fees as administration fees. You're free to add them to an invoice—no state laws prevent you from doing so—and they can be a flat fee or a percentage of your work. Card networks and processors are not against them because the overall transaction amount increases and, consequently, they earn a higher fee.

Here's the major caveat with administration fees: they can't only target clients who pay by credit card; they must also apply to people paying by check or cash. Since the card networks don't want to disincentivize people from using credit cards, you can be reported if you selectively apply administration fees to people paying with cards.²

However, bar associations may have other ideas about administration fees, so you must first check to see if they have any ethics rules concerning them.³ If you're in the clear, you need to add something general to your fee agreement, like:

In addition to the fees described above, as a matter of firm policy, an administration fee of 3 percent will be added to every invoice to cover any additional operating costs the firm incurs relating to this matter.

If you charge an administration fee, you'll likely have a separate line item on your invoice detailing the amount. To the credit card processor and your bank, however, that fee will not be split out; rather, you'll see one lump-sum transaction, which means that a portion of your administration fee will be dinged by the payment processing fee. You won't recoup the entire administration fee, but approximately 97–98 percent of it.

For example, if you charge a 3 percent administration fee on \$10,000 worth of legal work, you'll send a total invoice of \$10,300. If you're paying a 3 percent credit card fee, you'll pay 3 percent of \$10,300, or \$309—not 3 percent of \$10,000, or \$300.

In this instance, your total income would be \$10,300 minus the \$309 administration fee, or \$9,991.

Method 2: Convenience fees

A law firm may charge flat-fee convenience fees back to clients when using a credit card or for other “convenience” rea-

sons, such as payment by phone rather than in person. However, card networks stipulate that you can't add a convenience fee to everything—you must distinguish between *primary* and *alternative* payment channels.⁴

For example, let's say you require a \$10,000 retainer deposit, which can be paid in cash or by credit or debit card. That is your primary payment channel. You also offer an alternative payment channel in which your client can pay by credit card in two \$5,000 chunks with a \$25 convenience fee each time. In this example, the convenience fee would be associated with the option to pay online by credit card.

Note that the convenience fee in this example is expressed as a flat fee.⁵

Method 3: Cash discounts

Think of a cash discount as a reverse surcharge. With a cash discount, your standard advertised prices are what your clients pay when they use a credit card. If they pay with cash, they get a lower price.

For example, you might specify in your fee agreement that your rates are \$450 an hour. However, if someone pays in cash, you charge a discounted rate of \$400 an hour.

Is this distinction splitting hairs? Yes! With surcharges and cash discounts, your clients pay more for using credit cards than for paying in cash. The distinction, however, is the concept of being penalized for paying with credit cards. With a cash discount, your clients are not penalized for paying by credit card. With surcharges they are—you're tacking on an extra fee for credit card payment.

As is the case with surcharges, cash discounts require proper technology support and signage. You must work with your payment processor to set up the program.

Method 4: Surcharges

Visa, Mastercard, and other card networks oppose surcharges, as they disincentivize the use of their products. If the rules I've presented in this section seem confusing, it's for a reason: card networks make you jump through red-hot flaming hoops to use surcharges. And if you're doing things incorrectly and someone reports you, you can be fined by the card networks.

Before you even consider surcharges, you need to check the legality of accepting

them where you provide your service. First, they can only be applied in the United States. Second, 10 states currently restrict surcharge usage: Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma, and Texas. In some cases, localities may have their own rules as well.⁶

Let's say surcharges are legal in your jurisdiction. Now find out if your bar association has any rules related to them.⁷

Once you get word that your bar association permits surcharges, you must honor the following rules:⁸

- Surcharges must be limited to the average effective rates and fees from your card network and capped at 4 percent.
- You must calculate your surcharge rates from your previous payment history. This needs to be done on a card network-by-card network basis, so you must do this separately for American Express, Visa, and Mastercard.
- You must display signage announcing your surcharge that says something like, “We impose a surcharge on credit cards that is not greater than our cost of acceptance.”
- Each card network must be notified 30 days in advance before accepting surcharges.
- You must have compliant software and hardware that can clearly state the surcharge on the customer's receipt.

American Express has a strange wrinkle when it comes to surcharges: if you accept debit cards and add a surcharge to your regular credit card payments, you will not be allowed to accept American Express as a payment option. If you don't accept debit cards, then you can add a surcharge and accept American Express payments.⁹

Why is this the case? American Express considers this arrangement unfair since it doesn't issue debit cards. Not only will cardholders pay more for the surcharge, there's no debit option for them to save money with American Express.

If you understand the issues and risks of surcharges and want to implement them, your friendly payment processor representative can help you set up everything.

Final words

The most important takeaway when considering credit cards and their fees is that electronic invoicing and payments will increase your revenues much more than credit card fees will decrease it. Fees should not be the reason to avoid credit cards.

However, if you're determined to recapture your fees, make sure you understand the methods at your disposal and find one that works—and is legal—in your jurisdiction.

For more information on any of these options or to get your law firm started with one of these programs, contact Rocket Matter Payments at (888) 432-1529. ■

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ENDNOTES

1. Benson, Lofesness & Jones, *Payment Systems in the US—A Guide for the Payments Professional* (San Francisco: Glenbrook Partners, 2017).
2. E.g., *Rules and Policy*, Visa <<https://usa.visa.com/support/consumer/visa-rules.html>> and *Rules*, Mastercard (June 25, 2019) <<https://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf>>. See also Holmes, *Convenience fees: When is it OK to charge extra to use a credit card?*, *creditcard.com* (April 13, 2017) <<https://www.creditcards.com/credit-card-news/credit-card-convenience-fees-cost-surcharges-1280.php>>. All websites cited in this article were accessed November 13, 2019.
3. RI-364 (2013): "The amount a lawyer charges the client for expenses must reasonably reflect the lawyer's actual cost for the services rendered and that, as to services provided by third parties, the lawyer is able to pass along only the costs the lawyer incurred in securing those services."
4. *Rules and Policy and Convenience fees*.
5. RI-364.
6. *What merchant surcharge rules mean to you*, Mastercard <<https://www.mastercard.us/en-us/merchants/get-support/merchant-surcharge-rules.html>> and *Merchant Surcharge Q and A*, Visa <<https://usa.visa.com/dam/VCOM/global/support-legal/documents/merchant-surcharging-qa-for-web.pdf>>.
7. RI-364.
8. *What merchant surcharge rules mean to you and Merchant Surcharge Q and A*.
9. *Merchant Reference Guide—US*, American Express (April 2019), Sect 3.2 <https://www.americanexpress.com/content/dam/amex/us/merchant/merchant-channel/US_RefGuide_October_2018-Final.pdf>.

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