

VIRGINIA:

**IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND**

**IN THE MATTER OF PROPOSED
LEGAL ETHICS OPINION 1898**

APPENDIX TO PETITION OF THE VIRGINIA STATE BAR

Stephanie E. Grana, President
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**VIRGINIA STATE BAR
COUNCIL MEETING
SHERATON OCEANFRONT HOTEL
VIRGINIA BEACH, VIRGINIA
THURSDAY, JUNE 16, 2022**

AGENDA

**9:00 a.m. Council Meeting – Sheraton Ocean Grand Ballroom
Virginia Beach**

I. Reports and Presentation of Resolutions	Tab
A. President's report – Jay B. Myerson, President	1
B. Executive Director's report – Karen A. Gould, Executive Director	2
C. Financial report – Crystal T. Hendrick, Finance/Procurement Director	3
D. Bar Counsel's report – Renu M. Brennan, Bar Counsel	4
E. Judges and Lawyers Assistance Program report – Tim Carroll, Executive Director	5
F. Conference of Local and Specialty Bar Associations report - Roy V. Creasy, chair	6
G. Diversity Conference report – David D. Masterman, chair	7
H. Senior Lawyers Conference report – Gary C. Hancock, vice chair	8
I. Young Lawyers Conference report – Kristopher R. McClellan, President	9
J. VSB law office management proposal – David Neumeyer, chair, Practice Management Advisory Task Force	
K. Special Committee on Lawyer Well-Being report – Leonard C. Heath, Jr., chair	
L. Executive Director Search Task Force report – Lisa A. Wilson, vice chair	
M. Opportunity for questions, comments, ideas	

II. Action Items

- | | |
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| A. Minutes of February 26, 2022 Council meeting | 10 |
| B. Approval of resolutions honoring Jay B. Myerson and
The Myerson Law Group, P.C. – Stephanie E. Grana, president-elect | 11 |
| C. Approval of resolution honoring Justice Donald W. Lemons –
Jay B. Myerson, President | 12 |
| D. Approval and presentation of resolution to retiring executive director
Karen A. Gould – Jay B. Myerson | 13 |
| E. Approval of Nominating Committee report – Brian L. Buniva, chair | 14 |
| - Executive Committee | |
| - MCLE Board | |
| - Clients’ Protection Fund Board | |
| - Judicial Candidate Evaluation Committee | |
| - Council members at Large | |
| - ABA House of Delegates | |
| F. Clients’ Protection Fund Board rule revisions – Brian D. Lytle,
CPF Rules Subcommittee chair, and Peter M. Mellette,
CPF Rules Subcommittee member | 15 |
| G. LEO 1897, “Replying to all...” – Dennis Quinn, chair, Standing
Committee on Legal Ethics | 16 |
| H. LEO 1898, Cryptocurrency – Dennis Quinn, chair, Standing
Committee on Legal Ethics | 17 |

II. Notice of Upcoming Receptions, Dinners & Meetings

12:00 noon, Thursday, September 8, 2022, lunch and Executive Committee meeting, 3rd Floor Conference Room, Bank of America Building, 1111 E. Main St., Richmond.

12:30 p.m., Thursday, October 20, 2022, Executive Committee meeting, The Boar’s Head Resort, 200 Ednam Dr., Charlottesville.

6:30 p.m., Thursday, October 20, 2022, Council dinner, The Boar’s Head Resort, 200 Ednam Dr., Charlottesville.

9:00 a.m., Friday, October 21, 2022, Council meeting, The Boar’s Head Resort, 200 Ednam Dr., Charlottesville.

12 noon, Friday, February 25, 2023, Executive Committee lunch and meeting, 3rd Floor Conference Room, 1111 E. Main St., Bank of America Building, Richmond.

6:30 p.m., Friday, February 25, 2023, Council reception and dinner, Virginia Museum of Fine Arts, 200 N. Arthur Ashe Blvd., Richmond.

9:00 a.m., Saturday, February 26, 2023, Council meeting, Omni Richmond Hotel, 100 S. 12th Street, Richmond.

12 noon, Thursday, April 20, 2023, Executive Committee lunch and meeting, 3rd Floor Conference Room, 1111 E. Main St., Bank of America Building, Richmond.

**VIRGINIA STATE BAR
STANDING COMMITTEE ON LEGAL ETHICS**

Thursday, March 24, 2022
10:00 a.m.

AGENDA

I. APPROVAL OF MINUTES

II. OTHER BUSINESS

A. Real estate split settlement FAQs

III. UNAUTHORIZED PRACTICE RULES

A. UPR 3(Q) – Committee note

IV. LEGAL ETHICS OPINIONS

A. LEO 1897 – Reply all to emails (Rule 4.2)

Comments received from: Astrika Adams, Bobbi Jo Alexis, Ann Brogan, Jennifer Brown, Ryan Brown, David Corrigan (LGA), John Crouch, Vicki Francois, David Gogal, Shameka Harris, Sandra Havrilak, Laura Pantazis, Susan Pesner, Debra Powers, Mark Smith, Carl Witmeyer

B. LEO 1898 – Accepting cryptocurrency for legal fees

C. LEO 1899 – Conversion clause when flat fee representation is prematurely terminated without cause

V. ADJOURNMENT



Virginia State Bar

Seeking Public Comment

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MEDIA CONTACT: James M. McCauley, Ethics Counsel

RELEASE DATE: March 25, 2022

VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS SEEKING PUBLIC COMMENT ON LEGAL ETHICS OPINION 1898

RICHMOND - Pursuant to Part 6, § IV, ¶ 10-2(C) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed advisory Legal Ethics Opinion 1898 – Cryptocurrency.

The proposed opinion provides guidance on some of the technical issues surrounding cryptocurrency and what it means to act competently to safeguard the cryptocurrency.

This proposed opinion concludes that a lawyer may accept client property including cryptocurrency offered as an advance payment for the lawyer's services, provided the lawyer's fee is reasonable under Rule 1.5, and this business transaction with the client meets the requirements of Rule 1.8(a), namely, that the transaction is fair and reasonable to the client, the transaction and terms are fully disclosed in writing in a manner the client understands, the client is advised of the opportunity to consult with independent counsel, and the client's consent is confirmed in writing. When cryptocurrency is being held by the lawyer as an advance fee, the

requirements of Rule 1.15 regarding safekeeping client property apply and require that the lawyer take reasonable steps to secure the client's property against loss, theft, damage or destruction.

Inspection and Comment

The proposed opinion may be inspected below, or by contacting the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than May 4, 2022. Comments may be submitted via email to publiccomment@vsb.org.

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Governance

Chidi I. James of Fairfax is the first African American man to be president-elect of the Virginia State Bar.



Plan Ahead: VSB to unveil a **new lawyer portal and website** in April.

The Supreme Court of Virginia has approved **IOLTA changes** for lawyers in private practice.

The Clients' Protection Fund Board **disbursed \$38,810** on twelve petitions.

The Clients' Protection Fund Board **seeks comments** on rule changes.

Ethics



The VSB's Standing Committee on Legal Ethics is seeking public comment on proposed advisory **Legal Ethics Opinion 1898 – Cryptocurrency**.

The proposed opinion provides guidance on some of the technical issues surrounding cryptocurrency and what it means to act competently to safeguard the cryptocurrency.

Discipline

Disciplinary hearings are public meetings and may be viewed as they occur by following the **disciplinary docket**.

Recent disciplinary system actions:

Alicia Ellen Rowedder, license suspended, effective March 23, 2022.

Edward Emad Moawad, license suspended, effective April 1, 2022.

Guillermo Del Carmen Uriarte, license suspended, effective April 24, 2022.

Gerald Richard Curran, public reprimand, effective March 7, 2022.

Demian John McGarry, public reprimand, effective March 7, 2022.

Steven Scott Biss, public reprimand, effective March 8, 2022.

Kevette Beard Elliott, public reprimand, effective March 24, 2022.

Joseph Taylor Brown, public reprimand, effective March 31, 2022.

Private discipline: 3 private admonitions, 2 private reprimands

Opportunities

Virginia Tech, the Virginia Cooperative Extension, and the Virginia Department of Forestry seek **lawyers to serve as estate planners** for legacy farms and forestland.



Pro Bono / Access to Justice



The **Virginia Poverty Law Center** is hosting **several CLE training sessions** for lawyers interested in helping with eviction cases.

Nominate a pro bono lawyer: We are seeking nominations for the **Virginia Legal Aid Award** and the **Oliver White Hill Law Student Pro Bono Award**. Deadline for nominations is **April 8, 2022**.

The Legal Services Corporation has **grants available for civil litigation**.

2022 Annual Meeting: Come Back to the Beach! 🏖️

Mark your calendars for the back to the beach VSB Annual Meeting this summer.

Wednesday, June 15 – Friday, June 17, 2022.

The meeting features 8 hours of Live CLE (including one hour Ethics), the induction of 2022-23 VSB President Stephanie E. Grana, and receptions, luncheons, bingo, and the Run in the Sun!

Registration opens April 8.



Diversity Conference



The Diversity Conference is seeking lawyers for leadership positions, members of the judiciary for honorary roles, and lay members as well. Please consider nominating someone (or yourself!) for one of these roles today.

We are also seeking nominations for the Clarence M. Dunnville Jr. Achievement Award. Please consider nominating a colleague or friend by April 15. Contact Sylvia Daniel with questions.

Nominations: Recognize a Deserving Lawyer

The **VSB President's Special Committee on Lawyer Well-Being** seeks nominations for Virginia lawyers, retired judges, bar associations, law firms, corporate law departments, government law departments and agencies, law schools, or other legal services organizations that have made a commitment to wellness in the legal profession.



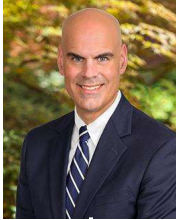
Submit nominations and view the criteria for the new **Award for Excellence in Wellness and Well-Being in the Legal Profession**.



The Conference of Local and Specialty Bar Associations is seeking nominations for its Awards of Merit, Local Bar Leader of the Year Award, Specialty Bar Leader of the Year Award, and Bar Association of the Year Award. Entry deadline: **May 4, 2022**.

Awards

Ronald S. Evans of Barnes & Diehl in Richmond has been named the 2022 recipient of the Betty A. Thompson Lifetime Achievement Award by the Virginia State Bar's Family Law Section. The award honors "an individual who has made a substantial contribution to the practice and administration of family law in the Commonwealth of Virginia."

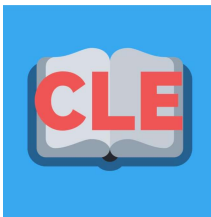


Daniel L. Gray, a partner in Cooper Ginsberg Gray PLLC in Fairfax, has been named the 2022 recipient of the Family Law Service Award. The award is presented by the VSB's Family Law Section to people and organizations that have improved family, domestic relations, or juvenile law in the Commonwealth.

The VSB Real Property Section and Virginia CLE named **Richard B. Chess** of Richmond and **Ronald D. Wiley Jr.** of Charlottesville as dual recipients of the 2022 Traver Award, given each year to honor a lawyer who embodies the highest ideals and expertise in real estate law.



CLE



YLC Bench-Bar Conference: April 29, 9:00 am – 12:30 pm

The third annual YLC Bench-Bar Conference is a half-day virtual CLE program that will consist of three, one-hour CLE presentations tailored for an audience of lawyers who are within the first few years of their legal careers. Registration is now open.

Stormwater CLE Series: April 6, 13, and 20, 12:00 – 1:30 pm

This FREE, three-part webinar CLE series, sponsored by the VSB Local Government and Environmental Law Sections, intends to demystify interlocking federal and state laws and regulations that apply at the local government level when rain falls out of the sky and hits the ground. Registration is required for each virtual session.

Register for the 2022 Virtual VSB Techshow:

A favorite session: "Current Technologies That Help Law Firms Succeed." Presented **April 25** with the latest on: Legal automation, tech ethics, cyber insurance, and many other tech issues for lawyers and legal staff.



Additional **FREE** and VSB-sponsored CLE webinars and events are updated frequently.

Events



Hampton Roads Minority Pre-Law Conference with Keynote Speaker Chief Justice S. Bernard Goodwyn

Regent University, April 30, 2022, 9:00 am – 3:00 pm

The **Minority Pre-Law Conference** is an engaging program that encourages minority and non-traditional students to apply to law school and succeed in the legal profession. **Please share this opportunity.**
Register by April 15.

All Virginia lawyers are invited to view and subscribe for free to a new monthly [Practice Management Advisor e-newsletter](#) from The Virginia Bar Association. Subscribe via the [newsletter](#). VBA Practice Management Advisor Live Chats are being offered FREE one Friday a month 10-11 am. [RSVP](#) for the April 15 chat. This month the VBA launches a webinar series on all things practice management. Take a break for lunch and view "[60 Legal Tech Tips, Tricks, Gadgets and Websites in 60 Minutes](#)" at noon on Monday, April 18.



[Virginia Lawyer](#)

April Issue in the mail: Thank you to our writers and advertisers for continuing to make *Virginia Lawyer* a vibrant chronicle of the legal profession in the Commonwealth.

Classifieds: Would you like to be a magistrate judge, a transactional attorney, or a chief legal counsel? We have those jobs, and an RFP from the City of Suffolk, in our [VSB classifieds](#).

There is only one magazine that reaches almost 50,000 lawyers, judges, and law schools in Virginia and across the country. Please contact [Dee Norman](#) for more information on showcasing your firm, your services, or your law school. If you would like to opt out of the paper edition, do so in your [lawyer portal](#).



Stay connected to your Bar:



5/5/22, 9:28 AM

April 2022: Historic president-elect, new VSB website, Court approves IOLTA changes, CPF disburses \$38,810

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Professional Guidelines

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Actions on Rule Changes and Legal Ethics Opinions

- Proposed | [Legal Ethics Opinion 1898, Cryptocurrency. Comments due by May 4, 2022.](#)
- Adopted | [Paragraph 20, Maintenance of Trust Accounts: Notice of Election Requirements, Amended by the Supreme Court of Virginia March 16, 2022. Effective July 1, 2022.](#)
- Proposed | [Legal Ethics Opinion 1897, replying all to an email when the opposing party is copied.](#)
- Adopted | [amendments to Clients' Protection Fund Rules. Approved by Council February 26, 2022.](#)
- Withdrawn | [Legal Ethics Opinions related to advancing costs and expenses. Effective November 18, 2021.](#)
- Proposed | [Legal Ethics Opinion 1894, Conflict of Interest: Representing Multiple Infant Claimants by "Next Friend." Pending approval by the Supreme Court of Virginia.](#)
- Adopted | [amendments to Rules 1.8, 1.10, and 1.15 of the Rules of Professional Conduct. Adopted by the Supreme Court of Virginia December 22, 2021. Effective February 20, 2022.](#)
- Withdrawn | [Legal Ethics Opinion 1895, Prosecutor's Communication with Represented Victim in Criminal Case.](#)
- Adopted | [Legal Ethics Opinion 1896, Out-of-State Lawyers Working Remotely in Virginia. Adopted by the Supreme Court of Virginia January 11, 2022. Effective immediately.](#)
- Proposed | [LEO 1893, Representing Child and "Next Friend" as Plaintiffs in Personal Injury Case.](#)
- Adopted | [amendments to Rule 1.2 of the Rules of Professional Conduct. Adopted by the Supreme Court of Virginia January 11, 2022. Effective March 12, 2022.](#)
- Adopted | [amendment to Paragraph 13-6.H regarding the Disciplinary Board's review of Agreed Dispositions. Adopted by the Supreme Court of Virginia January 11, 2022. Effective March 12, 2022.](#)
- Adopted | [Amendments to Clients' Protection Fund Rules. Approved by VSB Council 10/29/21](#)
- Adopted | [UPL Opinion 218: regarding power of attorney and the uniform power of attorney act. Approved by the Supreme Court of Virginia September 13, 2021. Effective immediately.](#)
- Adopted | [Supreme Court of Virginia Approves LEO 1890 After VSB Revision and Amends Rule 4.2, Comment \[7\] January 6, 2021. Effective immediately.](#)
- Adopted | [amendments to the VSB and Council Bylaws governing election of the president-elect. Approved by the Supreme Court of Virginia May 5, 2021. Effective July 5, 2021.](#)
- Adopted | [amendments to Paragraph 13 regarding completion period for professionalism course. Approved by the Supreme Court of Virginia April 28, 2021. Effective immediately.](#)
- Adopted | [amendments to reduce the delinquency fee for Rules violations. Approved by](#)

- the Supreme Court of Virginia April 28, 2021. Effective immediately.
- **Adopted** | [Reducing Clients' Protection Fund Assessment, Removing Sunset Provision, Assessment reduction approved by the Supreme Court of Virginia April 28, 2021. Effective immediately. The sunset provision is pending approval.](#)
 - **Proposed** | [paragraphs 24 & 25 regarding Real Estate Settlement Agents Regulations and Legal Aid Societies.](#)
 - **Adopted** | [amendments to Paragraph 13 regarding bar proceedings. Approved by the Supreme Court of Virginia May 17, 2021, effective July 16, 2021.](#)
 - **Adopted** | [Bylaws amendment regarding audit cycle. Approved by Council October 23, 2020. Effective immediately.](#)
 - **Adopted** | [Supreme Court of Virginia Amends Third Year Student Practice Rule September 18, 2020. Effective immediately.](#)
 - **Adopted** | [amendments to Paragraph 17 MCLE Rule regarding elimination of bias topic. Approved by the Supreme Court of Virginia August 11, 2021. Effective October 11, 2021.](#)
 - **Adopted** | [amendments to Paragraph 13-6.D, Quorum Requirement for Disciplinary Board. Approved by the Supreme Court of Virginia December 23, 2020, effective February 22, 2021.](#)
 - **Adopted** | [Compliance deadlines for 2020 extended due to COVID-19 Pandemic Effective April 14, 2020.](#)
 - **Adopted** | [amendments to Virginia Rule of the Supreme Court, Rule 1A:8, Military Spouse Provisional Admission. Adopted by the Supreme Court of Virginia December 28, 2021, Effective February 26, 2022.](#)
 - **Adopted** | [amendments to Paragraph 22 Voluntary Pro Bono Publico Legal Services Reporting Effective May 15, 2020.](#)
 - **Adopted** | [amendments to Paragraph 13. Effective March 15, 2020.](#)
 - **Adopted** | [revisions to Paragraphs 3 and 13-23.K. regarding membership statuses. Approved by the Supreme Court of Virginia May 1, 2020. Effective June 30, 2020.](#)
 - **Adopted** | [revisions to LEO 1850 regarding the outsourcing of legal services. Approved by the Supreme Court of Virginia January 12, 2021, effective immediately.](#)
 - **Adopted** | [LEO 1878 regarding a successor lawyer's duties in a contingent fee matter. Approved by the Supreme Court of Virginia May 17, 2021. Effective immediately.](#)
 - **Rejected** | [amendments to Rule 1.8 regarding conflict of interest: prohibited transactions.](#)
 - **Adopted** | [amendments to Rule 1A:5, Virginia Corporate Counsel & Corporate Counsel Registrants. Effective January 1, 2020.](#)
 - **Adopted** | [Changes to the Clients' Protection Fund Rules.](#)
 - **Adopted** | [amendments to Rule 1.15, Safekeeping Property. Effective March 15, 2020.](#)
 - **Adopted** | [new Part 6, Section IV, Paragraph 23, Attorney Wellness Fund. Approved by the Supreme Court of Virginia May 31, 2019. Effective July 1, 2019.](#)
 - **Adopted** | [amendments to Paragraph 17 regarding MCLE Rule. Approved by the Supreme Court of Virginia April 26, 2019. Effective July 1, 2019.](#)
 - **Adopted** | [amendment to Rule 5.5, Unauthorized Practice Of Law: Multijurisdictional Practice of Law. Approved by the Supreme Court of Virginia December 23, 2020, effective immediately.](#)
 - **Adopted** | [amendment to Rule 1.18, Duties to Prospective Client, in Comment 6. Approved by the Supreme Court of Virginia December 23, 2020, effective immediately.](#)
 - **Adopted** | [amendment to Rule 1.17, Sale of Law Practice, in Comment 12. Approved by the Supreme Court of Virginia December 23, 2020, effective immediately.](#)
 - **Adopted** | [amendments to Mandatory Continuing Legal Education Regulations. Effective September 6, 2019](#)
 - **Adopted** | [amendment to bylaws changing access to legal services committee from special to standing. Approved by Council June 13, 2019. Effective immediately.](#)
 - **Adopted** | [revisions to LEO 1750 on lawyer advertising and solicitation. Approved by the Supreme Court of Virginia October 2, 2019, effective immediately.](#)
 - **Adopted** | [revisions to LEO 1872 on virtual law office and use of executive office suites.](#)

[Approved by the Supreme Court of Virginia October 2, 2019, effective immediately.](#)

- **Adopted** | [LEO 1891 on communication with represented government officials. Effective January 9, 2020.](#)
- **Vacated** | [LEO 1890 on communications with represented persons. Effective April 7, 2020.](#)
- **Adopted** | [amendments to Paragraph 13. Approved by the Supreme Court of Virginia, effective December 1, 2019.](#)
- **Rejected** | [comment to Rule 3.8, Additional Responsibilities of a Prosecutor.](#)
- **Adopted** | [revisions to Rule 4.4, Respect for Rights of Third Persons. Approved by the Supreme Court of Virginia, effective December 1, 2019.](#)
- **Adopted** | [Supreme Court of Virginia Amends Rules 1A:1. Effective December 1, 2018.](#)
- **Withdrawn** | [twelve Legal Advertising Opinions issued by the former Standing Committee on Lawyer Advertising and Solicitation](#)
- **Adopted** | [revisions to the Virginia Lawyer Referral Service rules of service. Effective July 1, 2020.](#)
- **Adopted** | [LEO 1889: Regarding Court-Appointed Lawyers and Parental Rights. Approved by the Supreme Court of Virginia November 8, 2018. Effective immediately.](#)
- **Adopted** | [revisions to Part 6, §I of the Rules of the Supreme Court of VA on the unauthorized practice of law. Approved by the Supreme Court of Virginia April 26, 2019. Effective July 1, 2019.](#)
- **Rejected** | [revisions to Rule 1.10, imputed disqualification: general rule.](#)
- **Adopted** | [revisions to Rule 1.8 regarding conflict of interest: prohibited transactions. Approval by the Supreme Court of Virginia December 12, 2018. Effective February 15, 2019.](#)
- **Adopted** | [amendments to MCLE Opinion 19 regarding lawyer well-being. Effective September 24, 2018.](#)
- **Withdrawn** | [four Legal Ethics Opinions withdrawn by Standing Committee on Legal Ethics on April 3, 2018](#)
- **Adopted** | [LEO 1750 regarding advertising issues. Approved by the Supreme Court of Virginia on April 20, 2018. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 13 that conform to Chapter 27.2 of title 55 of the Code of Virginia. Approved by the Supreme Court of Virginia. Effective June 15, 2018](#)
- **Adopted** | [revisions to Paragraph 3 and 13-23 regarding change of membership for impaired attorneys. Approved by the Supreme Court of Virginia on October 31, 2018. Effective January 1, 2019.](#)
- **Adopted** | [revisions to Paragraph 13-1 and 13-30 regarding a Lawyer Assistance Program. Approved by the Supreme Court of Virginia on October 31, 2018. Effective January 1, 2019.](#)
- **Adopted** | [new Paragraph 22 voluntary pro bono publico legal services reporting. Approved by the Supreme Court of Virginia February 27, 2018. Effective December 1, 2018.](#)
- **Adopted** | [revisions to Paragraph 13-1 and 13-9 concerning assessment of Guardian Ad Litem's fees and costs. Approved by the Supreme Court of Virginia on October 31, 2018. Effective January 1, 2019.](#)
- **Adopted** | [revisions to Rule 1.1, Competence. Approved by the Supreme Court of Virginia on October 31, 2018. Effective immediately.](#)
- **Withdrawn** | [LEO 1888: prosecutor's duty to disclose evidence that tends to negate the guilt of the accused. Standing Committee on Legal Ethics voted not to send to Council.](#)
- **Adopted** | [LEO 1885: Ethical Considerations for a Lawyer's Participation in Online Attorney-Client Matching. Approved by the Supreme Court of Virginia November 8, 2018. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 13 to definitions of burden of proof and Disciplinary Record. Approved by the Supreme Court of Virginia. Effective June 15, 2018.](#)
- **Adopted** | [three-year extension of the Clients' Protection Fund sunset provision. Effective July 1, 2018.](#)

- **Adopted** | [Supreme Court of Virginia amends Part Six, § IV, ¶ 16 RE: Clients' Protection Fund Approved by the Supreme Court of Virginia September 28, 2017. Effective July 1, 2018.](#)
- **Adopted** | [LEO 1887: Duties when a lawyer over whom no one has supervisory authority is impaired. Approved by the Supreme Court of Virginia on August 30, 2017. Effective immediately.](#)
- **Withdrawn** | [LEO 776: Threatening prosecution in a civil matter.](#)
- **Adopted** | [changes to paragraph 3 modifying status of Emeritus Members allowed to provide pro bono services. Approved by the Supreme Court of Virginia. Effective March 1, 2018.](#)
- **Adopted** | [amendments to Rules 7.1-7.5 governing lawyer advertising. Approved by the Supreme Court of Virginia. Effective July 1, 2017.](#)
- **Adopted** | [amendments to Clients' Protection Fund Rules. Approved by VSB Council February 25, 2017. Effective immediately.](#)
- **Adopted** | [LEO 1886: Duty of partners & supervisory lawyers in law firm when another lawyer suffers impairment. Approved by the Supreme Court of Virginia on December 15, 2016. Effective immediately.](#)
- **Adopted** | [Paragraph 13-24 regarding disbarment, revocation, or suspension in another jurisdiction. Approved by the Supreme Court of Virginia. Effective March 1, 2017.](#)
- **Adopted** | [amendments to Paragraph 13.1 regarding suspension for failure to complete professionalism course. Approved by the Supreme Court of Virginia. Effective March 1, 2017.](#)
- **Adopted** | [LEOs 1329, 1438, 1584, 1606, 1742, 1792, 1856 and 1869 Approved by the Supreme Court of Virginia on November 2, 2016. Effective immediately.](#)
- **Adopted** | [LEO 1884 Conflicts arising from a lawyer-legislator's employment with a consulting firm. Approved by the Supreme Court of Virginia on September 30, 2016. Effective immediately.](#)
- **Adopted** | [amendments to Rules 1.6 \(Confidentiality\) and 3.3 \(Candor\). Approved by the Supreme Court of Virginia September 30, 2016. Effective December 1, 2016.](#)
- **Withdrawn** | [the Virginia State Bar's Standing Committee on Legal Ethics withdrew thirteen Legal Ethics Opinions.](#)
- **Adopted** | [State Code Regarding Procedure for Revocation of License Revised. Effective July 1, 2017.](#)
- **Adopted** | [Supreme Court of Virginia amends rule regarding unauthorized practice of law. Approved by the Supreme Court of Virginia March 1, 2016. Effective May 1, 2016.](#)
- **Adopted** | [amendments to Paragraph 13-11 \(Limited Right to Discovery\), 13-25 \(Reinstatement\), and 13-30 \(Confidentiality\). Approved by the Supreme Court of Virginia December 17, 2015. Effective March 1, 2016.](#)
- **Adopted** | [amendments to Rules 1.1 \(Competence\) and 1.6 \(Confidentiality\). Amended and approved by the Supreme Court of Virginia December 17, 2015. Effective March 1, 2016.](#)
- **Adopted** | [amendments to Rule 5.5 Comment \[1a\] and Rule 8.3\(e\). Approved by the Supreme Court of Virginia November 17, 2015. Effective February 1, 2016.](#)
- **Adopted** | [amendments to Paragraph 10 Section IV of the Rules for Integration of the Virginia State Bar. Approved by the Supreme Court of Virginia October 30, 2015. Effective immediately.](#)
- **Adopted** | [new rule: provision of legal services following determination of major disaster. Approved by the Supreme Court of Virginia October 30, 2015. Effective January 1, 2016.](#)
- **Adopted** | [new Paragraph 13.4 regarding malpractice insurance requirements in Va. Code Section 54.1-3935\(D\). Approved by the Supreme Court of Virginia August 21, 2015. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 13-4E regarding service on district committees by certain ex-officio members of Council. Approved by the Supreme Court of Virginia August 21, 2015. Effective immediately.](#)

- Withdrawn | [amendment to Bylaws regarding Better Annual Meeting Committee](#)
- **Adopted** | [Supreme Court of Virginia Amends Military Spouse Provisional Admission Rule. Approved by the Supreme Court of Virginia February 27, 2015. Effective immediately.](#)
- **Adopted** | [new Rule 5.8. Approved by the Supreme Court of Virginia February 27, 2015. Effective May 1, 2015.](#)
- **Adopted** | [amendment to Rule 1A:1 Reciprocity: Admission on Motion. Approved by the Supreme Court of Virginia October 31, 2014. Effective immediately.](#)
- **Adopted** | [amendment to bylaws regarding Council election procedures. Approved by VSB Council 10/24/14. Effective immediately.](#)
- **Adopted** | [amendments to the Clients' Protection Fund Rules regarding claim limits on payments from the fund. Approved by VSB Council 10/24/14.](#)
- Withdrawn | [amendments to Rules 1.1 \(Competence\) and 1.6 \(Confidentiality\).](#)
- Withdrawn | [Paragraph 13-4 C regarding district committee member's address of record.](#)
- Withdrawn | [amendments to Rules 1.1 \(Competence\) and 1.6 \(Confidentiality\).](#)
- **Adopted** | [amendment to Rule 1.10 regarding conflict of interest. Approved by the Supreme Court of Virginia 07/31/2015. Effective immediately.](#)
- **Adopted** | [addition to VSB and Council Bylaws. Approved by VSB Council 6/12/14. Effective immediately.](#)
- **Adopted** | [changes to Paragraph 17 Mandatory Continuing Legal Education Rule. Approved by the Supreme Court of Virginia May 1, 2014. Effective immediately.](#)
- Withdrawn | [changes to Paragraph 3 add e-mail and phone number to address of record.](#)
- Vacated | [amendments to UPR 1-101 concerning representation before general district courts. Proposal withdrawn April 8, 2014.](#)
- **Adopted** | [amendments to Rule 5.5 regarding temporary practice by foreign lawyers. Approved by the Supreme Court of Virginia December 13, 2013. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 13-13 regarding Participation and Disqualification of Counsel. Approved by the Supreme Court of Virginia January 31, 2014. Effective immediately.](#)
- **Adopted** | [amendment to Paragraph 13 regarding the definition of "Bar Counsel". Approved by the Supreme Court of Virginia January 31, 2014. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 13-26 regarding appeals from Disciplinary Board determinations. Approved by the Supreme Court of Virginia January 31, 2014. Effective immediately.](#)
- **Adopted** | [amendments to Rule 1.11, Rule 1.15, and Rule 5.4 of the Rules of Professional Conduct. Approved by the Supreme Court of Virginia November 1, 2013. Effective immediately.](#)
- **Rejected** | [amendment to VSB Bylaws regarding composition of Executive Committee.](#)
- **Adopted** | [amendments to Rules 7.1-7.5 of regarding lawyer advertising. Approved by the Supreme Court of Virginia April 15, 2013. Effective July 1, 2013.](#)
- **Adopted** | [revisions to Clients' Protection Fund Rules of Procedure. Approved by VSB Council February 23, 2013. Effective immediately.](#)
- **Adopted** | [correction to Paragraph 13-16 DD. Approved by Supreme Court of Virginia December 14, 2012. Effective immediately.](#)
- Vacated | [amendments to Rules 7.1-7.5 regarding lawyer advertising. By order of the Supreme Court of Virginia November 29, 2012.](#)
- **Adopted** | [bylaws revisions to election procedures for president-elect and council. Adopted by Council October 19, 2012. Effective immediately.](#)
- **Adopted** | [amendment to Bylaws to give Diversity Conference chair a seat on the Executive Committee. Approved by VSB Council June 13, 2013. Effective immediately.](#)
- **Adopted** | [amendment to Paragraph 13 regarding VSB Disciplinary Board. Approved by the Supreme Court of Virginia April 13, 2012. Effective immediately.](#)
- **Adopted** | [amendments to Rule 1.15 of Rules of Professional Conduct and Paragraph 20 of Part 6, § IV. Approved by Supreme Court of Virginia June 21, 2011. Effective immediately.](#)

- **Adopted** | [new Rule 1.18 defining a prospective client. Approved by the Supreme Court of Virginia June 21, 2011. Effective immediately.](#)
- **Adopted** | [amendments to Virginia Supreme Court Rule 1A:5 regarding corporate counsel. Adopted by Supreme Court of Virginia June 10, 2011. Effective immediately.](#)
- **Adopted** | [amendments to bylaws for VSB standing committees. Adopted by Council June 16, 2011. Effective immediately.](#)
- **Adopted** | [amendments to Virginia Supreme Court Rule 1A:5 regarding corporate counsel pro bono work. Approved by Supreme Court of Virginia April 15, 2011. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 11, regarding VSB annual dues. Approved by the Supreme Court of Virginia March 9, 2011. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 13 regarding multijurisdictional practice. Approved by the Supreme Court of Virginia February 17, 2011. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 17 regarding MCLE Rule. Approved by the Supreme Court of Virginia January 7, 2011. Effective immediately.](#)
- **Adopted** | [Rule 4.2 amendment addressing defendant waiving rights. Approved by the Supreme Court of Virginia November 1, 2010. Effective immediately.](#)
- **Adopted** | [amendments to Parts 5 and 5A, Rules of the Supreme Court of Virginia regarding appellate procedures. Approved by the Supreme Court of Virginia April 30, 2010. Effective July 1, 2010.](#)
- **Adopted** | [amendment to Paragraph 13-22, Board Proceedings Upon a Guilty Plea or an Adjudication of a Crime. Approved by the Supreme Court of Virginia March 19, 2010. Effective immediately.](#)
- **Adopted** | [amendment to Paragraph 13-10, Processing of Complaints by Bar Counsel. Approved by the Supreme Court of Virginia March 19, 2010. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 13, dealing with the use of the phrase "Charge of Misconduct." Approved by the Supreme Court of Virginia March 19, 2010. Effective immediately.](#)
- **Adopted** | [amendments to Paragraph 10 governing legal ethics and unauthorized practice of law. Approved by the Supreme Court of Virginia March 19, 2010. Effective immediately.](#)
- **Adopted** | [amendments to the MCLE Regulations include a limitation on pre-recorded CLE programs. Effective November 1, 2011.](#)
- **Rejected** | [Rule 7.4\(d\) certification as a specialist](#)
- **Rejected** | [Paragraph 17 mailing the annual certification form](#)
- **Rejected** | [Rule 8.4 allowing undisclosed recording under certain circumstances](#)

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Virginia State Bar

An agency of the Supreme Court of Virginia

NEWS AND INFORMATION

March 25, 2022

Virginia State Bar Seeks Comment on Cryptocurrency Ethics

The Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on proposed advisory Legal Ethics Opinion 1898 – Cryptocurrency.

The proposed opinion provides guidance on some of the technical issues surrounding cryptocurrency and what it means to act competently to safeguard the cryptocurrency.

This proposed opinion concludes that a lawyer may accept client property, including cryptocurrency, offered as an advance payment for the lawyer's services, provided the lawyer's fee is reasonable under Rule 1.5, and this business transaction with the client meets the requirements of Rule 1.8(a), namely, that:

- the transaction is fair and reasonable to the client,
- the transaction and terms are fully disclosed in writing in a manner the client understands,
- the client is advised of the opportunity to consult with independent counsel, and
- the client's consent is confirmed in writing.

When cryptocurrency is being held by the lawyer as an advance fee, the requirements of Rule 1.15 regarding safekeeping client property apply, and require that the lawyer take reasonable steps to secure the client's property against loss, theft, damage or destruction.

The complete LEO 1898 may be read [here](#).

Comment

Questions on the proposed opinion may be directed to the Office of Ethics Counsel at 804-775-0557.

Any individual, business, or other entity may file or submit written comments in support of or in opposition to the proposed opinion with Karen A. Gould, executive director of the Virginia State Bar, not later than May 4, 2022. Comments may be submitted via email to publiccomment@vsb.org.

Updated: Mar 25, 2022

DAVID P. CORRIGAN
804.762.8017
DIRECT FAX | 804.212.0862
dcorrigan@hccw.com
Respond to: Richmond

April 27, 2022

VIA EMAIL at publiccomment@vsb.org

Karen A. Gould, Executive Director
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

Re: Proposed Legal Ethics Opinion 1898

Dear Ms. Gould:

Thank you for seeking public comment on proposed advisory Legal Ethics Opinion 1898, regarding Cryptocurrency Ethics.

After reviewing the proposed opinion, the Ethics Committee of the Local Government Attorneys of Virginia, Inc. ("LGA") has determined that the proposed LEO does not have any impact unique to the practice of local government law. Therefore, the Committee has no comment on this proposed LEO. However, we do appreciate the continuing opportunity to provide comments on proposed Legal Ethics Opinions and Rule changes.

Very truly yours,



David P. Corrigan
Chair, LGA Ethics Committee

cc: Michelle Robl, Esq., LGA President (via email)
Andy Herrick, Albemarle County Deputy County Attorney (via email)

From: [Kellam T. Parks](#)
To: [publiccomment](#)
Subject: EXTERNAL SENDER Comments to Proposed LEO 1898
Date: Wednesday, May 4, 2022 8:02:55 PM

You don't often get email from kparks@pzlaw.com. [Learn why this is important](#)

I am writing regarding proposed LEO 1898 – “Accepting Cryptocurrency as an Advance Fee for Legal Services”

I recommend the adoption of the LEO. It is an extremely well-reasoned opinion, taking from other jurisdictions that have considered the topic and harmonizing with Virginia’s ethical rules. Cryptocurrencies, while not very common at the moment as a form of payment for legal services, will almost certainly increase moving forward as the platforms gain more acceptance and use by the public at large. Virginia has always held itself out to be business friendly, and especially in recent years, the VSB has streamlined and modernized its ethical rules governing the business of law (e.g. the marketing rules edits in 2017). This would be another step forward in that positive direction and keep Virginia at the forefront of the modern practice of law.

Kellam T. Parks, Esq.

Parks Zeigler, PLLC

Virginia Beach Office

4768 Euclid Road, Suite 103

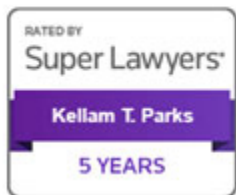
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Daniel Shin, Esq.
Center for Legal & Court Technology
William & Mary Law School
P.O. Box 8795, Williamsburg, VA 23187

May 4, 2022

Karen A. Gould
Executive Director
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026

Re: LEO 1898

Ms. Karen A. Gould,

My name is Daniel Shin, and I am a Cybersecurity Researcher at William & Mary Law School and a Coastal Virginia Node Commonwealth Cyber Initiative Research Scientist. I am a member of the State Bar. This document is submitted in my personal capacity and does not reflect the views and opinions of William & Mary.

I submit my comments regarding the proposed advisory *Legal Ethics Opinion 1898: Accepting Cryptocurrency as an Advanced Fee for Legal Services* (Legal Ethics Opinion), which provides guidance on cryptocurrency with respect to the safeguarding of client property and utilizing it for paying lawyer fees. For the reasons stated below, I recommend the Virginia State Bar's Standing Committee on Legal Ethics **not to adopt the proposed advisory** as it does not fully address the technical risks surrounding cryptocurrency.

Specifically, there are unreasonable foreseeable risks that can jeopardize cryptocurrency transactions and the safekeeping of crypto assets, *notwithstanding* whether both the client and the lawyer took reasonable security precautions. This comment concludes that the mechanism of cryptocurrency and the inherent security risks of this blockchain technology introduce unreasonable uncertainties for lawyers accepting this as a means of advanced fee payment.

I. Technical Risks Associated with Cryptocurrencies

Cryptocurrencies use blockchain technology to securely store past transactions and append new transactions on a public ledger. Some of the major cryptocurrencies, such as Bitcoin and Ethereum, utilize the "public blockchain" or "permissionless" model, where anyone who has access to a computer and the relevant open source software can participate in facilitating the transaction processing of the cryptocurrency network. Other cryptocurrencies utilize a "private blockchain" model, where access to the network is restricted to selected participants. For this comment, I will focus on cryptocurrency utilizing the public blockchain model because the Legal

Ethics Opinion is premised on the use of public blockchain cryptocurrency, which utilizes a “peer-to-peer computer network that is not reliant on or controlled by any central authority.”¹

The following section introduces two technical risks associated with cryptocurrencies that can undo processed transactions on the blockchain: the 51% attack and the risk of forks in the blockchain.

A. 51% Attack

Cryptocurrencies use a Proof-of-Work model, which requires cryptocurrency miners to provide easily verifiable data to prove that they have invested significant computing power before adding a block of new data on the blockchain. In general, a cryptocurrency blockchain is composed of sequential blocks of transaction data containing Proof-of-Work from the network’s most powerful miners. If the network encounters multiple blocks purporting to be the next block of data on the blockchain, the network will accept the block containing Proof-of-Work from the most powerful miner.

The Proof-of-Work system was conceived by Satoshi Nakamoto, the elusive and still unidentified creator of Bitcoin, to incentivize potentially greedy network participants to support the blockchain network instead of attempting to undermine it by altering previously accepted blocks of transactions.² Nakamoto’s system presumed that the benefit of supporting the blockchain network would always outweigh the cost of undermining the system for any user.

Competition among cryptocurrency miners makes it nearly impossible for any miner to control continuously what new data are added to the blockchain. The distributed and decentralized nature of mining networks makes it difficult for any entity to assert total control over the processing of cryptocurrency transactions.

However hard, it is not impossible for a form of manipulation of the blockchain to occur. When a group of miners possesses computing power exceeding 50% of the cryptocurrency network’s computing power, it has monopolistic control over what new data blocks are added to the blockchain. Also referred to as a 51% attack, this monopolistic control can disrupt transaction processing and even reverse completed transactions.³ Akin to a majority shareholder having significant control over a company, perpetrators of a 51% attack can have temporary control over which transactions get added to the blockchain.

Various cryptocurrencies have already suffered 51% attacks. For example, in August 2020, Ethereum Classics suffered a 51% attack, where the “offending miner” inserted 15 hours’

¹ *Legal Ethics Opinion 1898: Accepting Cryptocurrency as an Advanced Fee for Legal Services*, The Virginia State Bar’s Standing Committee on Legal Ethics, https://www.vsb.org/site/news/item/VSB_cryptocurrency_ethics032522 at 4.

² Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, <https://bitcoin.org/bitcoin.pdf>.

³ *51% Attack*, Investopedia, <https://www.investopedia.com/terms/1/51-attack.asp>; *What Is a 51% Attack?*, Binance Academy, <https://academy.binance.com/en/articles/what-is-a-51-percent-attack>.

worth of processed blocks of transactions that had higher Proof-of-Work than what the rest of the Ethereum Classic miners produced.⁴ The result of the attack was a blockchain reorganization, where 15 hours' worth of previously processed blocks of transactions by other miners were replaced with the inserted blocks by the offending miner.

A 51% attack can void recently processed transactions on the blockchain. Because this is a network-level attack, no amount of preparation by cryptocurrency users could mitigate the effects of the attack. In fairness, 51% attacks are more likely with cryptocurrency networks with low hashing powers, making popular cryptocurrency networks, such as Bitcoin and Ethereum, reasonably immune to this scenario. However, recent 51% attacks demonstrate the fragility of permissionless, decentralized blockchain networks.⁵

B. *Blockchain Fork*

While the 51% attack is initiated by cryptocurrency miners, the blockchain can also be modified by cryptocurrency developers. A “fork” refers to the change in the blockchain protocol to improve efficiencies and add new functionalities to the cryptocurrency network. Fork tends to be forward-looking, where changes are applied prospectively to new blocks after the blockchain update. However, there is a significant past fork incident involving *retroactive* changes to the blockchain that was driven not by technical concerns but by ideological interests.

On July 20, 2016, Ethereum underwent a fork on the blockchain that introduced retroactive changes to the Ethereum network.⁶ This fork was in response to the pernicious effects of a hack that had siphoned large amounts of cryptocurrency from the Decentralized Autonomous Organization, a smart contract-driven organization running on the Ethereum network.

The fork involved invalidating previously processed cryptocurrency transactions to “undo” the siphoning of stolen cryptocurrencies. After refunding stolen cryptocurrencies to victim users, Ethereum continued to run on the altered blockchain—the one where the fraudulent

⁴ Daniel Shin, *Ethereum Classic suffers a third 51% attack in August*, CLCT Cybersecurity and Information Security Newsletter – Issue 4, <https://legaltechcenter.net/files/sites/159/2021/11/Cyber-Newsletter-Issue-04.pdf>.

⁵ A 51% attack is not limited to Proof-of-Work. On April 17, 2022, Beanstalk, a “stablecoin”, suffered an attack, where the unidentified attacker initiated a lightning takeover of the stablecoin to siphon off \$180 million worth of reserves to the attacker’s cryptocurrency wallet. Alex Hern, *Beanstalk cryptocurrency loses \$182m of reserves in flash ‘attack’*, The Guardian, <https://www.theguardian.com/technology/2022/apr/18/beanstalk-cryptocurrency-loses-182m-of-reserves-in-flash-attack>; see Beanstalk Farms, Twitter, <https://twitter.com/BeanstalkFarms/status/1515700678454390785> (“Beanstalk suffered an exploit today. The Beanstalk Farms team is investigating the attack and will make an announcement to the community as soon as possible.”).

⁶ Vitalik Buterin, *Hard Fork Completed*, Ethereum Foundation, <https://blog.ethereum.org/2016/07/20/hard-fork-completed/>.

transactions no longer existed.⁷ However, some Ethereum miners refused to acknowledge the legitimacy of the modified blockchain and continued to process the unaltered blockchain that carried the stolen cryptocurrency transactions. Put simply, the main cryptocurrency network (Ethereum) adopted the amended blockchain while the minority of miners (Ethereum Classic) continued to use the unaltered blockchain, causing a chain split.

The developers of Ethereum implemented changes to the blockchain because the majority of the Ethereum community called for an intervening response.⁸ It should be emphasized that the fork was not conducted because of the lack of security of the Ethereum network protocol but because major key stakeholders demanded change.⁹ The fork was successfully implemented, with the majority of miners adopting the protocol change.

The takeaway from the 2016 Ethereum fork is that processed transactions may be reversed by the developer of the cryptocurrency. Although the likelihood of this scenario is low, there are no technical means to completely eliminate this risk.

C. Technical Risks of Cryptocurrency Provide Unavoidable Risk of Transaction Loss

Both the 51% attack and a developer-led blockchain fork have the effect of undoing transactions previously stored on the blockchain. When there is a transaction failure involving the traditional banking system, the lawyer has the means to reach out to the appropriate parties to resolve the issue. On the other hand, if there is a transaction failure with cryptocurrency, the lawyer has no institutional body to turn to because cryptocurrency networks are maintained by a decentralized network of blockchain participants.

Even if both the client and the lawyer maintain the highest possible security standards, the risk of transaction failure remains. The development of blockchain technology is ongoing, and parties assume a potentially hazardous risk when transacting an advanced fee in cryptocurrency. Unlike other forms of transactions, cryptocurrency transactions do not have the same level of institutional and technical safeguards compared to other forms of electronic transactions (e.g., bank transfers and credit card transactions). Notwithstanding some law firms accepting or considering accepting cryptocurrencies as payment for legal services, there is a considerable lack of understanding on the technical risks associated with cryptocurrencies.

⁷ Block #1920000, Etherscan, <https://etherscan.io/block/1920000>.

⁸ Jeffrey Wilcke, *To fork or not to fork*, Ethereum Foundation, <https://blog.ethereum.org/2016/07/15/to-fork-or-not-to-fork/>.

⁹ *Id.* (“The DAO, though not a product developed by the Ethereum Foundation, has been a hot topic as of late, both internally in the organisation as well as within our community. The Hard Fork is a delicate topic and the way we see it, no decision is the right one. As this is not a decision that can be made by the foundation or any other single entity, we again turn towards the community to assess its wishes in order to provide the most appropriate protocol change.”)

II. Volatility of Transaction Fees

In cryptocurrency networks, the initiator of the transaction is responsible for paying upfront the transaction fees from the same originating address to process the payment.¹⁰ These fees fluctuate based on the volume of pending transactions. The longer the queue of transactions that need to be validated, the higher the estimated transaction fee. Within this year alone, the transaction fee in the Ethereum network ranged from \$5.98 to as high as \$196.68.¹¹

Because transaction fees are solely dependent on the number of pending transactions, they are unpredictable. Cryptocurrency software attempt to estimate transaction fees based on the current network conditions, but there is no feasible way to estimate transaction fees—both in cryptocurrency and the U.S. Dollar equivalent—beyond the immediate term.

A. *Volatile Transaction Fees Provides Uncertainty to the Total Cost of Transaction*

Because cryptocurrency transaction fees are entirely dependent on the current volume of pending transactions, no party can reasonably estimate transaction fees even in the short term.

On the applicable rules of professional conduct, Rule 1.5 of the Professional Guidelines requires that (1) a lawyer’s fee must be reasonable, and (2) the lawyer must adequately explain her fees to the client.¹² Given those transaction fees are a necessary component of transmitting the lawyer’s fees to the lawyer, Rule 1.5 may apply to cryptocurrency transaction fees.

Given the volatile nature of cryptocurrency transaction fees, it is possible that a potential transaction fee alone may be unreasonable compared to the transmitted lawyer fee. For example, if the client sends \$200 worth of Ethereum cryptocurrency and spends \$50 for transaction fees, the client may argue that the transaction fees alone were unreasonable under the circumstances.

In another case, if the lawyer has to return the remaining cryptocurrency balance back to the client, the lawyer **must** pay the transaction fees from the remaining balance of cryptocurrency residing at the custody address. As a result, the client may receive less cryptocurrency than what she had anticipated because the transaction fee to transmit the funds was paid out of the balance due to the cryptocurrency protocol rules.

The complexity of transaction fees alone may make it difficult for a competent lawyer to explain *adequately* the volatile nature of transaction fees to the client. As noted above, given that

¹⁰ *Is it possible to pay transaction fee from another account in ethereum?*, Stackoverflow, <https://stackoverflow.com/questions/51112823/is-it-possible-to-pay-transaction-fee-from-another-account-in-ethereum>.

¹¹ *Ethereum Avg. Transaction Fee historical chart*, bitinfocharts.com, <https://bitinfocharts.com/comparison/ethereum-transactionfees.html#3y>.

¹² *Legal Ethics Opinion 1898: Accepting Cryptocurrency as an Advanced Fee for Legal Services*, *supra* note 1, at 3.

there is no adequate means to predict cryptocurrency transaction fees beyond the immediacy, there may be no way to reasonably predict the total expected lawyer fee for the client.

IV. Concluding Remarks and Recommendation

Despite other state bars leaning towards accepting cryptocurrency as an acceptable method of payment, this comment illustrates that there are technical risks associated with cryptocurrency that are perhaps underappreciated. These stem from transactions being removed from the blockchain and uncertainty of lawyer's fees from the volatile transaction fees of the cryptocurrency network.

This comment wishes to contribute to the work of the Standing Committee on Legal Ethics by revealing some technical risks that do not appear to be mentioned in the Legal Ethics Opinion. I would recommend the Virginia State Bar's Standing Committee on Legal Ethics not to adopt the Legal Ethics Opinion. Rather, I hope that the Standing Committee sees it fit to create a task force composed of cryptocurrency legal and technical experts to provide an overview of *all the major* risks associated with the technology to guide the Standing Committee on this critical issue.

Sincerely,

/s/ Daniel Shin
Daniel Shin

From: [Corrie Sirkin](#)
To: [publiccomment](#)
Subject: EXTERNAL SENDER Legal Ethics Opinion 1898 – Cryptocurrency
Date: Tuesday, May 10, 2022 11:34:21 AM

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Our firm is interested in accepting cryptocurrency and I am glad that our bar association is providing some guidance.

I appreciate the information regarding windfalls or loss of value and the risk that is associated with that.

Regards,

Corrie Sirkin

Attorney At Law

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From: [Sharon D. Nelson](#)
To: [publiccomment](#)
Subject: EXTERNAL SENDER Proposed advisory Legal Ethics Opinion 1898 – Cryptocurrency
Date: Tuesday, May 17, 2022 3:11:53 PM

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I am writing to support the adoption of LEO 1898, “Accepting Cryptocurrency as an Advance Fee for Legal Services.”

It is a well-reasoned opinion which is careful to note the possible problems that might arise if lawyers accepted cryptocurrency as an advance payment for legal services.

I have carefully read the comment submitted by Daniel Shin. Much of what he wrote about is ably covered by the LEO, which is careful to note the risks and volatility of cryptocurrency.

The current world of bounced checks, counterfeit monies, bogus certified checks, wire fraud, foreign currency exchange fees, etc. present risks and ethical challenges which we live with every day. The modern way of doing business now requires that we address cryptocurrency.

Cryptocurrency is already being accepted by an increasing number of law firms across the country. LEO 1898, as written, is understandable to Virginia lawyers and gives them guidance upon which they may rely.

We were clearly careful to take a good look at D.C. Ethics Opinion 378, which has been in place without controversy since June of 2020, and which provides practical guidance for D.C. lawyers. Virginia lawyers are understandably anxious for similar guidance.

I note that many VSB Past Presidents as well the current VSB President advocated for such a LEO to be written. They included Michael Robinson, Ed Weiner, John Huddleston, Kevin Martingayle, Howard Martin, Brian Buniva, Marni Byrum, Jay Myerson, George Shanks, Len Heath and myself.

No one denies the risk of cryptocurrency, but here is a recent occurrence which

gives weight to the argument that Virginia lawyers are truly seeking ethical guidance. Mike Maschke, Sensei Enterprise's CEO, is a frequent speaker on technology, cybersecurity and digital forensics. Several weeks ago, he spoke for the American Academy of Matrimonial Lawyers specifically on cryptocurrency. There were about 50 lawyers present.

At the outset of his presentation, he mentioned that he would be explaining the practical workings and risks of cryptocurrency and he mentioned pending LEO 1898. At that point, his presentation was "high-jacked" for 15-20 minutes as Mike was peppered by questions about how lawyers would go about accepting cryptocurrency in their law practices. Although he did his best to give them practical advice, he directed them to the proposed LEO itself for ethical guidance.

Mike's experience leaves me in no doubt about the level of interest lawyers have in accepting cryptocurrency in their law practices. LEO 1898 will give them the ethical guidance they deserve, which is part of the VSB's mission.

I strongly recommend the adoption of LEO 1898.

Respectfully,

Sharon D. Nelson, Esq.

Sharon D. Nelson, Esq., President

Sensei Enterprises, Inc.

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<https://senseient.com/your-it-consultant/> (information technology blog)

<https://senseient.com/digital-forensics-dispatch> (digital forensics blog)

From: [Charley Rothermel](#)
To: [publiccomment](#)
Subject: EXTERNAL SENDER Comments re LEO 1898 - Cryptocurrency
Date: Tuesday, May 17, 2022 3:27:00 PM
Attachments: [1898 pub cmnt 3.25.22 Rothermel comments.pdf](#)

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Good afternoon,

I realize this is late, but I wanted to share some thoughts and considerations regarding the draft LEO 1898. Please see my comments at pages 15-16. Thank you for your time and efforts in crafting this important guidance.

Charley

***** Please note our new address, effective immediately *****



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LEGAL ETHICS OPINION 1898 ACCEPTING CRYPTOCURRENCY AS
AN ADVANCE FEE FOR LEGAL
SERVICES

In this opinion the committee considers the ethics issues that arise when a lawyer accepts an advance fee paid by the client in Bitcoin or other cryptocurrency for legal services. For example, a lawyer is hired by a client to pursue a contested divorce against the client's spouse. The lawyer asks for an advance payment or fee of \$20,000 to handle the case to completion with a final decree of divorce. The client wishes to pay the advance fee in Bitcoin. The client tenders the current market equivalent in Bitcoin to pay the advance fee of \$20,000.

For purposes of this opinion, cryptocurrency also means virtual or digital currency.

Questions Presented

1. What are the ethical obligations of a lawyer who accepts cryptocurrency as an advance fee for payment for legal services?
2. May the lawyer keep the cryptocurrency in its digital form, or must it be converted to US Currency and deposited in the lawyer's trust account as required by Rule 1.15(a) of the Virginia Rules of Professional Conduct?

3. Is the lawyer's acceptance of cryptocurrency as an advance fee payment a "business transaction" subject to Rule 1.8(a) of the Virginia Rules of Professional Conduct?
4. What actions must the lawyer take to safekeep cryptocurrency that has been delivered to the lawyer as an advance fee?

Short Answers

1. A lawyer may accept cryptocurrency as an advance fee for services yet to be performed. However, the lawyer must ensure that the fee arrangement is reasonable, objectively fair to the client, and has been agreed to by the client only after being informed of its implications and given the opportunity to seek the advice of independent counsel, all of which is confirmed in writing. In addition, if the lawyer accepts cryptocurrency as an advance fee, the lawyer must also take competent and reasonable security precautions to safekeep the client's property.
2. Yes, the lawyer may keep the cryptocurrency in its digital form and is not required to convert payment into US currency and deposit the funds in the lawyer's trust account pursuant to Rule 1.15(a) of the Virginia Rules of Professional Conduct.
3. Yes, the lawyer's acceptance of cryptocurrency as an advance fee payment is a "business transaction" subject to Rule 1.8(a) of the Virginia

Rules of Professional Conduct. However, Rule 1.8(a) does not apply if the lawyer accepts cryptocurrency as payment for an earned fee.

4. If cryptocurrency is used to pay an advance fee, the lawyer should safekeep cryptocurrency as client property with the care of a professional fiduciary and take reasonable security measures to safekeep the client's property from theft, loss, destruction or misdelivery.

Applicable Rules of Professional Conduct

Rule 1.1 (Competence): A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.5 (Fees)

(a) A lawyer's fee shall be reasonable.

(b) The lawyer's fee shall be adequately explained to the client.

Rule 1.8 (Conflict of Interest; Special Rules)

(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 to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

Rule 1.15 (Safekeeping Property)

Comment [1]: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. For purposes of this Rule, the term “fiduciary” includes personal representative, trustee, receiver, guardian, committee, custodian, and attorney-in-fact. All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if funds, in one or more trust accounts.

Prior Relevant Virginia Legal Ethics Opinions

Legal Ethics Opinion 1593 (April 11, 1994); Virginia Legal Ethics Opinion 1489 (November 16, 1992); Virginia Legal Ethics Opinion 1041 (February 19, 1988); Virginia Legal Ethics Opinion 1564 (February 15, 1995).

Discussion

Cryptocurrency is used as a medium of exchange via a peer-to-peer computer network that is not reliant on or controlled by any central authority such as a government or bank, to uphold, maintain or verify it.

Cryptocurrency is given the name because it uses encryption to verify transactions. Advance coding is used in storing and transmitting cryptocurrency data between wallets and to public digital ledgers.

Cryptocurrency is not currency in the traditional sense and while various names have been given to classify or categorize it (i.e., commodities,

securities, as well as currencies), it is generally viewed as a distinct asset class. In 2014, the IRS issued Notice 2014-21, 2014-16 I.R.B. 938, explaining that cryptocurrency is taxed as property for Federal income tax purposes.

Cryptocurrency does not exist in physical form and is not issued by any central authority. It is a tradeable digital asset, or digital form of money, built on blockchain technology that exists only online. An advance payment by a client to a lawyer in cryptocurrency cannot be deposited into the lawyer's trust account. As of 2021 there were over ten thousand cryptocurrencies. Some popular currencies are Bitcoin, Ethereum, Litecoin and Dogecoin. Bitcoin, first released as open-source software in 2009, is the first decentralized cryptocurrency. Each cryptocurrency works through "distributed ledger technology," typically a blockchain, that serves as a public financial transaction database.

Holders or owners of cryptocurrency may use digital (hot) wallets or hardware (cold) wallets to store and secure cryptocurrency. Cryptocurrency may be purchased through an exchange using real currency and then stored in a wallet until the owner is ready to use it. Cryptocurrency may be used to send payments to individuals and businesses for goods and services, but it is not yet a form of payment that has mainstream

acceptance. It is also held as a speculative and volatile investment that can increase or decrease rapidly in value. Because cryptocurrencies are driven by supply and demand, and have no central issuer or regulatory authority, they can fluctuate in value unpredictably from day to day or even minute to minute. Thus, an agreement to value a transaction in cryptocurrency or convert cryptocurrency into traditional currency on a certain date carries potential risks for both sides.

Considering a cryptocurrency's extreme fluctuation, any transaction in which it is used as an advance payment to a lawyer involves a great deal of risk undertaken by the lawyer and/or client as to the ultimate value of the legal services for which the parties have contracted. Unless an agreement between the lawyer and client is reached on when the value of the cryptocurrency payment is determined, the lawyer could, for example, receive an inappropriate windfall due to an extreme overpayment—an excessive and unreasonable fee for the value of the legal service. Because *all* fee agreements must be reasonable and adequately explained to the client, Rule 1.5(a) and (b) are applicable to lawyers who accept cryptocurrency as payment for legal fees.

Despite its market volatility, cryptocurrency as a medium of payment has rapidly made inroads to several marketplaces. As a result, some law

firms are accepting or considering accepting certain cryptocurrencies, such as Bitcoin, as payment for legal services. See, e.g., Sara Merken, “More Law Firms are Accepting Bitcoin Payments,” ABA BNA Lawyers Man. Prof. Conduct (Sept. 6, 2017); Melissa Stanzione, “Client Cryptocurrency Payments May Pose Ethical Risks for Lawyers,” ABA BNA Lawyers Man. Prof. Conduct (May 11, 2019).

Given the extraordinary nature of the transaction, the committee agrees with three other state bar ethics opinions that the client’s payment *of an advance fee* using cryptocurrency “has the essential qualities of a business transaction with the client” subject to the requirements of Rule 1.8(a). North Carolina State Bar Ethics Opinion 2019-05 (October 25, 2019); D.C. Bar Ethics Opinion 378 (June 2020); New York City Bar Ass’n Ethics Opinion 2019-5 (July 11, 2019).

As Rule 1.15 indicates, a lawyer is not limited to accepting money for payment of a legal fee and may instead accept property as payment for legal services. This committee has previously opined that a lawyer may accept property, for example stock in the client’s company, as payment of the lawyer’s advance fee on services to be rendered. Virginia Legal Ethics Opinion 1593 (April 11, 1994). Applying DR-5-104 of the Code of

Professional Responsibility, the predecessor to Rule 1.8(a), the committee stated:

An attorney may, under DR 5-104(A), provide legal services to a corporation in consideration of the stock issued so long as he feels his independent professional judgment will not be affected by his status as a stockholder, the client consents after full disclosure by the lawyer of the potential conflicts of interest, and provided that the transaction is not unconscionable, unfair or inequitable when made.

See also Comment [4], ABA Model Rule 1.5:

A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

All three state bar ethics opinions cited above conclude that the lawyer's acceptance of cryptocurrency as payment of an advance fee is more in the nature of accepting *property* from the client rather than fiat currency. When a client is using cryptocurrency to pay an advance fee for future services, the reasonableness of the transaction is based not only on the amount of the fee charged by the lawyer for the legal service, but also on how well the lawyer has explained to the client the financial risks considering the agreed upon fee and the volatility of cryptocurrency.

Rule 1.8(a) recognizes the fiduciary relationship between attorney and client, requiring that a business transaction with the client must be fair and reasonable. The Rule requires that:

(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 to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

Is the Acceptance of Cryptocurrency as an Advanced Legal Fee a “Business Transaction” under Rule 1.8(a)?

In general, a “business transaction” between attorney and client is any business or commercial transaction other than the contract of representation. See Comment [1], ABA Model Rule 1.8 (“does not apply to ordinary fee agreements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee.”).

Also, as Comment [1] to Virginia Rule 1.8 explains:

Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In

such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

For example, if a lawyer obtains a loan from a client while representing that client, that situation is subject to the “business transaction rule.” Virginia Legal Ethics Opinion 1489 (November 16, 1992). *See also* Virginia Legal Ethics Opinion 1593, *supra* (attorney accepting stock in client’s company for payment of legal fees); Virginia Legal Ethics Opinion 1041 (February 19, 1988) (attorney going into partnership with friend and drafting partnership agreement; assuming friend relied on attorney’s services and professional judgement); Virginia Legal Ethics Opinion 1564 (February 15, 1995) (referral of real estate client to lawyer-owned company for title and settlement services). *See also* ABA Formal Opinion 00-418 (July 7, 2000) (acquiring ownership interest in client company, i.e., stock, while performing legal services for client company).

The transaction proposed in this opinion is not an ordinary fee agreement or a standard commercial transaction. Instead, as the New York City Bar Association’s Ethics Committee observes:

It is one in which the lawyer and the client must negotiate potentially complex questions, and in which an unsophisticated client may therefore place unwarranted trust in the lawyer to resolve these questions fairly or advantageously to the client. The variables associated with payment in cryptocurrency

include the rate of exchange on any given day, any associated fees when converting cryptocurrency to currency, whether (and when) cryptocurrency must be converted into cash, the exchange to be used, the type of cryptocurrency being used (or whether the payment would be in a single cryptocurrency or a combination of cryptocurrencies), and how any dispute will be handled in the event of a disagreement between the lawyer and the client related to these issues.

At What Point in the Engagement is “Fairness” and “Reasonableness” to be Determined?

This question is important when analyzing the fairness of a fee arrangement in which a volatile asset like cryptocurrency is being offered for services not yet rendered. In ABA Formal Opinion 00-418, *supra*, concerning accepting stocks or partial ownership of a client in lieu of fees the committee opined that:

For purposes of judging the fairness and reasonableness of the transaction and its terms, the Committee's opinion is that, as when assessing the reasonableness of a contingent fee, only the circumstances reasonably ascertainable at the time of the transaction should be considered.

ABA Formal Op. 00-418 at 4. The DC Bar agrees with this approach:

Rule 1.8(a) and the commentary thereto are silent on how fairness is to be determined, and whether it is to be determined only by reference to facts and circumstances existing at the time the arrangement is accepted by the parties, or by reference to subsequent developments (for example, a huge appreciation in the value of the shares received as fees such that the lawyer is effectively compensated at 100-fold the reasonable value of his services). For ethics purposes (and not for purposes of assessing common law fiduciary duties), we believe that the “fairness” of the fee arrangement should be judged at the time of

the engagement. In other words, if the fee arrangement is “fair and reasonable to the client” at the time of the engagement, no ethical violation could occur if subsequent events, beyond the control of the lawyer, caused the fee to appear unfair or unreasonable.

See *also* Restatement (3d) of the Law Governing Lawyers, § 126,

Comment e (2000) (“Fairness is determined based on facts that reasonably could be known at the time of the transaction, not as facts later develop.”).

Therefore, any fee arrangement that charges fees in cryptocurrency, or that allows or requires a client to either provide an advance fee or accept a settlement payment from a party in cryptocurrency, should be assessed for fairness at the time that it is agreed upon, based on the facts then available.

What Disclosures to the Client does Rule 1.8(a) Require?

At the very least, Rule 1.8(a) requires the lawyer to disclose to the client the risks associated with accepting cryptocurrency as payment of an advance fee and how those risks will be addressed. Particularly, what happens if the value of the cryptocurrency rises above or falls below the actual currency value of the legal services agreed upon by the parties? The information that a lawyer must disclose will vary, of course. However, as the DC Bar Ethics Committee recommends:

a lawyer accepting cryptocurrency should consider including a clear explanation of how the client will be billed (i.e., in dollars or cryptocurrency); whether and how frequently cryptocurrency held by the lawyer will be calculated in dollars, or otherwise trued-up or adjusted for accounting purposes and whether, upon that accounting, market increases and decreases in the value of the cryptocurrency triggers obligations by either party; how responsibility for payment of cryptocurrency transfer fees (if any) will be allocated; which cryptocurrency exchange platform will be utilized to determine the value of cryptocurrency upon receipt and, in the case of advance fees, as the representation proceeds (i.e., as fees are earned) and upon its termination; and who will be responsible if cryptocurrency accepted by the lawyer in settlement of the client's claims loses value and cannot satisfy third party liens.

Safekeeping Client Property under Rule 1.15—Competently Safeguarding Cryptocurrency

Comment [1] to Virginia Rule 1.15 states that a lawyer should safekeep the property of clients and third parties with the care required of a professional fiduciary. The rule also requires segregation of client and third-party property from the property of the lawyer. As a fiduciary, the lawyer may not commingle, misappropriate, or convert to the lawyer's personal use property that has been entrusted to the lawyer under Rule 1.15.

The first Rule of Professional Conduct, Rule 1.1, requires that a lawyer must act competently in representing a client. Ancillary to that rule, Comment [6] states that the lawyer "should pay attention to the benefits

and risks of relevant technology.” Applying these principles, several points require discussion.


Before accepting cryptocurrency by a lawyer, the duty of competence requires the lawyer to have the knowledge and skill to understand the risks associated with this technology, and safeguard against the many ways cryptocurrency may be stolen or lost. D.C. Bar Ethics Opinion 378, *supra*. “Because blockchain transactions are unregulated, uninsured, anonymous, and irreversible, cryptocurrency is regularly targeted for digital fraud and theft.” *Id.*

Unlike traditional funds deposited in a lawyer’s trust account, cryptocurrency is not FDIC insured. Cryptocurrency online wallets and exchange platforms may be fraudulent. Even legitimate online wallets and platforms may be hacked. Transactions stored on a digital (hot) wallet connected to an online network may be vulnerable to malware and hacking.



The private key is very important, because if lost or stolen, the cryptocurrency is likely permanently inaccessible. The user must keep the private key secret, not share it with anyone and store it in a safe place. Some recommend a “cold wallet” to store cryptocurrency more securely. However, even “cold wallets” (offline software, hardware or paper) may be lost, stolen, damaged or destroyed and therefore the lawyer must exercise

reasonable care to protect them. Some recommend purchasing a hardware wallet to store cryptocurrency and avoiding using digital wallets that are connected online.

When accepting cryptocurrency for “safekeeping” under Rule 1.15, the lawyer-client agreement should specify that the cryptocurrency remains the property of the client until earned by the lawyer – as does the appreciation or loss on the cryptocurrency. The agreement should address responsibility for the safekeeping, discuss the safekeeping mechanism(s), and allocate responsibility for security and responsibility for storage costs and risk of loss – whether loss of value or actual loss of the property through hacking or loss of the key. Since property held for safekeeping under Rule 1.15 remains property of the client, the client should be specifically allowed to cause the lawyer to sell the cryptocurrency (whether to prevent market losses, appreciate gain in value or otherwise), and to determine the procedures the lawyer should use in doing so.

Assuming the client has the right to direct the lawyer to sell the  cryptocurrency, a lawyer should consider and address in the agreement with the client: (1) whether the cryptocurrency should be sold or exchanged in its present state or converted to fiat currency; and, who bears the responsibility for payment of any expenses incurred as a result of any sale,

exchange or conversion; (2) what portion of the sale proceeds will be applied to the advance fee agreed upon by the parties versus what portion will be returned to the client; (3) who bears the risk if the cryptocurrency is sold at a loss or less than the value of the agreed advance fee, i.e., will the client be obligated to replenish any deficiency; and (4) if the direction to sell is incident to the termination of the lawyer-client relationship, what portion of the sales proceeds has been earned by the lawyer and how much the client is owed as a refund. These are some but by no means all of the questions that could arise if the client has directed the lawyer to sell the cryptocurrency.

 Once the cryptocurrency can be applied to earned fees, the agreement should state that it becomes the lawyer's property, the lawyer has the risk of gain or loss, and the lawyer makes the decision when and how to sell the cryptocurrency.  Any gain recognized by the lawyer on the value will not be credited to the client's future fees.

Many of the same security measures lawyers can be expected to use with cloud-based software and storage apply to handling cryptocurrency.

Some important measures include:

- Use a private and secure internet connection and not public wi-fi when making transactions.

- Use a unique and robust password.
- Use two-factor authentication to better secure and verify transactions.
- Keep the security level high and do not install unsecured apps.

Conclusion

A lawyer may accept client property including cryptocurrency offered as an advance payment for the lawyer's services, provided the lawyer's fee is reasonable under Rule 1.5, and this business transaction with the client meets the requirements of Rule 1.8(a), namely, that the transaction is fair and reasonable to the client, the transaction and terms are fully disclosed in writing in a manner the client understands, the client is advised of the opportunity to consult with independent counsel, and the client's consent is confirmed in writing. When cryptocurrency is being held by the lawyer as an advance fee, the requirements of Rule 1.15 regarding safekeeping client property apply and require that the lawyer take reasonable steps to secure the client's property against loss, theft, damage or destruction. When cryptocurrency is used by the client for payment of an earned fee, Rules 1.8(a) and 1.15 do not apply but the lawyer's fee must be reasonable under Rule 1.5.

AFFIDAVIT

I, Karen A. Gould, Executive Director at the Virginia State Bar, do hereby swear and affirm that the foregoing documents are true copies of the original documents on file in the offices of the Virginia State Bar regarding proposed LEO 1898.

Given under my hand this 5th day of July 2022.

Karen A. Gould
Karen A. Gould

STATE OF VIRGINIA
CITY OF RICHMOND, to-wit:

I, a Notary Public in and for the Commonwealth of Virginia, do hereby certify that Karen A. Gould, personally known to me, appeared in person before me and was by me duly sworn and thereupon executed in my presence and acknowledged to me the truth and voluntariness of the foregoing Affidavit.

Given under my hand this 5th day of July 2022.

Dianne M. F. Roland
Notary Public

My Commission Expires: Oct. 31, 2025

