



# **ETHICAL ISSUES OF BITCOIN AND CRYPTOCURRENCIES**

Business and Corporate Section  
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# THE BASICS

- . Digital currency, 1,759 types.
- . Uses peer-to-peer technology with no central authority or banks.
- . Cryptojacking.
- . Transactions are recorded in a computer file called a Blockchain, essentially a ledger.
- . Sent and received from a mobile device, computer or web application using wallet software.

# ETHICAL ISSUES

It is property, not funds, which is important under I.R.P.C. 1.15 and I.R.P.C. 1.5.

# I.R.P.C. 1.15 ISSUES

1) As property, bitcoin cannot be deposited into a trust account.

Client property must be safeguarded, i.e., your digital wallet must be secure and backed up.

2) If paid as advance fees, lawyer needs to either:

(a) Convert bitcoin to dollars and deposit;

(b) Keep bitcoin and put the equivalent cash value into the trust account.

This would require the lawyer to obtain consent and comply with I.R.P.C.

1.8(a); or

(c) Agree with the client that the risk of bitcoin volatility remains with the lawyer. However, you might be under paid. Additional risks if it is an advance payment, you may be unable to pay third-party liens under I.R.P.C. 1.15(d), or if there is a dispute it creates I.R.P.C. 1.15(e) problems.

## RULE 1.15(d): SAFEKEEPING PROPERTY

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

## RULE 1.15(e): SAFEKEEPING PROPERTY

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall distribute all portions of the property as to which the interests are not in dispute.

RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

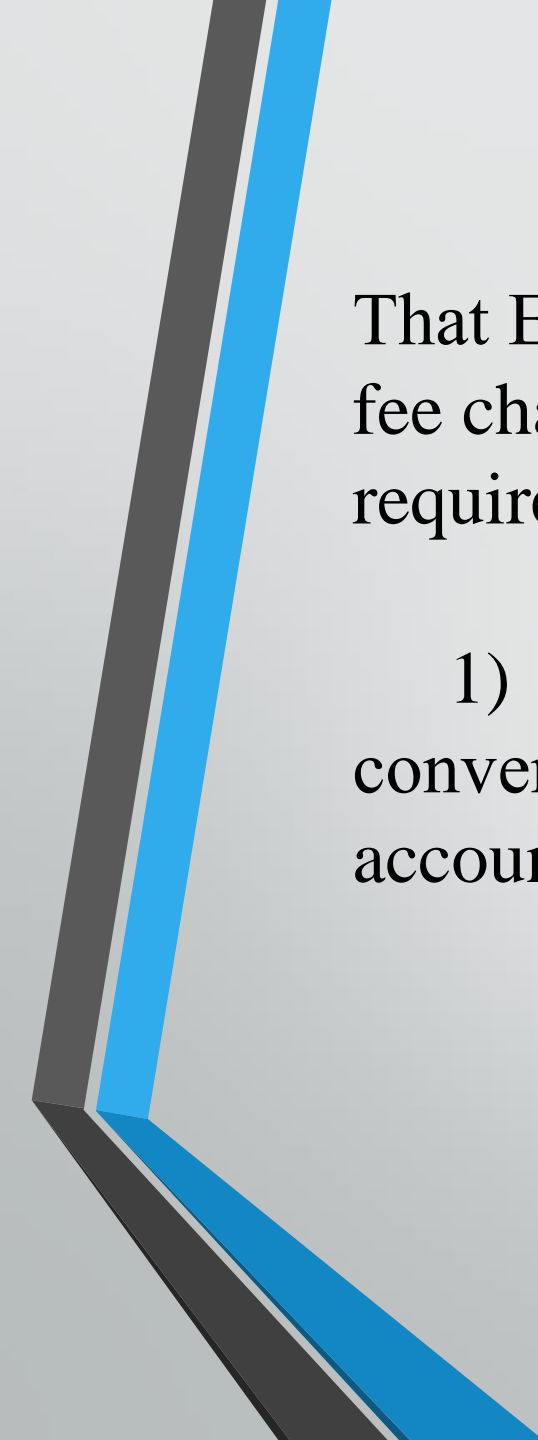
(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.





Nebraska Ethics Advisory Opinion 17-03 (Sept. 11, 2017) disallows the lawyer from agreeing to assume the risk of volatility of cryptocurrencies.



That Ethics Advisory Opinion provides to ensure that the attorneys' fee charged remains reasonable under Rule 1.5(a), a lawyer is required to:

- 1) notify client that bitcoin payment will be immediately converted to dollars at objective market rates and credit client's account at time of payment.



A critique of the Nebraska Advisory Opinion is that bitcoin is no different than stock.

## Other ethical issues:

- 1) Who pays transaction fees of conversion to dollars;
- 2) Since it is property, it is subject to capital gains taxes;
- 3) Can you assure the bitcoin payment was not acquired through illegal conduct? Money-laundering; tax avoidance; contraband; and does not reveal client confidential information.