



Technology Law

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HODL: Crypto Payments for Legal Services?

For many, cryptocurrency remains a mysterious concept shrouded with terms like blockchain, coins, and ledgers. But according to the website finder.com, Americans' ownership of cryptocurrencies reached 14.4% in 2019. Richard Laycock, *A rising number of Americans own crypto, But adoption is far from widespread*, Finder (Nov. 19, 2019), <https://bit.ly/3aSaELY>. Adoption of cryptocurrency as a form of payment continues to expand with retailers such as Whole Foods and Nordstrom now accepting Bitcoin as payment. If they have not already, law firms will soon face the question of whether they, too, can accept cryptocurrency as payment for legal services. But before accepting cryptocurrency, lawyers should make sure they understand the risks and ethical considerations associated with them.

Before a lawyer can decide if he or she is willing to accept cryptocurrency, he or she should understand the concept behind cryptocurrencies. Cryptocurrencies bypass centralized banks and do not have legal tender status by any government. "Coins" are intangible. They are virtual currency. There exists no asset to which a coin is connected. The only tangible evidence that your coin exists is a cryptographic proof (the "key" to your coin) that is recorded on the blockchain.

A blockchain is a decentralized network of open ledgers. These ledgers are shared with everyone on the network. Each "block" contains information relating to a transaction, such as time, date, and amount, which is "chained" together, becoming permanent. For example, when someone purchases one Bitcoin, a block is created. The computers on the network then check to confirm that the transaction occurred as reported. Once the transaction is confirmed by the computers on the network, the block is added to the chain and the ledgers updated. The benefit of this concept is that all of the information is open and transparent, and the information in the block can never be changed, giving rise to a secure and auditable transaction.

Lawyers must understand that the value of cryptocurrencies fluctuates. Illinois Rule of Professional Conduct 1.5(a) states, "[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." Therefore, when accepting payment in cryptocurrency, the lawyer must recognize that a large increase in the price of the cryptocurrency may result in a violation of Rule 1.5(a). Conversely, a large decrease in the cryptocurrency's price could mean the lawyer works for free. Although Illinois has not addressed this issue, Nebraska has. In Nebraska Ethics Advisory Opinion for Lawyers No. 17-03, lawyers are advised to convert cryptocurrency to U.S. Dollars immediately upon receipt and credit the client's account accordingly. This conversion will allow an immediate valuation of the currency that can be documented and communicated to the client. There may be fees associated with the conversion from cryptocurrency to U.S. Dollars. Lawyers should anticipate conversion fees and document to the client which party is responsible for such fees.

The immediate conversion of cryptocurrency to U.S. Dollars may allow for a valuation of the currency, but a question remains whether a law firm may hold cryptocurrency tendered by a client as payment for past legal services. The Nebraska opinion suggests no, but with the growing acceptance of cryptocurrency as payment, this area is ripe for

ongoing discussion. For example, should lawyers be able to decide if they want to risk the fluctuation in price, akin to accepting stock as payment for legal services, which also fluctuates in price?

Other considerations are required when a client asks a lawyer to hold cryptocurrencies in trust. Illinois Rule of Professional Conduct 1.15(a) mandates that a lawyer hold the property of a client separate from the lawyer's own property, be identified as such, and appropriately safeguarded. As cryptocurrency is a virtual currency, lawyers must have an understanding of how to store and appropriately safeguard cryptocurrency. For example, Comment 1 to Rule 1.15 states that securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

Cryptocurrencies cannot be stored in safe deposit boxes, *per se*. They are stored in wallets. Not all wallets are equal, however, and lawyers must understand the risks associated with the different types. Online exchanges where cryptocurrencies are bought, sold, and converted to U.S. Dollars allow for the creation of an online wallet—a virtual bank account with an identifier akin to a traditional bank's routing number and account number. Online wallets allow one to send and receive cryptocurrency. One of the risks of online wallets is that if you lose your password to that wallet, all virtual currency in the wallet will be inaccessible. Further, an online wallet faces the risk of a breach, whereby all cryptocurrency in the online wallet could be lost. If there was a breach and a client's cryptocurrency was lost, a lawyer may be in violation of Rule 1.15.

A more secure way to store cryptocurrency is through the use of a hardware (or cold) wallet. Hardware wallets allow for the transfer of cryptocurrency from an online wallet to a physical hardware device, which stores the cryptocurrency offline and protected from a breach. Although storage of cryptocurrency in a hardware wallet may safeguard it from a breach, the hardware wallet itself must be safeguarded. If the hardware wallet is lost, so too is all cryptocurrency on the device. Therefore, safeguarding your cold wallet and all passwords and recovery passwords to access the stored cryptocurrency is also essential, e.g., storing your cold wallets in a safe deposit box.

Rule 1.15(a) mandates that complete records of client trust account funds be kept and preserved for a period of seven years, so it is vital for lawyers to keep meticulous records of transfers to and from cold wallets and consider the use of separate cold wallets for each client, allowing a lawyer to document serial numbers of the devices to clients. Even assuming all safeguards are taken when holding a client's cryptocurrency, it is still important to document to the client that you are accepting the cryptocurrency to be held, it will not be converted to U.S. Dollars, and it has the possibility of fluctuating in value.

Debate continues as to the viability of cryptocurrencies, but when you encounter a whale client, who insists on paying in Bitcoin, proceed with caution to verify compliance with the Rules of Professional Conduct.

Author's Note: "HODL" is used in the cryptocurrency community to describe holding cryptocurrencies.

About the Author

Patrick W. Stuffebeam is a partner in the Edwardsville office of *Tressler LLP*. He concentrates his practice on the defense of civil litigation including toxic tort (asbestos, talc, and benzene), premises liability, product liability, commercial litigation, and insurance coverage issues. Mr. Stuffebeam also maintains a practice in assisting individuals and businesses with cybersecurity and privacy issues, corporate formation, reorganization, acquisition, and contracts. Mr. Stuffebeam obtained his law degree from Saint Louis University School of Law after graduating from Western Illinois University. He is a member of the Illinois Association of Defense Trial Counsel (twice elected Director, 2011-2017),



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