

CRYPTOCURRENCY AS COUNSELOR COMPENSATION

THE LONG VIEW OF PRICING, PAYMENTS AND PROFIT

SERIES - 2 / ARTICLE - 2

JULY 27, 2022

By **Jeffrey Brochin, Esq.**

GreenPoint>
Law & Compliance

william.anderson@greenpointglobal.com | pranav.menon@greenpointglobal.com

International Corporate Center, 555 Theodore Fremd Avenue, Suite A102 Rye, NY 10580

www.greenpointlegal.com

Bitcoin, Ethereum, Dogecoin, Tether... the market for cryptocurrencies just keeps getting bigger. After determining that you could buy your Starbucks Coffee, Dallas Mavericks tickets, or Whole Foods veggies with the coins, you may have thought, 'why not accept legal fees from clients via cryptocurrency?'

If so, you are not alone, and in fact, some states have already debated the issue and have come up with rules and regulations governing the use of cryptocurrencies as payment for your legal services. But, as with any innovation in the field of law, the ethics of the matter must be clearly understood.

Scissors, Paper, Rock?

Let us start with the basics. At one time, trading in goods and services was conducted using commodity money as the medium of exchange. Commodity money actually contained gold, silver, or another precious metal, thereby giving the coin itself intrinsic value. Next came representative money, which, contained no precious element itself (and was often printed on paper). It was deemed valuable because the government was issuing the currency guaranteed that its face value was backed by a certain value of gold or silver. With the issuance of fiat currency, governments and the people trading with the currency deemed their paper money to be the accepted medium of exchange, despite it having no intrinsic nor representative value with linkage to precious metals.

Blockchain as Your Banker

A fiat currency is introduced into the economy by a Central Bank, which lends money to financial institutions and thereafter regulates the supply. New physical banknotes are circulated by the Central Bank (Federal Reserve in the US) or a state's Treasury. But how much new money needs to be created or injected into the economy in any given quarter is a function the Central Bank undertakes through its decisions

on buying and selling money. Globally, this is carried out by corresponding Central Banks such as the European Central Bank, Swiss National Bank, or People's Bank of China.

So, who issues, regulates, and places a value on cryptocurrencies?

No Central Bank issues cryptocurrencies, instead, the coins (or 'tokens' or 'crypto') are 'mined' via extremely complex algorithms in order to be put into circulation, and new transactions using, the coins are confirmed by way of a 'blockchain ledger.' Once in circulation, you can buy the coins using, you guessed it, fiat currency, as long as you have a digital wallet.

Property, Not Currency

There are over 1,300 cryptocurrencies in circulation, and today's clients are eager to use that currency to pay for your legal services. But there is a problem with that premise crypto, is in fact, not money at all, but rather a 'property asset.' That classification was decided in the California case of [Morici v. HashFast Technologies LLC](#), where the cryptocurrency Bitcoin was found not to be a currency in the sense of fiat currency but rather property. That decision aligned with the IRS's opinion that crypto is property rather than currency for tax purposes.

“PARALEGALS ARE OFTEN HIRED FOR INTENSIVE SUPPORT ROLES WITHIN AN ATTORNEY’S CASELOAD....”

...A WIDE RANGE OF TRULY SUBSTANTIVE LEGAL WORK CAN NOW BE LAWFULLY ASSIGNED TO A PARALEGAL”

Accepting Cryptocurrency as Payment

The first state to authorize the acceptance of cryptocurrency as payment for legal services was Nebraska, which adopted [Nebraska Ethics Advisory Opinion for Lawyers No. 17-03](#) (September 11, 2017). Here, it advised lawyers to convert digital currency to US dollars upon receipt immediately. Due to the volatility of cryptocurrency values, it announced the sale of the cryptocurrency to ensure that the lawyer does not overcharge the client. Nebraska also addressed whether an attorney may receive digital currencies from third parties as payment for the benefit of a client and whether an attorney may hold digital currencies in a client trust account.

The New York City Bar Association (NYCBA) went further, rendering an opinion ([NYCBA, Comm'n on Prof'l Ethics, Formal Op. 2019-5](#)) that lawyers must comply with ABA Model Rule 1.8(a) when they accept cryptocurrency as a payment. In 2020, the Washington, DC bar approved the acceptance of cryptocurrency as payment for legal services as long as the fee agreement is 'fair and reasonable' and the lawyer can safeguard what the bar noted was virtual property. Payment in cryptocurrency, therefore, was considered akin to accepting payment in shares of stock, collectibles, etc.

ABA Ethics Considerations

Two 'ethics' issues may develop regarding accepting cryptocurrency as a means of payment for legal fees. First, under

ABA Model Rule 1.5, a lawyer is prohibited from entering into an agreement calling for unreasonable fees. However, various scenarios can emerge in which a cryptocurrency price might change dramatically between the time of transfer from the client's digital wallet to the lawyer's, subsequently converting it. Even if the lawyer decides to retain the cryptocurrency in his own digital wallet, instant appreciation in value may also trigger a Rule 1.5 exposure.

The other ethical concern pertains to ABA Model Rule 1.8, which restricts a lawyer from entering into a business transaction with a client or acquiring an interest that is adverse to his client's interest unless the conduct falls as an exception under the Rule. Although Rule 1.8 (a) generally pertains to fees paid by way of stocks, a security interest in a client's property, or other goods, the various interpretations of cryptocurrency as a property asset raise the specter of Rule 1.8 implications.

Check Your State's Rules

The increasing acceptance of cryptocurrencies by lawyers is all but a certainty, and as more states adopt opinions similar to those of Nebraska, New York, and Washington DC, the rules for accepting virtual currencies may indeed vary. However, by adhering to your own state's opinions and guidelines promulgated, you will eliminate or at least reduce the risks involved.

Executive Summary

1. The Issue

The rising popularity of cryptocurrencies in today's economy presents new ethical issues for attorneys and law firms who accept payment in these forms.

2. The Gravamen

Cryptocurrencies are not 'pure' forms of currency and carry a fair amount of risk, which may fall upon the client a scenario that potentially runs afoul of a lawyer's ethical obligations.

3. The Path Forward

Keep abreast of your Bar Association's guidance or directives on the issue. Ensure clients are fully apprised of the risks in paying for services by cryptocurrencies, and 'cash-out' cryptocurrency payments for banknotes without delay in order to avoid any inadvertent enrichment from fluctuations in the value of the client's payments.

Action Items:

Step 1:

As far as feasible, accept payment through traditional means until your jurisdiction provides reliable guidance on the issue.

Step 2:

If, by chance, you have a client keen on paying for legal services by cryptocurrency, then be sure to discuss and memorialize a set conversation rate or USD value for the payment.

Step 3:

Candidly discuss the risks with the client and treat the overall process as a business transaction under ABA Model Rule 1.8.

Step 4:

At the earliest convenience, have the payment converted back into traditional currency as price fluctuations in the value of the cryptocurrency can lead to allegations of unreasonable fee levying, which violates ABA Rule 1.5.

Further Readings

1. <https://cbaatthebar.chicagobar.org/2020/09/17/how-attorneys-can-accept-bitcoin-as-payment/>
2. <https://www.ncbar.gov/for-lawyers/ethics/ethics-articles/is-it-ethical-for-lawyers-to-accept-bitcoins-and-other-cryptocurrencies/>
3. <https://www.clio.com/blog/accept-bitcoin-law-firm/>
4. <https://news.bloomberglaw.com/us-law-week/washington-d-c-lawyers-can-accept-cryptocurrency-as-payment>
5. <https://www.americanbar.org/groups/litigation/committees/jiop/articles/2019/fall2019-ethics-of-accepting-cryptocurrency-as-payment/>
6. <https://www.law.com/americanlawyer/2021/05/17/more-law-firms-welcome-crypto-payments-but-few-clients-are-taking-advantage/>
7. <https://www.coindesk.com/policy/2020/07/01/dc-lawyers-can-now-accept-crypto-for-legal-fees/>



Jeffrey Brochin, Esq.

GreenPoint Staff Counsel
and Content Editor



After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions. Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



William H. Anderson, Esq.

MANAGING DIRECTOR AND HEAD OF
FINANCIAL PRODUCTS AND SERVICES



William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



Sanjay Sharma, PhD

FOUNDER AND CHAIRMAN



Pranav Menon, Esq.

LEGAL RECRUITMENT
MANAGER AND DATA
PRIVACY SPECIALIST – LAW
& COMPLIANCE | GPESR

GreenPoint> Law & Compliance

About GreenPoint Law & Compliance

- ▶ GreenPoint Global was founded in 2001 and since that time has faithfully served an expanding roster of clients. GreenPoint leverages a unique combination of US-trained attorneys and proprietary technology to deliver a unique offering of skill and flexibility to meet client needs.
- ▶ Our core team of experienced US attorneys is based in Israel and works US hours. The breadth of experience of our attorneys ensures high-quality, cost-effective results across a wide range of legal, compliance, and regulatory matters.
- ▶ GreenPoint's methodology and proven track record of achieving client objectives has resulted in a broad base of clients in the United States, ranging from Fortune 500 insurance companies to solo practitioners, law firms, in-house law departments, and legal publishers. GreenPoint attorneys are selectively recruited and deployed based on possessing demonstrable subject matter expertise covering a broad spectrum of substantive US laws and regulations. The work product of our attorneys is thoroughly vetted internally before delivery to client. Adherence to quality, value and flexibility is at the core of our foundation.

GreenPoint> Global

About GreenPoint Global

- ▶ GreenPoint Global provides litigation support, finance and technology solutions to insurers, law firms, banks, and in-house law departments through our subject matter experts and process specialists.
- ▶ Founded in 2001 and headquartered in Rye, New York, GreenPoint has grown to over 500 employees with a global footprint. We have a stable and growing client base that ranges from small and medium-sized organizations to Fortune 1000 companies worldwide. Our production and management teams are located in the US, India, and Israel with access to deep pools of subject matter experts. Our greatest strength is our employee-base of experienced lawyers, paralegals, process specialists, financial analysts, and software developers. We have leading edge software development capabilities with over 50 professionals on staff, working on internal and client projects.
- ▶ GreenPoint is certified by the TÜV SÜD (South Asia) for the highest standards of Quality Management (ISO 9001:2015) and Information Security Management (ISO 27001:2013). GreenPoint is certified as a Minority and Woman Owned Business Enterprise (MWBE) by New York City and a Minority Owned Business Enterprise (MBE) by the State of New York. GreenPoint complies with all federal and state contracting requirements. GreenPoint is owned by its founders and principals and is debt free. For comprehensive information on our services and products under Law & Compliance and Finance, please visit our subsidiary websites through the division's menu.