

**ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 2014-1**

**MAY LAWYERS CHARGE THEIR CLIENTS A SURCHARGE TO USE
THEIR CREDIT CARDS TO PAY FOR LEGAL SERVICES?**

QUESTION PRESENTED

The Committee has been asked to give an opinion as to whether it is permissible for a lawyer who accepts a credit card as payment for services to charge a surcharge to process the payment. Stated differently, may the lawyer pass on a processing fee charged by the credit card issuer as part of his or her costs?

CONCLUSION

It is the Committee's opinion that lawyers may charge a surcharge or pass on a credit card processing fee provided the charge is reasonable and the client consents upon full disclosure.

DISCUSSION

Credit and debit cards are ubiquitous in today's society. More and more clients are asking to use credit cards to pay for legal services. But the use of the credit card typically involves a transaction fee which may be calculated as a percentage of the transaction amount.¹ For example, if a lawyer submits a bill for \$1,000 to a client, and the client pays by credit card, the credit card vendor might charge a fee of 3% or \$30. If the lawyer treats the transaction fee as an overhead expense, then the lawyer has simply incurred an expense for his own account. If however, the lawyer treats the transaction fee as a *client expense* and expects the client to reimburse it, then the lawyer must be certain the client has agreed to pay it after giving fully informed consent.

Two previous opinions of the Committee provide guidance for the present issue. In Ethics Opinion 85-5, the Committee was asked whether lawyers could accept credit cards for payment of fees and expenses. That opinion concluded "the use of credit cards is permissible, provided that any plan is formulated and administered within the framework of all applicable laws and ethical considerations."² The narrow issue involved in this

¹ The Committee understands the bank or credit card vendor typically subtracts this transaction fee from the amount to be remitted to the lawyer.

² Ethics Opinion 85-5 at p. 1. The opinion also noted there may be situations in which the acceptance of credit cards is not appropriate, noting that bankruptcy, divorce and criminal cases might prove to be problematic.

Opinion is simply whether a lawyer may pass on as a surcharge the transaction fee charged by the vendor.

The Committee addressed standards for charging clients for a lawyer's out-of-pocket costs (disbursements) and expenses in Opinion 95-4.

It is permissible for a lawyer to require clients to pay for actual out-of-pocket costs. In addition, clients may be charged a reasonable amount for in-house services, such as photocopying. Charges for certain overhead items are also permitted. With regard to all of these charges, the lawyer is obligated to make explicit disclosures to the client of

- (a) the client's liability for the charges; and
- (b) the basis on which the charges will be computed.³

Alaska Rule of Professional Conduct 1.5(a) provides: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." So long as the charge for transaction fees is "reasonable," the Committee perceives no reason⁴ why the credit card vendor's transaction fee should be treated differently than other expenses.⁵ In order to be "reasonable," the lawyer may only pass on the actual out-of-pocket cost incurred by the lawyer for the surcharge.

The lawyer's fee agreement with the client should spell out explicitly whether the lawyer intends to charge the client for credit card transaction fees. So long as the fees are reasonable, and the client consents after full disclosure, the Committee believes the surcharge may be passed on to the client. In the absence of an express disclosure, the client has every right to assume that credit card transaction fees will be subsumed in the lawyer's fee.⁶

³ Ethics Opinion 95-4 at p. 1.

⁴ The Committee understands that some credit card companies prohibit the passing on of transaction fees to consumers as part of their merchant agreements. This is a matter of contract between the lawyer and the vendor.

⁵ At least three other state Bar Associations which have explicitly examined this question have reached similar conclusions. See DC Bar Association Opinion 348 (March 2009); Louisiana State Bar Association Public Opinion 12-RPCC-019 (October 2012); Washington State Bar Association Advisory Opinion 2214 (2012).

⁶ Ethics Opinion 95-4 at p 3. The Committee is also mindful of the admonition in Opinion 95-4 that surcharges for disbursements should not be disguised profit centers.

Approved by the Alaska Bar Association Ethics Committee on March 6, 2014.

Adopted by the Board of Governors on May 5, 2014.

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