Proskauer

Billable Bitcoins: Lawyers Accepting Cryptocurrency

Minding Your Business Blog on **December 13, 2017**

With bitcoin and other cryptocurrencies reaching shocking new prices seemingly every day, some people have finally started putting the new payment systems to real use – paying lawyers. Earlier this fall Nebraska became the first state to hand down a formal ethics ruling on the propriety of lawyers charging their clients using bitcoin and other cryptocurrencies. In allowing lawyers to charge their clients via cryptocurrencies, so long as they then instantly exchange the virtual currency for U.S. dollars, the decision may be indicative of a larger trend in the legal industry.

On September 11, 2017, the Lawyer's Advisory Committee, an ethics council appointed by the Nebraska Supreme Court, answered three questions in the affirmative: (1) may an attorney receive digital currencies as payment; (2) may an attorney receive digital currencies from third parties as payment for the benefit of their client; and (3) may an attorney hold digital currencies in escrow for a client? At the heart of the problem was Nebraska Rule of Professional Conduct § 3-501.5(a) which prohibits attorneys from charging unreasonable fees to their clients. The issue arises from the volatility of bitcoin's price – not only has it been known to fluctuate as much as 10% in value in a given day, but the currency's price has more than doubled to over $10,000 per coin since the Lawyer's Advisory Committee handed down its decision. With such rapidly changing prices how can an attorney who is charging in bitcoins make sure that they are charging their client a consistent price? Given this volatility, a billable fee of one bitcoin could cost a client wildly different prices based on the market's behavior that day. The Committee answered this question by counseling lawyers to immediately convert any cryptocurrency payments to U.S. dollars in line with market rates before crediting the dollars to the client's account. Such a transfer would eliminate the uncertainty at the heart of using such a volatile currency. The advisory opinion went on to suggest the same procedure – immediate conversion to U.S. dollars – for third party payments and holding the client's funds in escrow.

While this advisory opinion was the first such decision in the country condoning the practice of billing using bitcoins, some lawyers around the country have been charging their clients in cryptocurrencies for years without official sanction from a state ethics body. For some, the practice of immediately exchanging a client's bitcoins for U.S. currency might not seem like a significant innovation, and in some ways it's true that it is less charging in bitcoins than it is using bitcoins as a money transfer system. But the decision strikes a happy medium, if lawyers are immediately transferring their client's bitcoins into U.S. currency there is less of a risk that they will be speculating with their client's payments and consequently charging them unreasonable prices. Given the frenzy surrounding not only investing in cryptocurrencies but also the potentially wide-reaching application of the underlying blockchain technology, the public ledger upon which cryptocurrency transactions take place, it seems a safe bet that cryptocurrencies will become increasingly common in the legal profession. In New York, for example, the Department of Financial Services allows merchants to sell goods and services using cryptocurrencies and now requires a BitLicense for anyone engaged in the financial use of virtual currencies such as holding or storing virtual currency on behalf of others – a longtime practice of the legal profession. While the exact contours of lawyers charging in bitcoins are still hazy, one thing is for certain – a potential new option is emerging.

View Original