

# Passing Credit Card Fees on to Clients

Research and Resources by State Related to the Practice of Charging Clients for Credit Card Fees

## Introduction

Credit card and online payment processing can be expensive. From several dollars for an ACH transaction to as much as 3% for some credit cards, these fees are significant. Still, credit and debit cards are an increasingly popular way people pay for anything today, and legal services are no exception. How can a law firm balance the costs associated with accepting credit cards while preserving the convenience to clients? Here we outline two ways a lawyer or law firm can pass the cost of processing on to the client or at least share the cost with the client. These strategies are known as surcharging and discounting.

In this document, we provide an overview of both surcharging and discounting. Then we examine the three sets of rules that should be understood prior to implementing these strategies: card brand rules, state laws and state rules of professional conduct. At the end, you will find a guide outlining relevant ethics rules and laws by state.

## Surcharging

In surcharging, firms expose the cost of processing credit cards to clients and let them choose what payment methods to use. Many lawyers assume that charging clients an additional fee for payment processing is unethical or at least slimy. But the truth is that large card brands like Visa and Mastercard don't want consumers to know the actual cost of their airline miles, cashback rewards or vacation points. For years, consumer advocates have been fighting the card brands to allow businesses to expose the true cost of credit cards and help consumers make more informed decisions about which payment methods they use.

## Discounting

Another strategy for offsetting credit card fees is to provide the client with a discount if they pay with means other than a credit or debit card (ACH for example). While this strategy can be economically similar to surcharging, it is viewed more favorably by the card brands, under state laws and by the rules of professional conduct.

## Rules and Regulations

There are three sets of rules firms should be familiar with prior to implementing either surcharging and discounting: card brand rules, state laws and the state rules of professional conduct.

### Card Brand Rules

The card brands (Visa, Mastercard etc.) permit surcharging and discounting but they have some rules that merchants must follow. These rules are generally uniform across all states, and so we've provided them below. Here are some of the best practice related to surcharging:

- Firms intending to surcharge must notify Mastercard 30 days in advance of beginning to surcharge
- Surcharging is limited to credit cards only; the practice is not allowed on all debit cards even if they have a Visa/MC logo
- The amount of the surcharge must not exceed the amount it costs to process that card (Note: This rule makes it difficult to implement surcharging when firms are paying different amounts to process certain types of credit cards)
- In no case may the surcharge exceed 3%
- Clearly notify clients of the surcharge at the time of payment, in a fee agreement and with signage at the firm's offices
- Use a payments system that calculates the total amount of the payment after the surcharge is added; do not simply provide a surcharge percentage and require the client to do their own math
- Provide a receipt with the surcharge amount clearly identified

And here are some of the best practices related to discounting:

- The discount must be displayed as an actual discount from the full price of the services
- In the eyes of the card brands, a discount is not a service fee or other additional fee charged on all services and then removed for those paying by means other than cards (Note: Firms can accomplish this by displaying two prices on an invoice: a credit price and a check/bank transfer price)
- Clearly notify clients of the discount at the time of payment, in a fee agreement and with signage at the firm's offices
- Discounting may be applied to both credit and debit cards

## State Laws

While discounting is permitted in all states, some jurisdictions have passed laws limiting how businesses (not just law firms) implement surcharging or whether it is allowed at all. Below we provide links to reference materials on states where surcharging is limited.

## Rules of Professional Conduct

Unsurprisingly, bar associations also have a say in how these strategies are implemented. There are only a few ethics opinions or rules or professional conduct that take the anti-consumer position of prohibiting the exposure of processing fees to clients. Most other states permit it explicitly, haven't taken a position, or allow legal-sector-agnostic state laws and court decisions about merchant best practices to govern. Below we provide links to rules and opinions that have limited the practice of both discounting and surcharging.

Wait, you're telling me that I need to think about card brand rules, state laws and the rules of professional conduct just to do something gas stations do to me all the time?

Unfortunately, yes. But we've got good news too! First, it's pretty simple in most states.

Second, we at Confido Legal did all the homework for you. You can schedule a consult, and we'd be happy to walk you through it.

[Schedule A Consult](#)

But we also know that you're a lawyer, and you probably want to double-check everything. So, we've put together this handy guide with links out to relevant laws, rules and opinions by state to help you determine how and if you can implement surcharging or discounting at your law firm.

**Connect with us at**

**[confidolegal.com](https://confidolegal.com)**

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State	State Surcharging Laws	Opinion # / Rule #	State	State Surcharging Laws	Opinion # / Rule #	State	State Surcharging Laws	Opinion # / Rule #
AL	✓	<a href="#">Formal Opinion No. 1993-19</a>	KY	✓	<a href="#">Ethics Opinion KBA-E-426</a>	ND	✓	<a href="#">Opinion No. 09-05</a>
AK	✓	<a href="#">Formal Opinion No. 2014-1</a>	LA	✓	<a href="#">PUBLIC Opinion 12-RPCC-019</a>	OH	✓	No opinion or rule found
AZ	✓	<a href="#">Ethics Opinion 89-10</a>	ME	⛔	No opinion or rule found	OK	⛔	No opinion or rule found
AR	✓	No opinion or rule found	MD	✓	<a href="#">Ethics Docket 2001-15</a>	OR	✓	<a href="#">Formal Opinion 2005-172</a>
CA	⛔	No opinion or rule found	MA	⛔	No opinion or rule found	PA	✓	No opinion or rule found
CO	⛔	No opinion or rule found	MI	✓	<a href="#">RI-168</a>	RI	✓	No opinion or rule found
CT	⛔	<a href="#">Informal Opinion 2014-02</a>	MN	✓	No opinion or rule found	SC	✓	<a href="#">Ethics Advisory Opinion 98-08</a>
DE	✓	No opinion or rule found	MS	✓	<a href="#">Ethics Opinion No. 135</a>	SD	✓	No opinion or rule found
DC	✓	<a href="#">Ethics Opinion 348</a>	MO	✓	<a href="#">Advisory Opinion 2019-08</a>	TN	✓	No opinion or rule found
FL	⛔	<a href="#">Bar Rule 4-1.5(b)</a>	MT	✓	No opinion or rule found	TX	✓	No opinion or rule found
GA	✓	No opinion or rule found	NE	✓	<a href="#">Advisory Opinion 81-2</a>	UT	✓	<a href="#">Opinion No. 97-06</a>
HI	✓	<a href="#">Formal Opinion No. 45</a>	NV	✓	No opinion or rule found	VT	✓	No opinion or rule found
ID	✓	No opinion or rule found	NH	✓	No opinion or rule found	VA	✓	<a href="#">Legal Ethics Opinion 1848</a>
IL	✓	<a href="#">Opinion No. 14-01</a>	NJ	✓	No opinion or rule found	WA	✓	<a href="#">Opinion 2214</a>
IN	✓	<a href="#">Opinion No. 8 of 1978</a>	NM	✓	No opinion or rule found	WV	✓	<a href="#">Formal Opinion 76-4</a>
IA	✓	<a href="#">Opinion No. 77-09</a>	NY	⛔	<a href="#">N.Y. State Opinion 1050</a>	WI	✓	<a href="#">SCR 20-1.15(PX3)b</a>
KS	⛔	No opinion or rule found	NC	✓	No opinion or rule found	WY	✓	No opinion or rule found



For more information on offsetting credit card fees:

Schedule A Consult

## About Confido Legal



Confido Legal is a payments acceptance and money movement platform specifically designed for law firms.

With integrations to the platforms and technologies that growth-minded attorneys use most, Confido Legal helps ambitious law firms eliminate costs, optimize collections and automate the accounts receivable cycle.

Find out more at [confidolegal.com](https://confidolegal.com)

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