

A Bitcoin for Your Troubles

By Ian Anderson

Is receiving Bitcoin as payment for legal services more trouble than it's worth?

As the legal profession lurches into the 21st Century, more lawyers are relying on innovative fee arrangements. With the recent buzz around cryptocurrency such as Bitcoin, attorneys are beginning to accept payment in Bitcoin and other virtual currency. The Nebraska Supreme Court recently weighed in on lawyers accepting payment in Bitcoin.

The ethics of receiving payment in cryptocurrency is similar to the ethics of bartering for legal services, because the IRS still treats these "virtual currencies" as property and not legal tender. Payment in Bitcoin is payment in property.

Whether an attorney may barter for legal services depends on local ethics laws. Some state bar associations have approved of barter either directly or indirectly in connection with barter exchanges, associations formed to facilitate bartering goods and services (some have their own "money" that tracks the value of services provided to the exchange).

The Nebraska Supreme Court's ethics opinion on cryptocurrency and the State Bar advisory opinions on barter exchanges advise that the value exchanged must be reasonable and the exchange must not otherwise impair an attorney's loyal and competent provision of services



for his client.

Given the uncertainty of Bitcoin's value, it may be difficult to set a fair price. If the value of the cryptocurrency spikes, clients may complain that they overpaid for services. Or if the value of the cryptocurrency plummets, the attorney may be completing a complex task in exchange for suddenly worthless digital money. The Nebraska Supreme Court recommends advising the client that any cryptocurrency received will be immediately converted to dollars to mitigate any issues with price volatility.

Despite uncertainty, the value of a single Bitcoin (as of the date of this article) is more than \$5000. The fair value of the attorney's services may not be equivalent to a nice round number of Bitcoins. If only a fraction of a Bitcoin were transferred in exchange for services, the attorney may end up co-owning a Bitcoin with the client, which might implicate additional ethical issues as an ownership interest adverse to a client.

Where payments in Bitcoin present new ethical challenges is holding Bitcoin in trust. Cryptocurrencies present unique security challenges and cannot simply be deposited into a trust account. Again, this could be possibly be remedied by advising the client that any cryptocurrency received would be converted and held in trust as cash, as recommended by the Nebraska Supreme Court and this article by the Orange County Bar Association.

Cryptocurrencies also implicate money laundering concerns. The US Treasury Department's Financial Crimes Enforcement Network has taken an interest in cryptocurrency and issued guidance for cryptocurrency exchanges to prevent and report money laundering activities. While these guidelines do not apply to anyone simply receiving payment in cryptocurrency, attorneys should be aware of the risks and accept payment through exchanges that actively take steps to prevent money laundering.

Attorneys need to evaluate whether the added due diligence outweighs the value of accepting payment in Bitcoin. Some attorneys believe

it does and believe that such flexible payment models attract new clients. But for cases with minimal fees or for technical luddites, receiving payment in Bitcoin may be more trouble than its worth.