



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1112 (1/7/17)

Topic: Attorneys' Fees: Credit Card Payments

Digest: A lawyer's retainer agreement may provide that (i) the client secures payment of the lawyer's fees by credit card, and (ii) the lawyer will bill the client's credit card the amount of any legal fees, costs or disbursements that the client has failed to pay within 20 days from the date of the lawyer's bill for such amount, as long as the credit card charge complies with the requirements previously set forth in our opinions, including that the client is expressly informed of the right to dispute any invoice of the lawyer (and to request fee arbitration) before the lawyer charges such amount, and the lawyer does not charge the client's credit card account for any disputed portion of the lawyer's bill.

Rules: 1.5(a) & (b); 1.15

FACTS

1. A firm wishes to add to its retainer agreement the following provision:

"In the event of your failure to pay any bill for legal fees, costs and/or disbursements in excess of 20-days from the date of the bill, you hereby authorize the undersigned attorney to bill your credit card for the full amount of the unpaid balance of the bill, without further notice to you. Your credit card information is as follows: _____."

QUESTION

2. May a law firm impose through its retainer agreement a 20-day time limit for payment upon clients, after which the law firm may automatically bill the client's credit card for the full amount of the unpaid balance of the moneys outstanding?

OPINION

3. It is well-established that, in certain circumstances, New York lawyers may allow their clients to pay their attorneys' fees by credit card. *See, e.g.*, N.Y. State 1050 (2015); N.Y. City 2014-3; Nassau County 13-5 (2013); N.Y. State 763 (2003); N.Y. State 362 (1974), as modified by N.Y. State 763 (2003).

4. A lawyer may accept credit card payments of legal fees so long as: (i) the amount of the fee is reasonable; (ii) the lawyer complies with the duty to protect the confidentiality of client information; (iii) the lawyer does not allow the credit card company to compromise the lawyer's

independent professional judgment on behalf of the client; (iv) the lawyer notifies the client before the charges are billed to the credit card and offers the client the opportunity to question any billing errors; and (v) in the event of any dispute regarding the lawyer's fee, the lawyer attempts to resolve all disputes amicably and promptly and, if applicable, complies with the fee dispute resolution program set forth in 22 N.Y.C.R.R. Part 137. *Id.* See also N.Y. State 763 (2003) and nn. 3&4.

5. It is not appropriate for a lawyer to charge a credit card for any disputed portion of the lawyer's bill. See N.Y. City 2014-3; Nassau County 13-5 (2013); cf. Rule 1.15(b)(4) of the New York Rules of Professional Conduct (the "Rules") (if the client disputes the lawyer's right to funds, the lawyer may not withdraw the disputed funds from the lawyer's special account until the dispute is finally resolved). Consequently, the proposed 20-day provision would be consistent with the Rules only if the retainer agreement also expressly informed the client of the right to dispute any invoice (and to request fee arbitration in accord with applicable court rules, prior to the imposition of any disputed credit card charges).

CONCLUSION

6. A lawyer's retainer agreement may provide that (i) the client secures payment of the lawyer's fees by credit card, and (ii) the lawyer will bill the client's credit card the amount of any legal fees, costs or disbursements that the client has failed to pay within 20 days from the date of the lawyer's bill for such amount, as long as the credit card charge complies with the requirements previously set forth in our opinions, including that the client is expressly informed of the right to dispute any invoice of the lawyer (and to request fee arbitration) before the lawyer charges such amount and that the lawyer does not charge the client's credit card for any disputed portion of the lawyer's bill.

(37-16)