



Lawyers and
cryptocurrency payments
Should you “byte” the bullet?

How to handle collections —
and boost cash flow

The call’s coming from inside
Fighting fraud in your firm

Study highlights the threat of ALSPs

LAW FIRM MANAGEMENT

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990 Stewart Avenue
Garden City, New York 11530

☎ 516.288.7400

☎ 516.288.7410

✉ info@garibaldicpas.com



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GROUP

Certified Public Accountants
Financial and Management Consultants

www.garibaldicpas.com

Lawyers and cryptocurrency payments

SHOULD YOU “BYTE” THE BULLET?

Bitcoin and other cryptocurrencies aren't going to replace traditional forms of payment, but a growing number of law firms have begun to accept them from clients. Before making such a decision, though, your firm needs to understand the basics of how these currencies work and some of the issues they raise.

WHAT ARE CRYPTOCURRENCIES?

Cryptocurrency generally refers to a decentralized form of digital currency. Bitcoin and Ethereum probably are the best known, but dozens of others are out there, including Zcash, Ripple and Litecoin.

Cryptocurrencies are virtual assets, with no physical form, and deemed to be property by the IRS. Transfers are instant and tracked in a blockchain ledger. (See “Blockchain poised to shift transactional practices” on page 3.) Unlike other currencies, the ledger resides not with a

central authority such as a bank or government but across public peer-to-peer networks.

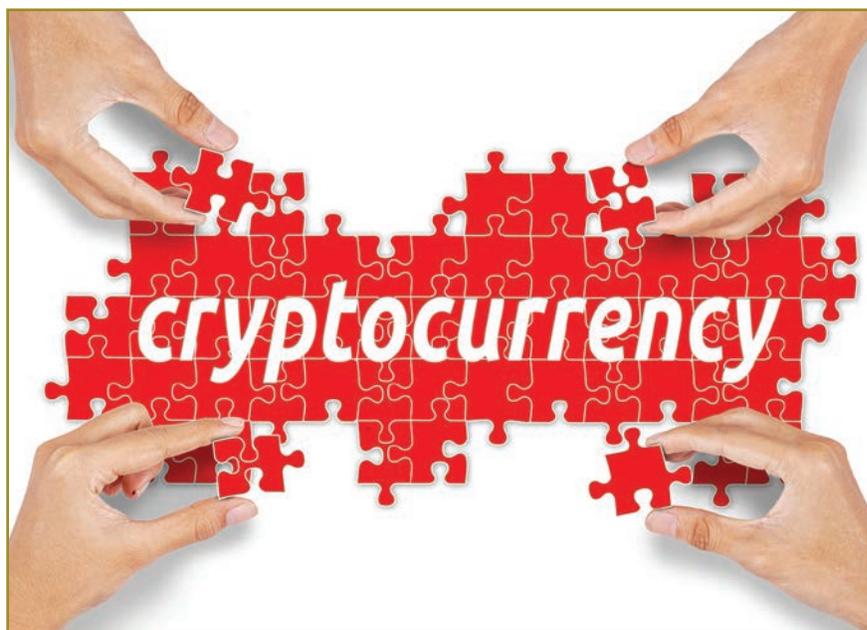
Some firms have begun accepting cryptocurrencies as payment for a very simple reason — their clients demand it.

The value of cryptocurrencies comes in part from its utility, or people's willingness to accept it as payment. The value also reflects its scarcity. In the case of Bitcoins, for example, no more than 21 million “coins” can ever be created.

WHAT'S IN IT FOR LAW FIRMS?

Some firms have begun accepting cryptocurrencies as payment for a very simple reason — their clients demand it. Technology and other intellectual property companies are among the clients that could have cryptocurrency assets they want to use to pay for legal services. Financial technology, payment processing and securities clients might have similar demands in the near future.

Moreover, offering clients more payment options generally improves collection rates. Some firms have found that they attract new clients when they accept cryptocurrencies. It may make these firms seem better positioned to handle innovative clients.



BLOCKCHAIN POISED TO SHIFT TRANSACTIONAL PRACTICES

Many law firm practice areas revolve around transactions, from mergers and acquisitions to the sale of real estate, securities and other assets. Blockchain, the technology supporting cryptocurrency, could soon bring fundamental changes to the way these transactions are conducted.

Blockchain technology generally refers to a digitized, distributed ledger or database that records and shares information kept secure through cryptography. The information is stored in chronological, unalterable blocks, each of which includes a time stamp and a link to a previous block. The blockchain is distributed across open networks, providing a public, verifiable history of transactions.

Real estate transactions represent one important area where blockchain could have a significant impact. The technology eliminates the need for many traditional middlemen, because anyone can record or view the information. And smart contracts that use blockchain technology to automate performance based on agreed-upon rules remove the risk of breach, fraud and human error.

WHAT ARE THE POTENTIAL RISKS?

Perhaps the biggest concern associated with cryptocurrencies is their price volatility. The price for Bitcoin can move more than 10% in a single day. This may create problems in light of ethics rules that require attorneys to charge reasonable fees. A Bitcoin fee that's reasonable when negotiated could become unreasonably high by the time of payment (and, of course, it also might become unreasonably low from the firm's perspective). Your firm can mitigate this risk by referring only to U.S. dollars in fee agreements and invoices.

A Nebraska ethics advisory opinion — the first issued by a state ethics body addressing receipt of digital currencies — provides additional guidance. When a cryptocurrency payment is received, it suggests, the firm should immediately convert it into dollars according to market rates and then credit the client's account using dollar amounts. The firm must advise the client of this process so the client doesn't expect an increase in the value of the currency to create an additional credit to its account.

Cryptocurrencies also raise questions related to ethical obligations to safeguard client funds, including retainers and advances. Firms typically

satisfy these obligations by employing trust accounts, but, as property, cryptocurrencies can't be deposited in bank accounts. According to the Nebraska opinion, if the payment will be drawn on for future fees, the firm should immediately convert it to U.S. dollars and deposit the amount into the appropriate trust account. Firms that don't convert client funds will need to develop effective internal controls such as encryption or store cryptocurrencies offline. You might, for example, keep them on a USB drive locked in a safe (referred to as "cold storage").

Finally, cryptocurrencies will pose accounting problems. With units that can go out to 18 decimal places, they're incompatible with current accounting software systems (which only go to two decimal places). This means cryptocurrencies will require manual accounting for now.

LOOK BEFORE YOU LEAP

Despite their increasing prevalence, cryptocurrencies aren't exactly sweeping the country. That gives your firm time to educate itself and evaluate the associated pros and cons before taking the plunge to accept virtual payments. •

How to handle collections — and boost cash flow

For most law firms, it's a familiar pattern: While some clients remit promptly, others drag their feet, and regrettably, some may not pay at all. Because attorneys generally can't withdraw representation based solely on a client's failure to timely pay an invoice, firms must have a system in place that improves collections. Doing so will have a positive effect on the firm's cash flow.



BILLING PROCEDURES

The first step is to send clients invoices on a regular and timely basis. The sooner you bill, the sooner you'll see the revenue. Clients tend to devalue services received as time goes by, so it pays to be prompt. Billing promptly may subtly suggest to clients that you expect to be paid quickly, whereas sitting on invoices may send out the message that there's no hurry to collect.

Extend discounts only to clients who pay in full on time or, better yet, ahead of schedule.

Promptness depends on the type of matter involved. For transactional matters, bill at or before closing, as clients usually don't waste time before reinvesting proceeds. For protracted litigation, bill monthly or even semimonthly (especially if you're fronting fees for third parties such as experts and litigation support). And don't forget, for your firm to bill promptly, attorneys must regularly record their time. Have attorneys submit time records daily, or at least weekly.

Invoices must accurately describe the services rendered in a manner easily understood by the

recipients. If an invoice isn't clear, it's likely to be set aside. Also make sure the invoice's due date and amount are obvious. Smart invoices — electronic programs that streamline invoicing — can cut the number of billing disputes, which almost always delay payment.

Don't be tempted to offer discounts to delinquent clients just to get some money in the door on a relatively timely basis. Even if it works and they pay part of their bill, providing discounts to late-paying clients conditions them to pay late. Instead, extend discounts only to clients who pay in full on time or, better yet, ahead of schedule.

GET IT IN WRITING

No matter its size, every law firm should have written policies and procedures regarding billing and collection practices. Include in your firm's policy a timeline of when invoices are sent, and when and how follow-up is conducted. As for delinquencies, set the number of days past due that constitutes delinquency, and how delinquencies will be handled.

Then, follow these policies and procedures consistently. Don't allow firm attorneys to go outside the standard practices for favored clients. While attorneys should be involved in collecting from delinquent clients, their collection role needs to

be within established firmwide parameters. For example, have the billing attorney add a handwritten note to a standard past due notice.

TIME TO TALK

Firms can't afford to sit back and hope that clients pay their invoices on time — you must be proactive. While this makes many people uncomfortable, the best course of action is to routinely follow up when invoices go unpaid. Again, it's best to follow a timetable. For example, send a new statement as soon as the initial statement is more than 30 days out, with additional follow-ups at 60 and 90 days. Communicating frequently with delinquent clients is a crucial component of the collection process.

Finally, consider using data analytics to identify trends and patterns among your chronically late-paying clients. Data can reveal red flags that indicate impending payment problems. Use such indicators to identify clients you should monitor and communicate with more frequently.

PREVENTION IS THE BEST MEDICINE

Satisfied clients generally are more likely to pay their bills on time. So to help keep clients content, regularly update them on the status of their legal matters and assure them that progress is being made. And to avoid circumstances that lead to late payments, take the time to develop an effective collection plan. Don't wait until your cash flow deteriorates. •

The call's coming from inside

FIGHTING FRAUD IN YOUR FIRM

Law firms usually are stocked to the rafters with intelligent people, but they're not immune to fraud. In fact, these businesses generally may share characteristics that can make them particularly vulnerable. That's why your law firm needs to know what to look for and how to protect itself from schemes perpetrated by attorneys, managers or support staff.

LAW FIRM VULNERABILITIES

Law firms may be particularly susceptible to fraud because of how they delegate responsibilities. Attorneys generally focus primarily on their practices, leaving management of day-to-day operations to employees. These staff members can have significant authority and little oversight. This can prove especially dangerous in firms with small, seemingly loyal staffs that require employees to wear many hats. The costliest frauds often are perpetrated by long-term, trusted employees.

In addition, ethics rules can make firms susceptible. Law firms are required to avoid commingling their funds with client funds. As a result, they can have large amounts of money sitting idle and not closely monitored for lengthy periods.

RED FLAGS

Individuals who commit fraud on the job frequently display behavioral red flags. What should your firm look for? Be on the lookout for employees experiencing financial struggles, gambling or substance abuse issues, or ongoing health problems that might lead to expensive medical bills.

Additional signs can include employees living beyond their means or who refuse to take vacation because they may feel the need to be in the office to cover their tracks. Fraudsters might exhibit control issues or an unwillingness to share duties. They also may exhibit a

“wheeler-dealer” attitude toward unscrupulous behavior. Close relationships with vendors and complaints about inadequate pay can signal potential fraud, too.

CONTROLS TO CONSIDER

The first step to reducing the odds of fraud is to conduct a risk assessment. Such an assessment identifies the types of risks your firm faces and their likelihood of occurrence. Based on those risks, you can implement appropriate controls, including:



Employee controls. Conduct background screenings of all prospective employees. This should include verification of work history, education and references. Also segregate duties to ensure, for example, that employees who process invoices don’t also process payments or receive and reconcile bank statements. Rotate job duties so no single employee “owns” certain functions. In addition, impose mandatory vacation time.

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Bank and trust accounts. Bank statements should be reconciled at least monthly by someone not involved in disbursements. Also be sure to:

- Monitor online bank accounts regularly to check transactions for irregularities,
- Prohibit the use of signature stamps to endorse checks,
- Require dual signatures for outgoing checks from operating accounts, including the managing partner’s signature on checks above a specified threshold amount,

- Mandate dual signatures for trust account transactions,
- Have an independent professional (such as a CPA) monitor trust accounts, and
- Consider giving individual clients access to their trust accounts to review their activity.

Other areas. Review manual journal entries and voided transactions in your accounting transactions. Regularly review firm budgets for unexplained variances between budgeted and actual amounts. You should also perform unannounced audits of your firm’s financial records. Finally, establish an anonymous and confidential fraud reporting hotline for employees, clients and vendors.

Regardless of the controls selected, you should establish measures that will prevent partners and other high-ranking employees from overriding internal controls.

IT STARTS AT THE TOP

Internal controls can go a long way toward deterring and detecting fraud, but firm culture also plays a critical role. Prioritizing ethical behavior through training, policies and procedures isn’t enough. Make sure your firm’s leaders emphasize the importance of such behavior through their words and, most important, their actions. •

Study highlights the threat of ALSPs

A new report from the Center on Ethics and the Legal Profession at Georgetown University Law School and Thomson Reuters Legal Executive Institute (LEI) could cause some soul searching among law firms. The *2019 Report on the State of the Legal Market* reveals that the traditional law firm business model is crumbling due to new market realities — including the expanding availability of alternative legal service providers (ALSPs).

CHANGING LANDSCAPE

The report reinforces what many firms already suspect: They need to take a longer-range, more strategic view of their competitive positions. For example, while the demand for law firm services has been essentially stagnant, corporate legal spending has risen steadily, suggesting that firms are losing market share. Part of such losses can be attributed to larger in-house staffs. But it also reflects the shift of work to ALSPs, including accounting and consulting firms.

According to the report's lead author, it was long assumed by both firms and clients that legal work could be performed only by lawyers. But new competition, technology and innovative legal service delivery models are rapidly transforming how services are provided.

The report's findings are consistent with those of a 2018 global survey of ALSPs conducted by the Georgetown school, LEI and Oxford University

Business School. According to that survey, the ALSP market had grown significantly to about \$10.7 billion in annual revenues, or a compound annual growth rate of 12.9%.

Even more striking, the 2018 survey confirmed that ALSPs' services were moving into territory generally thought of as too sophisticated for nonattorneys. This includes regulatory risk and compliance, project management, legal research and corporate due diligence work.

A NEW MODEL

Some things never seem to change, though. The 2019 report cites a common hurdle facing law firms trying to adapt to new market realities — partner resistance. Too many partners are mired in their belief of “legal exceptionalism,” which prevents them from recognizing the threat from accounting firms.

The authors of the report propose a dynamic model that categorizes law firm services on a continuum. It runs from “unique legal expertise” (for example, private equity practices) at the top to “comprehensive legal services” (day-to-day services that clients require to run their business) and down to “ancillary support services” (services that nonattorneys can cover, including document review and coding). The report concludes by urging firms to make honest assessments of where their key practices fall along the continuum. Only then can they begin to make the necessary strategic decisions to optimize competitive advantages.

THE FUTURE IS NOW

The report emphasizes that each firm's strategy will differ, depending on factors such as its client and practice mix, market positioning, reputation and culture. Law firms should take the time to understand where they may be on the continuum and how changes can affect their business. •





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