

A Florida Lawyer's Quick Guide to Accepting Cryptocurrency Payments

SUMMARY OVERVIEW

This publication provides best practices and ethical guidance for Florida lawyers interested in learning how to accept cryptocurrency as payment for past services into an operating account, and as advance fees for future services into a trust account.

AUTHOR

Anessa Allen Santos, Esquire
IntelliLaw

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Preface

In early 2021, I received a cryptic email from a colleague from across the State requesting an impromptu meeting about a “sensitive matter” that she preferred to discuss by phone. Because she is not one given to melodramatics, I was intrigued. On a Zoom call, she introduced me to a delightful gentleman who was making an inquiry for an anonymous friend. He explained that six people had been arrested during a pre-dawn FBI raid in a residential neighborhood that included SWAT, drones, and a bearcat tactical vehicle that bored a hole into the side of an occupied home, all caught on video that I later watched on YouTube - transfixed. The friend was not arrested along with the others, but was concerned he might become a person of interest by unfortunate proximity. The indictment read like someone was operating a well-organized criminal enterprise with charges including operating an unlicensed money services business, wire fraud, and money laundering of Bitcoin, often through ATMs.

Then I understood why I had been called. Many years ago, my first job out of law school was as a public defender where I managed the circuit’s largest criminal docket and had the biggest motion practice across five counties. Although I absolutely loved my job, back then there was no law school debt forgiveness program for lawyers in service to the State. So, when I could no longer defer on those loans, I left criminal law and joined the corporate world as in-house counsel to a series of tech startups pioneering global network infrastructure and data management for what was the burgeoning video conferencing industry. Tech has been good to me, but as it often is with lawyers, there are those special cases that forever impact you, and maybe even motivate you to change the world. As a public defender, I had one of those, and it is related to how I found myself in this unexpected Zoom meeting.

Roberto (not his real name) was a migrant worker making \$63 each day picking 4,000 lbs. of tomatoes under the searing heat of the central Florida sun. Unable to open a bank account due to insufficient bank-approved identification, he was paid in cash that he had to carry with him everywhere because there was no safe place to leave it. When he accumulated enough to justify the fees, he would travel to Western Union to wire funds to his family in Guatemala – a trip that often proved dangerous. While on one such journey, Roberto was stopped by the police under pretext who used criminal forfeiture rules to confiscate his hard-earned wages. Although I was able to get the criminal charges dropped, I was not authorized as a public defender to sue for the return of his money – a situation that has continued to bother me. Years later, while preparing for my first lecture on blockchain to deliver at the annual Florida Bar conference, I recognized that Bitcoin could solve Roberto’s problem shared by millions around the world who are unbanked for similar reasons. After pursuing a course of study at the University of Oxford Saïd Business School designed to solve Roberto’s problem, my practice evolved to service blockchain and fintech companies almost exclusively. As their lawyer, I am entrusted to help them develop business strategies, raise capital, and navigate the regulatory landscape for complex compliance across diverse practice areas such as general business law, finance, data privacy, intellectual property, and securities.

Returning to the matter of the FBI raid, several weeks after the call, I was contacted by the witness concerned with guilt by proximity. He inquired, could he hire me to be lead counsel to the entire defense team, and could he pay me in Bitcoin? I had the most complicated and lucrative crypto-payment opportunity before me and there was no way I was going to pass this up. Navigating the nuances of accepting payment in Bitcoin for conversion into my trust account was incredibly challenging, and I learned many valuable lessons along the way. Based on my real-world experience, this quick guide is designed to provide you with the information you need to feel confident in accepting payment for services made in cryptocurrency into your operating and trust accounts.

1.0 Why Read this Quick Guide

In 2017, *The Economist* published a bold headline declaring that “[t]he world’s most valuable asset is no longer oil, but data.”¹ At the start of 2021, the public markets reported that the big five tech companies (Amazon, Apple, Facebook, Google, and Microsoft) together held a combined value of nearly one-third of the United States’ total economy. The business model of each one of these global giants is largely dependent on activities related to data management, like data collection, data analytics, the sale of data, and other data monetization strategies. “Consequently, it is data management and related analytics tools that are receiving the lion’s share of attention from innovators, financiers, and regulators...”² Although data management suffers many challenges, especially where privacy and security are concerned, blockchain and related technologies are especially equipped to overcome them.



In a recent report examining blockchain use cases across 58 big industries, CB Insights explained that what began as the basis of cryptocurrencies such as Bitcoin, blockchain technology is now spreading across a wave of industries, and ultimately, the use cases for a transparent, verifiable register of transaction data are practically endless.³ In particular, the digitalization of money has revolutionized payment systems by facilitating instantaneous peer-to-peer transfers of value in a way that was previously impossible, and it has surfaced in a variety of contexts.⁴ While banks were first responsible for repressing the adoption and integration of cryptocurrencies, they are now partnering together with innovative startups and regulatory authorities to provide guidance, experience, and even funding to expand their use. Consequently, despite early problems where cryptocurrencies were often used for illicit activities, targeted regulations and improvements in the technology have developed a money transmission solution that is safe, reliable, and increasingly ubiquitous.

In March 2021, the global cryptocurrency market cap was valued at \$1.55T, with the total volume in decentralized finance (DeFi) at \$10.69B, and a single Bitcoin was valued at \$50,421.12.⁵ As market activity grows, so does the likelihood that lawyers will be asked to engage in cryptocurrency transactions. Even if you have no background or experience with blockchain or cryptocurrencies (e.g. Bitcoin, Ethereum, Cardano, etc.) this quick guide will provide you with the information you need most to collect fees with ease paid in cryptocurrency.

¹ Economist. 2017. *The World’s Most Valuable Resource Is No Longer Oil, But Data*. [online] Available at: <https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data> [Accessed 18 January 2021].

² Allen Santos, A., 2020. *What’s The Big Deal About Blockchain?*. [online] Florida Bar. Available at: <https://www.floridabar.org/the-florida-bar-journal/whats-the-big-deal-about-blockchain/> [Accessed 18 January 2021].

³ 58 Big Industries Blockchain Could Disrupt | CB Insights Research, CB Insights Research (2021), <https://www.cbinsights.com/research/industries-disrupted-blockchain/> (last visited Oct 19, 2021).

⁴ Brunnermeier, M., James, H. and Landau, J., 2019. *The Digitalization Of Money*. [online] Bis.org. Available at: https://www.bis.org/events/confresearchnetwork1909/brunnermeier_2.pdf [Accessed 18 January 2021].

⁵ CoinMarketCap. 2021. *Cryptocurrency Prices, Charts And Market Capitalizations* | CoinMarketCap. [online] Available at: <https://coinmarketcap.com/> [Accessed 7 March 2021].

2.0 Introduction to Cryptocurrencies

As a short introduction to cryptocurrencies, understanding their nomenclature can be confusing because it varies among jurisdictions and the use case. “In a very short period of time, we’ve evolved from cryptocurrencies to tokens to stablecoins to a digital representation of everything along with derivatives of each.”⁶ Generally speaking, digital assets are not new, nor must they inherently rely on blockchain. Fundamentally, digital assets exist in the same way that electronic records do - they are both stored in digital record-keeping systems like databases. Digital assets may be electronically represented as a string of characters, often stored in binary code, that represent values or rights that can be exercised within a specific context. For this reason, the term “digital assets” does not always refer to assets issued and transferred on a blockchain, since this is a sub-group within the more generic definition of digital assets. Digital payment systems more familiar to the public include PayPal, Square, Stripe, Venmo, and other financial service providers that use traditional banking payment rails, carry the friction, and absorb the time and costs to settle transactions between various financial institutions.

Digital assets created using a blockchain framework have created a complex taxonomy where they may be referred to as crypto assets, cryptocurrency, virtual currency, convertible virtual currency (CVC), digital currency, altcoins, tokens, or some combination thereof. Because of the element of cryptography that is used in blockchain transactions, blockchain representations of value are commonly referred to as “cryptocurrency,” or even just “crypto” for short. Each cryptocurrency is associated with one blockchain. For example, Ether ([ETH](#)) is the crypto for the Ethereum blockchain, Ripple ([XRP](#)) is the crypto for the Ripple blockchain, and ADA ([ADA](#)) is the crypto for the Cardano blockchain. Blockchain-based digital assets like cryptocurrencies are unique in comparison to other digital assets because they use the internet for transfer and settlement. Also, many of these digital assets may be programmed to include automated functions that autonomously execute when certain parameters are met - a function described as a “smart contract.” For more information on blockchain, crypto, smart contracts, and how they are making their way into the practice of law, check out all the materials made available on the Practice Resource Center for the Florida Bar at Legal Fuel – www.legalfuel.com.



⁶ Deloitte United States. 2019. *A Tax Lens On The Proliferation Of Digital Assets*. [online] Available at: <https://www2.deloitte.com/us/en/pages/financial-services/articles/a-tax-lens-on-the-proliferation-of-digital-assets.html> [Accessed 18 January 2021].

3.0 Accepting Cryptocurrency into Your Operating Account

When you provide services to your client and bill them after, they may prefer to make payment in crypto rather than with legal tender (government-issued currencies) like the dollar (\$) or euro (€). Before accepting payments in crypto, there are several issues to first consider, including confirmation of your client's identity, which crypto to accept, what digital wallet to use, what you will do with the crypto-payment, how to report the transaction for taxation, and applicable rules of ethics.

3.1. Getting to Know-Your-Client

In today's increasingly digital world filled with video calls and instant messaging, it is more important than ever that attorneys implement programs and procedures like *know-your-client* (KYC) and *anti-money-laundering* (AML) to protect against the unintentional participation in criminal activity. Banks, money services businesses, FINRA broker-dealers, and several other industries are all required to implement KYC/AML programs per 31 C.F.R. Chapter X. Promulgated and enforced by the Financial Crimes Enforcement Network ([FinCEN](#)), these rules require the governed to establish a written KYC/AML program that (a) verifies the identity of each customer, (b) makes and maintains a record of information obtained relating to identity verification, (c) determines whether the customer appears on any list of known or suspected terrorist organizations,⁷ and (d) provides each customer with adequate notice that this information is being used to verify their identity.

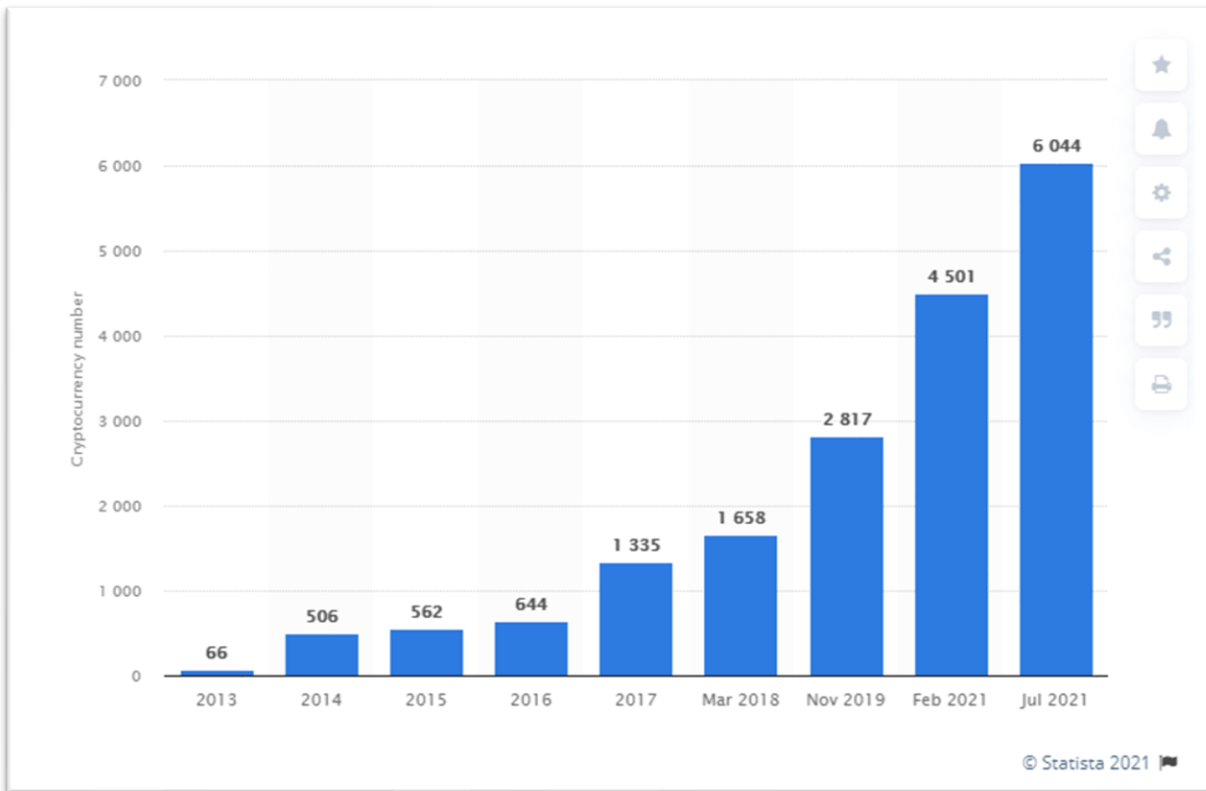
Although attorneys are not held to the same compliance standards as other industries, we can still be held liable for civil and criminal penalties for receiving funds derived from criminal activity; so, we must exercise reasonable care. For example, at the start of the pandemic, I had a few clients who were involved in the personal protective equipment (PPE) industry that was so rife with fraud, I had to write an article about it just to keep it all straight. The problem was that everyone was trying to get in on the PPE sales chain for what they believed were billion-dollar deals for millions of 3M Cranberry gloves sitting in a warehouse somewhere, and all they needed was a lawyer to help them move mega-money so everyone could get their cut. There were always multiple brokers involved, and inevitably, things would go sideways when I asked for the identity documents for each person in the deal. There were claims of confidentiality, unavailability, and all manner of diversions thrown-up while the pressure was increased to close the deal before someone else swooped in for scarce goods. Nevertheless, I was unmovable. I refused to budge unless I had satisfied myself of the identity of each person or organization from whom funds came, and to whom funds were directed. Consequently, each prospective deal eventually revealed its fraudulent roots, and every one of my clients ultimately abandoned the industry relatively unscathed.

Similarly, I have also become the unwilling recipient of a common email scam that KYC/AML procedures quickly uncovered. The sender is usually across an ocean and has an asset to sell to a buyer in Florida. In one case, the seller in Hawaii had a collectible automobile he wanted to sell to a buyer in Orlando. The sender sent me a copy of his passport and driver's license, and we had a video call so I could reasonably confirm his identity. The buyer, however, refused. Not surprisingly, I killed that deal, too. In conclusion, a few easy steps you can take to protect yourself from being used to perpetrate crimes include taking steps to verify your client's identity, inquire about the source of the funds, and most importantly, wait until all funds have completely cleared all financial institutions before passing them on.

⁷ The Office of Foreign Assets Control ("OFAC") of the US Department of Treasury administers different sanctions programs to accomplish foreign policy and national security goals. The sanctions lists and specially designated nationals (SDN) list are available for search online on the [OFAC Website](#).

3.2. The Best Cryptocurrencies to Accept

Despite regulatory reform and the robust prosecution of fraudulent sales of cryptocurrencies, as illustrated by the image below provided by Statista, in July of 2021, there were at least 6,044 cryptocurrencies in circulation worldwide.⁸ So, how do you know which ones to accept?



In 2016, the Securities and Exchange Commission (SEC) issued a landmark decision about “The DAO Attack”⁹ which has subsequently fueled aggressive enforcement actions against unregistered initial coin offerings (ICOs) and the successful prosecutions of dozens of cyber enforcement actions in the past several years.¹⁰ In a speech delivered in 2018, former SEC Director William Hinman explained that labeling an investment opportunity as a coin or token does not, without more, remove the transaction from securities laws.¹¹ Rather, the analysis of “... whether a transaction in a coin or token on the secondary market amounts to an offer or sale of a security requires a careful and fact-sensitive legal analysis ... [involving] how it is being sold and the reasonable expectations of the purchasers.”¹²

⁸ Number of crypto coins 2013-2021 | Statista. (2021). Retrieved 5 August 2021, from <https://www.statista.com/statistics/863917/number-crypto-coins-tokens/>

⁹ Siegel, D., 2016. *The DAO Attack: Understanding What Happened – CoinDesk*. [online] CoinDesk. Available at: <https://www.coindesk.com/understanding-dao-hack-journalists> [Accessed 10 February 2021].

¹⁰ Sec.gov. 2021. *SEC.gov | Cyber Enforcement Actions*. [online] Available at: <https://www.sec.gov/spotlight/cybersecurity-enforcement-actions> [Accessed 14 February 2021].

¹¹ Hinman, W., 2018. *SEC.gov | Digital Asset Transactions: When Howey Met Gary (Plastic)*. [online] Sec.gov. Available at: <https://www.sec.gov/news/speech/speech-hinman-061418> [Accessed 14 February 2021].

¹² *Id.*

If the underlying network on which the token or coin is launched is sufficiently decentralized so that purchasers would no longer reasonably expect a person or group of persons to carry out essential

The 4-part *Howey Test* for defining securities

An investment of value

Into a common enterprise

With the expectation of profits

Derived from the efforts of others

managerial or entrepreneurial efforts, then the digital assets may not represent a security. When examining the Bitcoin and Ethereum blockchains, the SEC and other federal regulatory agencies have determined that the networks are so decentralized, there are no identifiable central parties whose efforts are a key factor in the enterprise. Consequently, the SEC has determined that Bitcoin (BTC) and Ethereum (ETH) are not

securities. However, the CFTC and FinCEN have found that BTC and ETH are commodities. Thus, certain activities involving their trade may fall within the regulatory authority of those federal agencies. For these reasons, attorneys who accept BTC, ETH, or related forks¹³ for payment through a licensed payment processor or exchange can feel confident they are not participating in an unregistered securities offering.

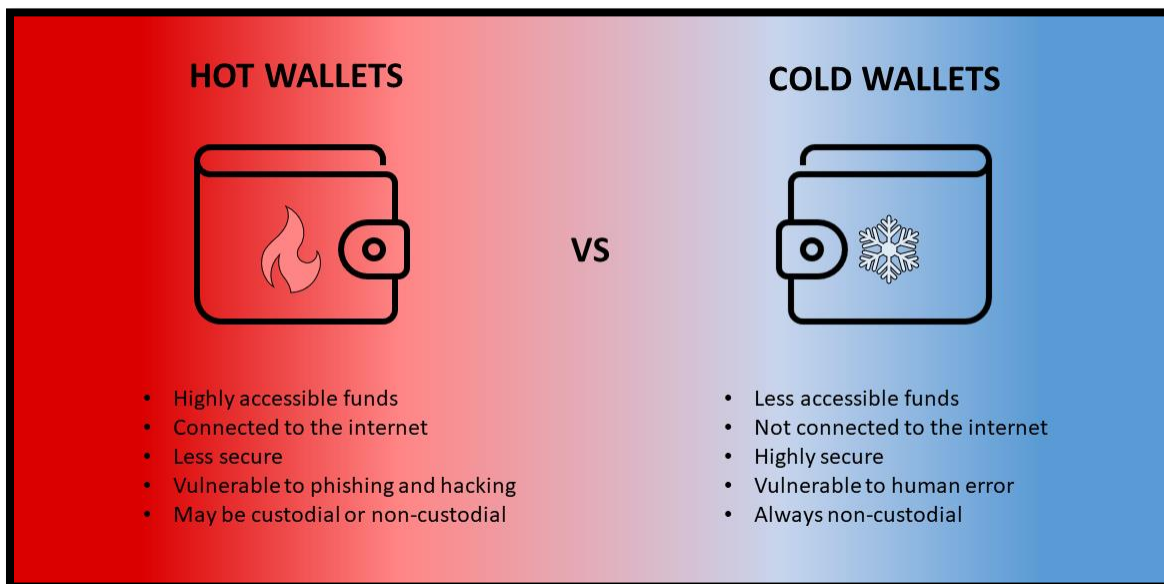
3.3. Select Your Crypto-Wallet

When you purchase cryptocurrency, the sender delivers it to your designated digital wallet (sometimes called a “crypto-wallet”) which serves as a digital bank account for the asset. These wallets store the public and private keys that enable you to manage your cryptocurrency and engage with blockchain networks and exchanges. All crypto-wallets come with two keys - a “public key” and a “private key.” Public keys represent the address to your crypto-wallet in the same way your residential address represents your home. When you purchase cryptocurrency, it is the public key address that you give to the seller so they can direct the funds to your wallet. Private keys, on the other hand, unlock access to the contents of your wallet much like your house key unlocks your front door. You do not share this key with anyone unless you want them to have access to the contents.

There are two categories of crypto-wallets: “hot wallets” and “cold wallets,” and it’s crucial that attorneys transacting in crypto know the difference. Hot wallets are connected to the internet while cold wallets are not, and for this reason, cold wallets are generally considered more secure. Of equal importance is whether the crypto-wallet is “custodial” or “non-custodial.” With a custodial wallet, someone else controls the private keys and is responsible for securing and managing the funds much like a broker manages an investment account, only buying and selling on your command. Many crypto-exchange accounts come complete with a custodial digital wallet that is created when you first open an account with that exchange. In such instance, you should only use reputable custodial wallets such as those offered by licensed exchanges [Coinbase](#), [Kraken](#), [Gemini](#), or [Binance](#), for example. Nevertheless, although these exchanges do deploy high security measures, if your password becomes compromised, or if the exchange network security is breached, you could have your assets stolen. For this reason, you

¹³ A “fork” happens when a blockchain coding community makes a major change to the protocol, creating a split that produces a second blockchain. Hardforks requires all miners to upgrade, while Softforks do not. Some forks may result in a whole new coin, e.g. Litecoin and Bitcoin Cash are both forks of the original Bitcoin blockchain.

should use a password unique to each of your custodial wallets that is not shared with any other account, including your email account, social media accounts, or your cat's veterinarian patient access portal.



Cold wallets, on the other hand, may be disconnected from the internet to give the owner complete control of the keys and therefore the funds. Cold wallets like [Trezor](#) and [Ledger](#)¹⁴ are handheld hardware devices specifically manufactured to be a digital wallet. You can also make your own cold wallet by selecting a device for exclusive use with non-custodial wallet software like [Exodus](#). The challenge with cold wallets, however, is that if you lose your password or your hardware device becomes damaged, you can lose access to those assets forever. This problem is so common that major media outlets have reported on investors like Stefan Thomas who lost his password to his [IronKey](#) encrypted flash drive and forever lost access to over \$200M in value. However, this problem could also occur in certain software-based non-custodial hot wallets like [MetaMask](#). MetaMask is not a cloud-based solution, but rather lives on your web-browser protected by a 12-word seed phrase that is randomly generated when you first setup your account. If the device where your MetaMask wallet lives breaks, is lost, stolen, or suffers data corruption, there is no way for the MetaMask support team to recover your wallet or its contents. So, it's mission critical for lawyers to carefully consider what wallet they will use to store their crypto, whether hot or cold, whether custodial or non-custodial, and how to manage it.

If you decide to use a custodial wallet, be mindful of the [Florida Bar Ethics Opinion 21-2](#). Although this opinion does not specifically address a lawyer's acceptance or use of cryptocurrency, it does explain that a lawyer may ethically accept payments from clients using electronic payment-processors, including funds that are the property of a third person, ". . . as long as reasonable steps are taken to protect against inadvertent or unwanted disclosure of information regarding the transaction and to safeguard funds of clients and third persons that are entrusted to the lawyer." This may be applicable in cases where you direct a client to disburse cryptocurrency to your hot wallet in a custodial account. In such case, the

¹⁴ By using the .io domain, startups can instantly establish their brand as a tech company. While the .io domain was originally assigned to the British Indian Ocean Territory, it was adopted by tech enthusiasts as a nod to input/output, giving the ccTLD a personality of its own. Moreover, there is a greater availability of names under .io than .com, and Google oddly treats .io as a gTLD, meaning .io websites get the same treatment as other widely used, global domains with more creative opportunity.

custodian may require information about your client as the sender of the cryptocurrency, and if you share that information, you may be in violation of ethics. To avoid this, you can use a non-custodial wallet, which can be either hot or cold, to which your client can send the cryptocurrency to protect the client's identity.

3.4. What You Can Do with Cryptocurrency

Once the payment has settled into your digital wallet, there are quite a lot of options for what you can do with it, including cash liquidation, HODL, trading pairs, or spend it for other goods and services.

3.4.1. Cash Liquidation

There are several ways to liquidate your crypto into cash such as selling it on the open markets through an exchange, selling to a private buyer, or using a crypto-kiosk that dispenses cash. To sell your crypto on an exchange, you must first open an account with that exchange online or by downloading their application onto your mobile device. Depending on whether the exchange is centralized or decentralized, the account onboarding process will be different. Centralized exchanges like the aforementioned Coinbase, Kraken, Gemini, and Binance are licensed and regulated because there is an identifiable group of persons running the company who the regulators can hold accountable. Consequently, these financial services providers will require new users to submit substantial documentation proving their identity that must be verified before the exchange will open the account.

On the other hand, decentralized exchanges (DEX) like [Pancakeswap](#) have no centralized authority to submit to regulation or apply for licensure, and thus may not require any identification to open an account. Of course, there is great argument about the benefits and burdens of centralized finance versus decentralized finance (DeFi), but that discussion is beyond the scope of this publication. Either way, when opening your exchange account, consider whether to connect your bank account directly to your exchange account or whether to direct all funds through a non-custodial wallet instead. If your bank account is connected to the exchange and the exchange is hacked, your bank account could become compromised. Ask yourself, if this were to happen, do you want the exchange to be licensed, bonded, and insured? Or have you established a separate bank account just for cryptocurrency so that if it is hacked, you are no worse for the wear? Incidentally, this thought process should also be applied to all of your digital wallets, including those with PayPal, Cash App, and other common digital payment processors.

Conversely, if you decide to liquidate to a private buyer, be careful about selling above market rates as published by reputable crypto-indices like [CoinMarketCap](#). Selling above market rates may trigger regulatory treatment as a money transmitter by FinCEN and the Florida Office of Financial Regulation ([FLOFR](#)), resulting in a hornet's nest of compliance requirements. FIN-2019-G001 is the latest authoritative federal guidance on this issue, explaining that "[w]hether a person is a money transmitter under FinCEN's regulations is a matter of facts and circumstances," and that natural persons engaged in peer-to-peer (P2P) sales of cryptocurrencies for profit or gain are subject to Bank Secrecy Act regulations regardless of whether such activities occurs on a regular basis or as an organized business concern.¹⁵ Similarly, in *State v. Espinoza*, 264 So. 3d 1055 (Fla. 3rd DCA 2019), the Court held that under Florida Statutes §560.103(23), the P2P sales of cryptocurrency as a business is money transmission that requires a money services business license from the FLOFR. Although the *Espinoza* case triggered great controversy about its

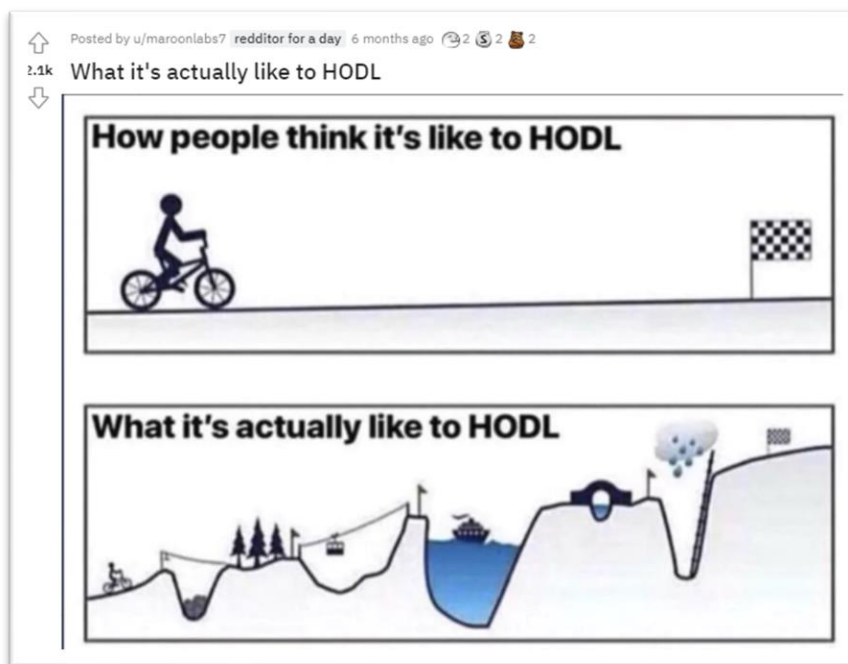
¹⁵ *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 (May 9, 2019). <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

application businesses selling crypto direct to consumers, when the legislature failed to revise the statute in 2021, the FLOFR finally rendered multiple declaratory statements finding that each petitioner selling cryptocurrencies as a business did require a license for money transmission.¹⁶ Consequently, all businesses engaged in the purchase and sale of cryptocurrencies have until January 2022 to file their money services business license application or they risk civil and criminal prosecution by the FLOFR.

The rules requiring money services businesses to acquire a license from federal and select state authorities also apply to companies who buy and sell cryptocurrencies through kiosks called “Bitcoin ATMs.” Anyone can check on the validity of a FinCEN issued money services business (MSB) license on the FinCEN MSB Registrant Search webpage.¹⁷ Likewise, a search for Florida licensed MSBs can be conducted through the Florida Regulatory Enforcement and Licensing (REAL) webpage.¹⁸ Note that most countries and many other states have not implemented regulations like FinCEN or Florida, so just because a person or business is engaged in related activities overseas, or is not registered in a particular state, does not automatically mean they are violating any laws. Nonetheless, this area of law changes as fast as the underlying technology, so exercise caution before assuming last month’s regulations still hold true.

3.4.2. Hold On for Dear Life (HODL)

HODL (pronounced “höd-êl”) is an expression used by crypto-enthusiasts for buying with an intent to hold long-term. They commit to this strategy despite market volatility because they believe that crypto-markets are a more accurate reflection of free market forces than public markets that they believe are manipulated by the federal reserve to protect institutions “too big to fail.” The now famous term HODL first originated with a [post](#) to the forum Bitcointalk in December 2018 when GameKyuubi posted “I AM HODLING” in a drunk, typo-laden rant about his poor trading skills and a decision to simply hold on to his Bitcoin.¹⁹



'I type d that tytle twice because I knew it was wrong the first time. Still wrong. w/e,' he wrote about the now-famous misspelling of "holding." 'WHY AM I HOLDING? I'LL TELL YOU WHY,' he continued. 'It's

¹⁶ OFR Indexed Orders - Division of Administrative Hearings, Doah.state.fl.us (2021), <https://www.doah.state.fl.us/FLAIO/OFR/>. (Issuing five Declaratory Statements for Money Services Businesses on 7/21/201 and eight on 7/29/2021.)

¹⁷ <https://www.fincen.gov/msb-state-selector>.

¹⁸ <https://real.flofr.com/datamart/selSearchType.do>.

¹⁹ HODL, Investopedia (2021), <https://www.investopedia.com/terms/h/hodl.asp>.

because I'm a bad trader and I KNOW I'M A BAD TRADER. Yeah you good traders can spot the highs and the lows pit pat piffy wing wong wang just like that and make a millino bucks sure no problem bro.' He concluded that the best course was to hold, since 'You only sell in a bear market if you are a good day trader or an illusioned noob. The people inbetween hold. In a zero-sum game such as this, traders can only take your money if you sell.' He then confessed he'd had some whiskey and briefly mused about the spelling of whisk(e)y.²⁰

Attorneys who are in practice with others and who want to HODL their crypto-payments should first check with their accounting advisors because this strategy creates unique tax implications requiring special recordkeeping and reporting reviewed in further detail below.

3.4.3. Trading Pairs

In the world of cryptocurrency, “trading pairs” or “cryptocurrency pairs” are cryptocurrencies that can be traded for each other on an exchange. Not all cryptocurrencies can be traded directly one for another without having to be first converted into legal tender. Conversely, some cryptocurrencies can only be bought with other cryptocurrencies, and not legal tender. The reason why investors are interested in trading pairs is because they may profit from the difference in asset prices between markets – an advanced investment strategy called “arbitrage.” Bitcoin and Ethereum often serve as a base currency from which one can trade into some of these lesser known cryptocurrencies. Before the Tax Cuts and Jobs Act (TCJA) in December 2017, some exchanges of personal property qualified for 1031 like-kind exchange treatment that exempted from taxation any gains realized in the transaction. However, not only did the TCJA change the exemption to qualify only real property (or real estate) exchanges, but it never did exempt crypto-to-crypto exchanges from taxation – a fact that was lost on many early crypto investors. For this reason, to properly record crypto values for federal tax reporting purposes, attorneys that receive payment in crypto must record the crypto’s base price in U.S. dollars when received, and also record any gains or losses valued in USD for each trade for proper federal tax reporting. However, as explained hereinbelow, the tax quagmire can be entirely avoided by using licensed crypto payment processors.

3.4.4. Spend It

Attorneys who receive payment in crypto can always spend it for other goods and services wherever it is accepted, or by using a crypto compatible credit card. There are tons of places you can buy goods and services with crypto, including with major retailers like Microsoft, Overstock, Home Depot, Namecheap, Starbucks, Whole Foods, NewEgg, and Tesla (sometimes). Restaurants that accept Bitcoin include Subway, Burger King and various coffee shops. Travel site Expedia.com is also on the Bitcoin bandwagon. [Lolli](#) gives you free Bitcoin when you spend money at stores you use everyday like Walmart, Groupon, Macy’s, and CVS. If you are curious about whether your favorite stores accept Bitcoin, check out [Spendabit](#) – a search engine for things you can buy with Bitcoin across hundreds of businesses.

There are loads of credit cards available to help you manage and spend your cryptocurrency, and many of them come with added benefits. In my opinion, the Crypto.com VISA card is the best looking with the coolest packaging, plus it comes with 8% back on all purchases, no annual fees, and you can top it up with fiat or crypto. Moreover, this card gives deals to users on other services like Spotify, Netflix, Expedia,

²⁰ *Id.*

Airbnb, Airport lounge access and a slew of other benefits. It's pretty nifty and very competitive with other cards likewise offered by major exchanges and payment processors.

3.5. Taxation of Cryptocurrency Transactions

With certain limitations, section 1031 of the Internal Revenue Code (IRC) exempts from taxation gains realized from the sale of real estate when those gains are reinvested in a different parcel. In the past, the IRS also permitted exemption from taxation gains realized on like-kind exchanges of certain personal property. Somehow, the crypto community developed a pervasive misunderstanding that this exemption was also available for crypto-to-crypto exchanges, but it never was. In 2014, the IRS released Notice 2014-21, clarifying the tax framework applicable to all crypto transactions.²¹ Although much of the world taxes these transactions like they do fiat, the IRS taxes it all as non-exempt property. Therefore, taxpayers who receive payment in crypto must record the fair market value of the crypto measured in USD on the date received.²² Then, when the taxpayer trades that crypto for another, converts it to fiat, or spends it, the taxpayer must record the fair market value of the crypto on its exit. Gains realized must be reported to the IRS while losses may be used to offset other asset gains. As demonstrated by the image below, the IRS is very serious about reporting crypto transactions for taxation, having devoted a new line on the front page of form 1040 to the subject for reporting year 2020.

Form 1040 Department of the Treasury—Internal Revenue Service (99) **2020** U.S. Individual Income Tax Return OMB No. 1545-0074 IRS Use Only—Do not write or staple in this space.

Filing Status ☐ Single ☐ Married filing jointly ☐ Married filing separately (MFS) ☐ Head of household (HOH) ☐ Qualifying widow(er) (QW)
Check only one box. If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QW box, enter the child's name if the qualifying person is a child but not your dependent ▶

Your first name and middle initial Last name Your social security number
If joint return, spouse's first name and middle initial Last name Spouse's social security number

Home address (number and street). If you have a P.O. box, see instructions. Apt. no. **Presidential Election Campaign**
City, town, or post office. If you have a foreign address, also complete spaces below. State ZIP code Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.
Foreign country name Foreign province/state/county Foreign postal code ☐ You ☐ Spouse

At any time during 2020, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency? ☐ Yes ☐ No

Standard Deduction **Someone can claim:** ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness **You:** ☐ Were born before January 2, 1956 ☐ Are blind **Spouse:** ☐ Was born before January 2, 1956 ☐ Is blind

Dependents (see instructions):
If more than four dependents, see instructions and check here ▶ ☐

(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) <input checked="" type="checkbox"/> if qualifies for (see instructions):	Child tax credit	Credit for other dependents
					<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>

Attach Sch. B if required.	1 Wages, salaries, tips, etc. Attach Form(s) W-2	1	
	2a Tax-exempt interest	2a	
	3a Qualified dividends	3a	
	4a IRA distributions	4a	
	5a Pensions and annuities	5a	
Standard Deduction for—	6a Social security benefits	6a	
	7 Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ <input type="checkbox"/>	7	
	b Taxable interest	2b	
b Ordinary dividends	3b		
b Taxable amount	4b		
b Taxable amount	5b		
b Taxable amount	6b		

²¹ Internal Revenue Service Notice 2014-21. <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

²² *Id.*

Of further concern to the unwary crypto-investor is the possible application of phantom taxation – a scenario where taxpayers are expected to pay taxes on unrealized gains. For example, if the investor purchased ETH for \$1,200 and traded it for BTC when ETH was valued at \$1,500, then the investor just realized a gain of \$300 that must be reported to the IRS. Presumably, taxes will be owed on that \$300 gain regardless that the investor did not actually pocket the gain needed to pay the tax. If the new investment into BTC is liquid, then the investor can sell it to access the cash needed to pay the tax, and of course, figure any gains/losses pursuant to that transaction as well. However, if the BTC purchased was part of an investment product that locks-up the investment for a period of time, meaning the BTC is now illiquid, then the investor will have to find the money elsewhere or risk IRS action. To avoid these potential tax-traps, consider receiving crypto from clients through the services of a third-party payment processor.

3.6. Using Payment Processors to Avoid Crypto Tax Traps

By using a payment processor as an intermediary, you may altogether avoid the tax planning and reporting associated with being paid directly with digital assets. From a practical perspective, if you are generally new to cryptocurrency and want to get started with accepting crypto as payment for services, I recommend running crypto-payments through third party payment processors like [BitPay](#) or [Kraken OTC](#). A licensed and regulated payment processor for both consumers and businesses, BitPay operates similar to LawPay by processing payments on your behalf and directing them to your designated account or cryptocurrency wallet, according to your settlement preferences. For example, if I send my client in England an invoice and payment link from LawPay, LawPay converts my client's payment from GBP to USD in the payment settlement process. Likewise, attorneys can issue invoices and payment links from BitPay for clients to use for crypto payments. When the client clicks the link and makes payment in crypto, BitPay will convert the crypto to USD and forward it to your designated bank account. Because it is the client that is transacting in crypto and not the attorney, the attorney avoids the receipt of payment in property, thus mitigating associated tax implications. Moreover, BitPay absorbs the volatility of cryptocurrency payment by guaranteeing the rate of exchange, and the value of the exchange in payment of your invoice.

Incidentally, at the time of this publication, BitPay is America's only licensed crypto payment processor who provides this service for transactions less than \$100,000, and who does not charge a fee for hosting business accounts. Nevertheless, as new market entrants emerge, these same characteristics are those you should require for any crypto payment processor. In any case, for an added layer of cybersecurity, I suggest opening a separate bank account designated for use with your crypto payment processor, like a fee-free business savings account. From this account, your client's funds can then be directed into either your firm's operating or trust account as expressed by the terms of your written client engagement agreement.

Although Kraken is a cryptocurrency exchange and not a payment processor, they do have an over-the-counter (OTC) trading desk that provides white-glove service for trades involving at least USD 100,000 in value. This is helpful because when trading large amounts of crypto, you could influence the market prices during the trade, essentially betting against yourself. Also, Kraken OTC will process the crypto payment and forward it in your currency of choice to your designated account, essentially performing the payment processing service so that you don't have to. Moreover, they charge very competitive fees for this service, often coming in even lower than other commercial payment processors. While other exchanges do offer OTC services similar to Kraken, not all of them will assign you a designated customer service representative to walk you through the process. As in the case of BitPay, attention to customer service influenced my decision to use Kraken OTC to convert the crypto I received as an advance

fee. With their help, I learned of additional steps I could take to protect the third party payor's identity while maintaining a high level of transaction security, further discussed below.

4.0 Accepting Cryptocurrency into Your Trust Account

This section title is a bit misleading because we aren't technically accepting crypto into the trust account, but rather converting it into USD ahead of deposit into the trust account. In brief recollection of the Preface, in mid-2021, I was presented with a federal criminal case involving six defendants who were indicted on charges involving money laundering, wire fraud, and the unlicensed money transmission of Bitcoin. Although the third party payor was not under investigation, he needed to make payment in Bitcoin which present several unique practical and ethical challenges further explored below.

4.1. Rules for Accepting Payment from a Third Party

Receiving payment of an advance fee in cryptocurrency from a third party presents unique hazards. Although anyone can pay for someone else's lawyer, making payment does not grant them access to the details of the case. The Rules Regulating the Florida Bar,²³ Chapter 4 Rules of Professional Conduct (RPC),²⁴ confirm that a lawyer may be paid from sources other than the client if the client is informed of and consents to the arrangement, and it does not compromise the lawyer's duty of loyalty to the client.²⁵ Accordingly, my co-counsel and I held a video conference with the payor to explain that in spite of his generosity, we would not be able to share with him any confidential information about the case, including that related to the preparation of the defense or our strategy. Rather, he would be limited to reviewing what was published on the court's docket. Then, we organized a separate video conference with the client who was still while still in jail to confirm his consent to our representation, the terms of the engagement, and for the third party to make payment of the advance fee.²⁶ When we obtained consent from the payor and the client, we prepared separate fee agreements, one from each firm, that outlined the details of the representation, billing rates, the advance fees required, and each step of how the payment in Bitcoin would be converted into dollars, and forwarded to my trust account, from which funds my co-counsel would then be issued his advance fee. In summary, we were abundantly transparent with the payor and the client about where the funds were, and where they were going at all times, including any transaction fees that might be charged by network carriers for Bitcoin transfers.

4.2. Rules for Accepting Payment in Crypto

Recalling that Bitcoin is a digital asset taxed as property, rule 4-1.5 permits lawyers to accept property as payment for services if it does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to rule 4-1.8(i). "However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of

²³ *Rules Regulating The Florida Bar*, 605 So. 2d 252, (Jan. 1, 1993) (The Supreme Court of Florida by these rules, comprised in 21 chapters, establishes the authority and responsibilities of The Florida Bar, an official arm of the court, the purpose of which is to inculcate in Florida-licensed attorneys the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence.) <https://www.floridabar.org/rules/rrtfb/rrtfb-full-set/>.

²⁴ *Id.* at Chapter 4 Rules of Professional Conduct. (These rules provide the legal context and framework that define the ethical practice of law, including court rules and statutes relating to licensure, the laws defining a lawyer's obligations, and general substantive and procedural law, the violation of which may result in disciplinary action.)

²⁵ See rule 4-1.7; rule 4-1.8(f).

²⁶ "Advance fee" is a sum of money paid to the lawyer against which the lawyer will bill the client as legal services are provided. Rule 4-1.5(e)(2)(C)). Advanced fees must be held in trust until it is earned. See, Rule 4-1.5

the services and the lawyer's special knowledge of the value of the property."²⁷ This scrutiny requires consideration of whether the transaction and terms are fair and reasonable to the client and fully disclosed in a writing in plain English; the writing advises the client to seek independent counsel about the transaction terms; and the client provides written consent to the terms. Rule 4-1.8(a). Fortunately, due to the proliferation of investment funds in cryptocurrency and their regulation, there are several rules-based market indices used by regulators and publicly-registered exchanges that take the guess-work out of valuing crypto in dollars. For example, in addition to the previously mentioned CoinMarketCap, the S&P Dow Jones launched a series of eight indices in July 2021 that measure the performance of a selection of cryptocurrencies that meet minimum liquidity and market capitalization criteria, and are listed on trading facilities ("exchanges").

Because digital assets are generally more volatile than traditional assets, there was the possibility that between the time the Bitcoin left the payor's crypto-wallet and arrived in my trust account as dollars, the resulting value could be radically different. This risk was further complicated by the need to have Kraken OTC in the middle to facilitate liquidation into dollars before forwarding it on to my trust account. To mitigate these risks, the payor and I agreed

S & P DOW JONES DIGITAL ASSET INDICES ¹	YTD 2021
Cryptocurrency Broad Digital market Index	133.36%
Cryptocurrency BDM Ex-MegaCap Index	360.67%
Cryptocurrency BDM Ex-LargeCap Index	438.34%
Bitcoin Index	66.86%
Cryptocurrency LargeCap Index	124.4%
Cryptocurrency MegaCap Index	103.49%
Cryptocurrency LargeCap Ex-MegaCap Index	328.07%
Ethereum Index	335.98%

in writing on the total value of the Bitcoin in dollars to be sent to my Kraken account including cover for applicable transaction fees, spot price swings, and what to do if I didn't receive an acceptable bid within 72 hours of receipt of the Bitcoin. Although the rules do not require fee agreements to be in writing, lawyers do have a duty to communicate the basis or rate of fees and costs; thus, in new client-lawyer relationships, or in complicated situations like my criminal case, having a written agreement explaining how fees work is recommended to reduce the possibility of misunderstandings.²⁸

4.3. Rules for Using Payment Processors

Having confirmed how I could receive an advance fee in Bitcoin from a third party payor, I still had to be sure that I could even use Kraken OTC as a payment processor. Fortunately, shortly prior to accepting the criminal case, the Florida Bar issued an ethics opinion providing related guidance for this issue. Although advisory ethics opinions are not binding, they do provide excellent guidance for the interpretation and application of ethics rules to prospective actions. In Opinion 21-2, the Ethics Committee opined that:

A lawyer ethically may accept payments via a Web-based payment-processing service (such as Venmo or PayPal), including funds that are the property of a client or third person, as long as reasonable steps are taken to protect against inadvertent or unwanted

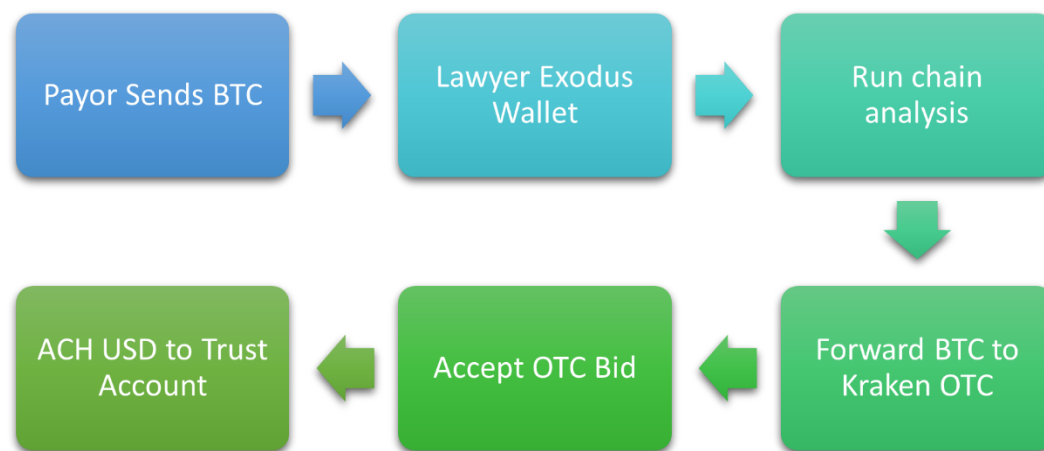
²⁷ See rule 4-1.5.

²⁸ See rule 4-1.5.

disclosure of information regarding the transaction and to safeguard funds of clients and third persons that are entrusted to the lawyer.²⁹

In my case, the processing of Bitcoin into dollars through the Kraken OTC presented issues pertaining to privacy, security, custody, and value. The Bank Secrecy Act requires financial institutions like banks, money transmitters, and payment processors to implement an effective KYC/AML program that addresses the four pillars of compliance. Consequently, if I had the payor transmit the funds directly to my Kraken account, then Kraken would have to run KYC/AML on the payor which would submit him to unnecessary scrutiny and delay the deal. However, if he tried to liquidate his BTC into his own bank account and then transfer it my account, the bank might freeze the funds due to the unusual size and type of transfer. Meanwhile, I also had to be mindful about the direct acceptance of digital assets in trust lest I trigger undesirable tax consequences. How could I help the payor securely move their Bitcoin through me and to Kraken OTC for whom I was the KYC/AML subject?

When first working through this problem, I thought the obvious solution was to purchase a cold wallet. But, upon consultation with several blockchain engineers, I learned that there is a world of malware crawling around the internet seeking cold wallet software to attack. Once I inserted my cold wallet into the computer to make a trade, the malware could see me and steal all the crypto before I could react. Yet, non-custodial hot wallets present similar challenges to security. While there can never be a total guarantee that digital or physical property won't be hacked or stolen, there are best practices lawyers can implement that provide better privacy and security for our clients, and that protect lawyers from accusations of malpractice and ethical violations. That same malware would not be searching for custom crypto-wallets. The solution, then, was for me was to make my own cold wallet so I could briefly act as a custodian in trust for the payor to carry out the liquidation of Bitcoin per his instruction whilst remaining the primary KYC/AML target of Kraken OTC.



Upon the advice of experienced blockchain engineers, I purchased a cheap Samsung tablet with a basic Android operating system so it would be free of applications that might attract seek and destroy malware. Once out of the box, I logged onto my secure wifi network and downloaded two applications from the Google Play store – Exodus and WhatsApp. Exodus would serve as my non-custodial crypto-wallet, and WhatsApp was how I would communicate my Exodus public address to the payor in an encrypted P2P chat he would use to send me Bitcoin. This way, I had an “account” that was private, secure,

²⁹ See Opinion 21-2 (with reference to RPC 4-1.1, 4-1.6(a), 4-1.6(e), 4-1.15, 5-1.1(a), (g)).

and completely dedicated to this transaction so that the payor's funds would be in no way commingled with any other property or currency.³⁰ We did a test run of the minimum transfer amount and when confirmed, we sent the remainder.

After running chain analysis on the payor's wallet ID, I sent the same test transfer to my Kraken account, and upon clearance, I sent the remainder. Then the fun really began. I had the payor encrypted chat open on my phone, and Kraken was on a different encrypted chat open on my desktop. The bidding began. I relayed the offers to the payor, but the price for Bitcoin precipitously dropped. The mainstream media reported on regulatory crackdowns on crypto-markets by the Biden administration and it was hitting the price of Bitcoin hard. We waited, and when the market rebounded, the payor gave the command to sell at spot. I took screenshots and made file archives of the chats I had with the payor and Kraken, and saved them to the client file. Within minutes, Kraken transferred funds via ACH to my trust account which cleared in a few days. From there, I cut a check to my co-counsel and we headed out of town to visit our client in jail. And just like that, I had successfully received my first payment in crypto into my trust account while maintaining compliance with applicable regulatory and ethical obligations.

4.4. Rules for Verifying Source of Funds

Because all of the charges on the indictment were Bitcoin related, my colleague and I had to verify that the source of the Bitcoin being used for payment was not connected to the defendants' activities; otherwise, we could run the risk of being implicated in those underlying charges. Rule 4-1.16 provides that a lawyer shall not represent a client or, where representation has commenced, shall withdraw if the representation will result in violation of the rules or law. The sweeping general reference to the "law" is where lawyers may run into trouble for failure to take reasonable steps to verify that source of client funds is legitimate, and has not been derived from criminal activity.

In the case of *United States v. Blair*, 661 F.3d 755 (4th Cir. 2011), Attorney Blair's conviction for money laundering was affirmed for having concealed the nature, location, and source of drug proceeds he accepted as for payment for legal services. In *Blair*, there were several individuals who together operated a large cash marijuana distribution ring. When drug charges were filed, the defendants and witnesses implicated in the round-up contacted Attorney Blair for assistance. Upon Blair's instructions, the group dumped into a duffle bag the contents of a safe containing stacks of drug money and brought it to his office. Blair provided them with a cover story for the cash, set up a real estate corporation to purchase properties to launder the cash, and issued a retainer agreement for his firm to buy and sell real estate, recover vehicles, and take other appropriate action to protect the interests of his new clients. Using the cash from the duffle bag, Blair also purchased cashier's checks to retain co-counsel for other defendants, and deposited cash into his own business account to pay himself as their attorney.

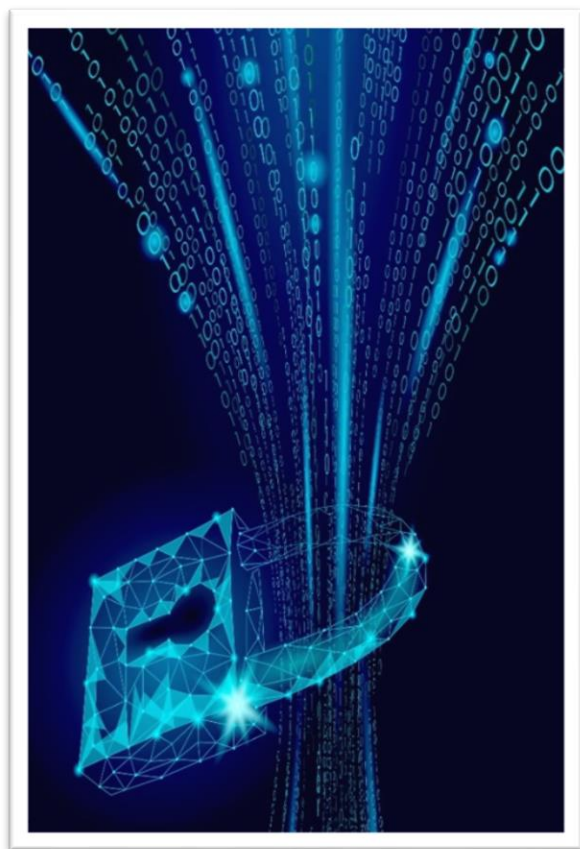
In the common understanding, money laundering occurs when money derived from criminal activity is placed into a legitimate business in an effort to cleanse the money of criminal taint. The money laundering statute, 18 U.S.C.S. § 1956, proscribes several distinct types of money laundering, including concealment of money laundering. § 1956(a)(1)(B)(i).³¹

³⁰ RPC 5-1.1(a). (Prohibiting the commingling of funds and property to be held in trust with funds of property of the lawyer or another client, but that if so directed in writing, trust funds may be separately held and maintained other than in a bank, credit union, or savings and loan association prior to doing so.)

³¹ *United States v. Blair*, 661 F.3d 755, 764.

To sustain a conviction for the concealment of money laundering, the government must prove that the defendant conducted a financial transaction through interstate commerce involving the proceeds of specified unlawful activity, that the defendant knew the proceeds came from the unlawful activity, and that the transaction was designed to conceal or disguise the nature, location, source, ownership, or control of these proceeds, to some degree.³² The court found the evidence clearly demonstrated that Blair received the money with the intent to launder it, and his withdrawal of funds from the bank account qualified as a “transaction” for purposes of the money laundering statute which explicitly includes deposits and withdrawals within the definition of a “transaction.”³³ In particular, 18 U.S.C. § 1957 prohibits knowingly engaging in a monetary transaction with property derived from criminal activity with a value greater than \$10,000. Although Blair argued that the safe harbor provided by section 1957(f)(1) exempts a “transaction necessary to preserve a person’s right to representation as guaranteed by the sixth amendment to the Constitution,” the court disagreed.³⁴ When Blair used someone else’s unlawful drug proceeds to pay for counsel for others, and then took a cut for himself, he took money that legally belonged to the United States.³⁵ In its holding, the court notes that Attorney Blair knew what he was doing, and not the co-counsel that Blair hired. Consequently, lawyers should ask their clients about the source of funds used to pay them and, in circumstances involving criminal charges or amounts greater than \$10,000, include this information in the fee agreement.

Anonymity of blockchain users is the biggest complaint of crypto opponents and often serves as the basis for additional regulation and enhanced scrutiny by law enforcement. In reply, I often remind naysayers that prior to cryptocurrency, the dollar was most exploited by criminal enterprises for their illicit activity, but no one ever tried to outlaw the dollar. Nevertheless, regulatory authorities and the compliance industry have done a lot to lift the veil of blockchain anonymity, relegating blockchain developers and regulators to an endless game of chess. [Chainalysis](#) and [CipherTrace](#) are two reputable companies that provide risk management tools for the investigation and monitoring of blockchain transactions to virtual asset service providers that helps them mitigate criminal activity and to comply with KYC/AML requirements. Although these solutions may be too costly to implement for the occasional transaction, attorneys can conduct a simplified chain analysis on the payor’s wallet ID using [Bitcoin Abuse](#), [Bitcoin Who’s Who](#), and other open-source tools that flag suspicious accounts and transactions in concert with paid service providers.



³² *Id.*

³³ *Id.* at 765. (Citing 18 U.S.C. § 1956(c)(3)).

³⁴ *Id.* at 771.

³⁵ *Id.* (See *United States v. Buena Vista Ave.*, 507 U.S. 111 (1993) (title to forfeitable assets vests in the United States at the time the criminal act giving rise to the forfeiture is committed)).

5.0 Rules for Fee Division between Firms

My co-counsel on the criminal matter shares a practice with other attorneys who are unfamiliar with Bitcoin, so I had to discover a way to accept both of our advance fees into my trust account from which I could distribute half of the funds to my co-counsel for his fees. With the exception of cases involving contingent fees governed by rule 4-1.5(f),

a division of fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and (1) the division is in proportion to the services performed by each lawyer; or (2) by written agreement with the client (A) each lawyers assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and (B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made. Rule 4-1.5(g).

Once an attorney files a notice of appearance for a criminal matter, it is very difficult to withdraw without causing undue hardship to the client, so courts often refuse such requests. Because third party payors have limited benevolence, having to ask them for additional funds is never a good position. So, my co-counsel and I carefully considered all the complexities in the case before asking for the advance fee we reasonably believed would cover all of the casework and expenses through trial. Upon receipt of the entire advance fee converted into USD, I was then able to send my co-counsel his portion, resulting in the final conclusion of my journey on learning how to convert crypto into dollars, directed into my trust account, in conformity with applicable rules.

6.0 Call to Action

Unlike our overseas contemporaries, U.S. regulators have not issued a comprehensive regulatory framework for cryptocurrencies. Nonetheless, as the technology continues to proliferate and regulators gain understanding of its workings, they often issue authoritative guidance that will form a solid foundation for future regulations. Over the last decade, it has become clear that blockchain is not a passing fad, but will become the backbone of Web 3.0³⁶ because it provides a transparent, immutable, and auditable record of transaction history that is resistant to fraud and tampering. In essence, blockchains are a truth-telling machine. For example, if the entire chain for a real estate title was recorded on a publicly accessible and decentralized blockchain that anyone could see, there would be no need for title companies or title insurance.

More important, however, is how payments on a blockchain can resolve the financial exclusion of billions worldwide like my former Guatemalan client Roberto discussed in the Preface. Because much of the U.S. banking infrastructure is based on a vintage programming language called COBOL, we are limited on implementing upgrades that would expand services more efficiently. The industry is reaching an inflection point, though, as U.S. banks shift toward newer languages after the example of overseas rivals like the Commonwealth Bank of Australia who have already made the switch.³⁷ One option is for the U.S. to issue its own central bank digital currency (CBDC). Speaking at the Aspen Institute Economic Strategy

³⁶ The Spatial Web and Web 3.0, Deloitte Insights (2021), <https://www2.deloitte.com/us/en/insights/topics/digital-transformation/web-3-0-technologies-in-business.html> (last visited Oct 19, 2021) (Web 3.0, a.k.a. the *Spatial Web*, or the *3D Web*, is the next evolution in computing and IT that will eliminate the boundary between digital content and spatial objects we know today). See *generally*, Google search results for *Metaverse*.

³⁷ *Id.*

Group on July 31, 2021, Federal Reserve Governor Lael Brainard explained, “the dollar is very dominant in international payments, and if you have other major jurisdictions in the world with a digital currency, a CBDC offering, and the U.S. doesn’t have one, I just, I can’t wrap my head around that.”³⁸

A CBDC is different than the digital transactions we make every day because it would enable the federal reserve to transact directly with Americans. Although it could integrate existing banks to some degree, a CBDC would result in greater centralization of our current financial system. Currently, when the government wants access to a person’s financial records, it must do so through serving a subpoena on the financial institution. A CBDC system, on the other hand, will disintermediate that process to enable the federal reserve to directly access every person’s financial history for total surveillance and control. While this would support the faster distribution of government funds into citizen-accounts, it also means the administration can shut-off anyone’s account at any time, leaving the account-holder with no recourse. If this seems far-fetched, check out the short documentary *Leave No Dark Corner* that exposes China’s digital dystopian dictatorship where every citizen is watched and their behavior scored in the most ambitious and sophisticated system of social control in history.³⁹ With the implementation of scoring systems for *environmental and social governance* (ESG) promulgated by the World Economic Forum and adopted by major corporations worldwide, the U.S. isn’t far behind China in the integration of a similar system.

The solution is not to centralize the financial system, but to build a system of decentralized finance (DeFi) that issues a controlled quantity of digital dollars into circulation per the example of Bitcoin. Then, citizens can be issued a digital identity that is personal, persistent, portable, and private through which they can transact on a DeFi network that provides personalized controls. If you would like to learn more about blockchain, crypto, smart contracts, and how they are making their way into the practice of law, check out all the materials made available on by Florida Bar at [Legal Fuel](#).

About the Author



Anessa Allen Santos, J.D. is a seasoned corporate attorney and business executive having served in senior management positions leading several technology companies from idea through exit by acquisition of publicly traded companies. She is passionate about the promise of blockchain and related technologies to resolve financial exclusion, and to impose greater transparency on public markets and government agencies. Her practice is largely dedicated to blockchain and fintech by helping innovative corporate clients efficiently navigate the evolving regulatory landscape for securities, commodities, and financial services. A former public defender, she also provides white collar defense for financial crimes involving money laundering, wire fraud, and unlicensed money transmission of cryptocurrency. The current Vice-Chair of the Florida Bar Committee on Technology Law, she is a proud alumna of Oxford Saïd

Business School, the University of Dayton School of Law, and Wright State University. For questions or comments on this publication, she is best reached via email at anessa@intellilaw.io.

³⁸ Kevin Reynolds, Fed's Brainard Says US Can't Not Have a CBDC in a World in Which Others Have Them - CoinDesk coindesk.com (2021), <https://www.coindesk.com/feds-brainard-says-us-cant-not-have-a-cbdc-in-a-world-in-which-others-have-them> (last visited Aug 22, 2021).

³⁹ ABC Australia, *Leave No Dark Corner* (2018), https://www.youtube.com/watch?v=eViswN602_k (last visited Aug 22, 2021).