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Crypto Compensation: Navigating Ethical Payment Practices for Attorneys

Cryptocurrency, a digital or virtual currency that uses cryptography for security, has grown from a niche curiosity to a significant player in the global financial system. Bitcoin, the first cryptocurrency, introduced in 2009, paved the way for thousands of other digital currencies. These currencies are decentralized and typically operate on blockchain technology, a distributed ledger enforced by a network of computers. As cryptocurrencies become more mainstream, the legal sector is exploring their potential benefits and risks. This article delves into the ethical considerations attorneys must contemplate when accepting cryptocurrency as payment for legal services.

Understanding Cryptocurrency

Before diving into the ethical and risk management implications, it is essential to understand what cryptocurrency is and how it functions. "Crypto" refers to the various encryption algorithms and cryptographic techniques that safeguard these entries. Unlike traditional fiat currencies (a government-issued currency that is not backed by a commodity such as gold)¹, cryptocurrencies are not issued or regulated by any central banking authority. Instead, they are generated through a process called "mining" and are managed by peer-to-peer networks. Mining is accomplished by executing complicated mathematic operations that take a great deal of processing power. Transactions are verified by networks through cryptography and recorded on a public ledger called a blockchain, which is similar to a traditional ledger used in conventional money transactions. Users send and receive cryptocurrency such as Bitcoin, Ethereum, Tether, and other cryptocurrencies from their mobile device, computer, or web application by using "wallet" software.

Cryptocurrencies offer advantages, such as cheaper transaction fees and faster transfer times because they do not use third-party intermediaries such as a bank or a credit card company. However, they also come with significant risks, including price volatility,² regulatory uncertainty, and the potential for misuse in illegal activities.

The Legal Framework for Cryptocurrency

The legal status of cryptocurrencies varies significantly across different jurisdictions. Some countries embrace digital currencies, while others impose strict regulations or outright bans. In fact, as of June 2024, El Salvador was the only country to accept Bitcoin as legal tender for monetary transactions.³ Since cryptocurrencies are not issued by any public or private entities and function outside most existing financial infrastructures, it is difficult to make a case for their legal status in different global financial jurisdictions. In the United States, the regulatory environment is complex, involving multiple agencies such as the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Internal Revenue Service (IRS).

For attorneys, it is crucial to stay informed about the evolving regulatory legal landscape surrounding cryptocurrencies. Accepting cryptocurrency as payment may have implications under several laws, including those related to money laundering, tax reporting, and the Rules of Professional Conduct.

¹ Fiat currencies are those that derive their authority from the government or monetary authorities. For example, the U.S. dollar is recognized and issued by the government as the official currency of the United States and is "legal tender."

² "Bitcoin remains 4.5 times more volatile than the S&P 500 (7.88%) and four times more volatile than gold (8.92%). "See, "How Volatile Is Bitcoin Compared To Other Assets."

³ U.S. International Trade Administration. "El Salvador Adopts Bitcoin as Legal Tender."

Ethical Considerations for Attorneys

State bar associations and attorney regulatory bodies have been grappling with how to treat payment arrangements involving cryptocurrency since the first legal ethics opinion was issued in Nebraska in 2017.⁴ Since that time, many opinions agree there is nothing inherently unethical or improper with accepting cryptocurrency in payment for legal services. However, fee arrangements using cryptocurrency can present thorny issues under the Rules of Professional Conduct that ordinary transactions in fiat currency do not.⁵

MRPCs 1.5(a), 1.8(a) and the Reasonableness of the Fee

Fees or expenses paid in cryptocurrency must be reasonable.⁶ Rather than define this term, Rule 1.5(a) of the ABA Model Rules of Professional Conduct includes a list of eight factors to be considered in making this determination. The problem in determining reasonableness with cryptocurrency comes from the volatility of the currency itself as well as the chosen fee structure. For example, “[a] client who receives a bill for services rendered and elects to immediately transfer bitcoins to an attorney’s wallet can be certain of the value of the payment, while a client who pays a lawyer an advance for services to be performed cannot predict the value of that cryptocurrency in a week, much less a month or a year.”⁷

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However, Rule 1.5(a) contains no prohibition on lawyers accepting potentially volatile assets as payment for fees. In fact, Comment 4 to Rule 1.5 states that “[a] lawyer may accept property . . . such as an ownership interest in an enterprise,” as payment. In fact, many state’s legal ethics opinions have concluded that payment of fees in cryptocurrency is more like a payment of fees in property than in fiat currency.

If and when cryptocurrency fee payments are considered a business transaction, they must comply with Rule 1.8(a) of the ABA Model Rules of Professional Conduct which imposes significant responsibilities on the lawyer including obtaining the informed consent of the client.⁸ This communication may include a discussion of the risks and benefits of a cryptocurrency fee agreement such as how the client will be billed (i.e. in fiat currency or cryptocurrency); whether and how frequently cryptocurrency held by the lawyer will be transferred into dollars; who is responsible for paying any increase or decrease in the value of the cryptocurrency; who will pay the transfer fees; which cryptocurrency exchange platform will be used to determine the value of cryptocurrency upon receipt and, in the case of advance fees, how will unearned fees be returned and in what currency, etc.

Safeguarding Cryptocurrency Payments

When an attorney uses an advance payment retainer agreement, and the attorney is holding fees that have yet to be earned in trust, the situation becomes even more difficult. Rule 1.15(a) of the Model Rules of Professional Conduct requires that an attorney hold property belonging to a client or third-party in relation to the representation separate from his/her/their own property and it must be safeguarded.⁹ Just as with fiat currency or any client property, a lawyer must use reasonable care to minimize the risk of loss. The problem rears its head in that most cryptocurrency is stored in digital wallets offered by online platforms. Since cryptocurrency and blockchain transactions are decentralized, unregulated, uninsured (no FDIC protections), anonymous and irreversible, there is no central bank or government to insure against a loss, and theft via hacking and malware is a substantial risk.¹⁰ As is the risk of losing the password needed to access the digital wallet.¹¹

4 See, “[Nebraska Ethics Advisory Opinion for Lawyers – no. 17-03.](#)”

5 See also Md. Ethics Op. 2022-01 (2022); N.Y. City Bar Ethics Op. 2019-5 (2019); N.C. Ethics Op. 2019-05 (2019);

Ohio Bd. of Prof. Conduct Ethics Op. 2022-07 (2022); Va. Ethics Op. 1898 (2022); D.C. Ethics Op. 378 (2019).

6 See Rule 1.5(a) of the ABA Model Rules of Professional Conduct.

7 D.C. Ethics Op. 378.

8 For more information on obtaining the informed consent of the client, see D.C. Ethics Op. 378, N.Y. City Bar Ethics Op. 2019-5 and “[Paying with Crypto Currency.](#)”

9 ABA Model Rule of Professional Conduct 1.15(a).

10 Cyber insurance may or may not cover your losses. It depends entirely on the policy you have and many insurers have specific policy exclusions for cryptocurrency, whereas others offer it as an optional add-on.

11 See “[Lost Passwords Lock Millionaires Out of Their Bitcoin Fortunes.](#)”

Practical Steps for Accepting Cryptocurrency

To navigate the ethical landscape successfully, attorneys considering cryptocurrency payments should take the following practical steps:

- 1. Education and Training:** Attorneys should invest in understanding the fundamentals of cryptocurrency and blockchain technology. Comment [8] to Rule 1.1 of the Model Rules of Professional Conduct makes it clear that attorneys must stay informed about significant changes in technologies impacting their practice areas. Maintaining competency in cryptocurrency requires consistent engagement with both legal and technological developments. Because of the frequent changes in cryptocurrency regulations and the advent of new financial products in the space, attorneys benefit from regularly attending CLE programs and staying connected to industry publications and conferences focused on cryptocurrency law. Additionally, collaborating with technology experts and consulting financial professionals can help attorneys deepen their understanding of complex blockchain structures. By actively seeking knowledge and resources on cryptocurrency, lawyers can effectively represent clients while upholding their professional duty to remain competent in emerging areas that influence modern legal practice.
- 2. Developing a Policy:** Solo practitioners and law firms alike should develop comprehensive policies for accepting cryptocurrency. This includes setting guidelines for which types of cryptocurrency will be accepted, how payments will be processed, and how potential issues such as price volatility will be managed. For example, in order to transfer cryptocurrency payments received from clients to an IOLTA account, an attorney must first convert the cryptocurrency into fiat currency on a cryptocurrency exchange, then deposit the converted funds into their IOLTA account; an attorney cannot directly deposit cryptocurrency into the IOLTA account as it is considered property, not currency, and needs to be converted first to comply with individual state jurisdictions' versions of Rule 1.15(a). Key points to remember when making these transfers are the following:
 - **Client notification:** Always inform the client that you will be converting their cryptocurrency payment into fiat currency immediately upon receipt.
 - **Choose a reputable exchange:** Select a reliable cryptocurrency exchange to convert the crypto to fiat currency at market rates.
 - **Accurate recordkeeping:** Maintain detailed records of all crypto transactions.
- 3. Client Agreements:** It is paramount that attorneys clearly outline the terms of cryptocurrency payments in client agreements. They should specify how fees will be calculated, how the value of the cryptocurrency will be determined, and the timing of any conversions to fiat currency. The engagement letter should contain the following provisions, including but not limited to, the client's understanding of and informed consent to the acceptance of cryptocurrency as payment of fees and the attendant disclosure requirements under Rule 1.8(a); admonishment to the client to consult with tax counsel regarding the intention to pay legal fees in cryptocurrency; who bears the risk of gain or loss and who will earn any gain; parameters for valuing the cryptocurrency, including identification of the exchange to be used, allocation of transaction fees, and the expected timing of the conversion.
- 4. Secure Transactions:** It is important to use reputable cryptocurrency exchanges and wallets to ensure secure transactions. Implementation of robust cybersecurity measures to protect against theft and fraud are key. Further, attorneys should employ reasonable methods of safeguarding cryptocurrency for a client that may include using more than one private key for access to cryptocurrency, or maintaining the digital wallet or private keys in a computer, flash drive, or other storage device that is not connected to the Internet (known as "cold storage").
- 5. Tax Compliance:** Attorneys need to stay informed about the tax implications of accepting cryptocurrency. The IRS treats cryptocurrency as property, meaning that each transaction may have tax consequences.¹² Attorneys should ensure that they and their clients comply with all relevant tax reporting requirements.

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¹² Although cryptocurrencies are considered a form of money, the Internal Revenue Service (IRS) treats them as financial assets or property for tax purposes. See "[IRS: Updates to Question on Digital Assets: Taxpayers Should Continue to Report All Digital Asset Income.](#)"

The Future of Cryptocurrency in Legal Payments

The use of cryptocurrency as a form of payment in the legal sector is likely to increase as digital currencies become more mainstream. However, the ethical and practical challenges will continue to evolve. Attorneys must remain vigilant, adaptable, and proactive in addressing these challenges.

- 1. Regulatory Developments:** Ongoing regulatory developments will shape how attorneys can accept and use cryptocurrency. Staying informed about changes in laws and regulations will be crucial.
- 2. Client Expectations:** As more clients become familiar with and use cryptocurrencies, the demand for attorneys who can accept digital currency payments will grow. Meeting client expectations while maintaining ethical standards will be key to a successful and safe practice.
- 3. Global Considerations:** Given the borderless nature of cryptocurrencies, attorneys with international practices must consider the varying legal and regulatory landscapes in different jurisdictions. Navigating these complexities requires a thorough understanding of global regulatory environments.

Conclusion

The acceptance of cryptocurrency as payment for legal services presents both opportunities and challenges for attorneys. While digital currencies offer potential benefits such as faster transactions and lower fees, they also pose significant ethical and practical considerations. Attorneys must navigate issues related to competence, conflicts of interest, financial safeguards, and reasonable fees. By educating themselves, developing clear policies, and maintaining transparency with clients, attorneys can ethically and effectively integrate cryptocurrency into their practice.

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