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THE Iowa Trial Lawyer

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You've been served . . . by NFT and QR code?

How one case brought the innovative solution to Iowa

By: Joe Casey

Attorney at Harding Law Offices, Des Moines



Joe Casey
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**Joe is a member
of IAJ and guest
magazine contributor**

Creative torts require creative solutions.

In June 2023, my office filed a lawsuit in the Southern District of Iowa on behalf of a man who lost money to someone whom he believed was his long-term girlfriend. In reality, he had been deceived by a "Pig-Butchering Scam," a China-based criminal operation targeting Iowans and other Americans on the internet. The increasingly common cyber fraud – which cost U.S. consumers more than \$3 billion in 2022 alone – derives its name from scammers who patiently "fatten up" their victims for financial slaughter through the use of long-term relationships (maintained exclusively online) which ultimately persuade the victim to remit large sums of cryptocurrency.

The mechanics of this particular fraud were complex, especially with respect to the efforts the John Doe defendants took to conceal their true identities and to disguise the ultimate destination of the stolen funds. In this case, the defendants used blockchain – the technology underlying cryptocurrency – to their advantage. They converted plaintiff's funds in the form of Ether, Ethereum's native cryptocurrency, and expected that the plaintiff would not know how to recover his losses.

After an in-house review successfully traced the plaintiff's stolen funds to a major cryptocurrency exchange, our team's primary challenge was discerning how to effectuate personal service of process on defendants with no confirmed identities. The only certainty was that the defendants used nine particular Ethereum addresses to convert and transfer the plaintiff's funds. Reasoning that the defendants' conduct demonstrated that they were active on the Ethereum blockchain and had made it their preferred digital terrain, we petitioned the court to permit an alternative method of service of process using that same blockchain: service by non-fungible token (NFT).

An NFT is a unique piece of code stored on a blockchain. Cryptocurrency users, including those on Ethereum, can send NFTs to each other and view them in the digital "wallets" connected to those addresses. Creating, or "minting," an NFT is analogous to sending an email insofar as it specifies addresses for senders and recipients, and contains text and/or an image. Unlike an email, however, minting an Ethereum NFT creates a permanent and public record with irrefutable proof of receipt.

Using my background in blockchain litigation and basic familiarity with coding, I developed a computer program (called a "smart contract") capable of minting and sending (called "airdropping") NFTs. Termed "Service Tokens," each newly-minted NFT contains a hyperlink and a QR code which the defendants can use to view the pleadings and summons.

In August 2023, upon receiving the Court order permitting such service, our office minted nine NFTs on an Ethereum-based blockchain and airdropped them directly to the scammers' known addresses. The John Doe defendants continue to use the same addresses to send and receive other NFTs, which means that they have almost certainly seen the litigation initiated against them. This method of service has been successful in providing actual notice to defendant, including in one New York case, where the alleged cybercriminals actually hired lawyers to appear on their behalf and contest the merits of the action. Service by NFT, then, gives Iowans a real opportunity to sue for their losses in court.

In her order freezing the stolen crypto and authorizing this method of alternative service, Chief Judge Stephanie Rose drew upon extensive case law to provide the legal basis for Iowans to use service-by-NFT and QR code. In short, Rule 4(f)(3), Federal Rules of Civil Procedure, permits alternative service if it is "reasonably calculated to provide notice" and "opportunity to respond," and is not prohibited by international agreement. Where "defendants conducted their alleged scheme through cryptocurrency and blockchain technology . . . service by NFT and website posting is reasonably calculated to reach" the defendants. And China, through the Hague convention or any other means, has not objected to such methods of service.

Public filings in the case are available at the "Hoop v Doe" button on Harding Law's homepage at www.IowaLegal.com.

QUESTIONS ABOUT STRUCTURES?

**At no cost or obligation we
would be happy to visit with you.**

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