

LAWYER SCAMS CONTINUE TO PLAGUE KENTUCKY LAWYERS

Lawyers are frequently the target of scams that, if effective, result in huge losses in client trust accounts and violations of trust account fiduciary rules. These losses are seldom, if ever, covered by insurance. We recently learned of several Kentucky lawyers either being the victim of a scam or realizing just in time that something was really wrong with a requested representation.

Lawyers Mutual began alerting the Kentucky Bar to this risk in our newsletter in early 2009 with follow up alerts in late 2009 and 2010 newsletters. An old Army maxim is that 10% never gets the word. This article is an effort to get the last 10% of the Bar informed and updates the other 90% with developments in lawyer scams.

The Scam Concept:

- Lawyer scams are fraudulent schemes that trick lawyers into depositing a counterfeit certified or cashier's check in a client trust account, and after deducting a fee, wiring the proceeds to the "client" fraudster. When the counterfeit check is discovered and the funds withdrawn from the trust account by the bank, the lawyer is left with a major overdraft in the account. It has been uniformly held that lawyers liability insurance does not cover this situation because it does not involve professional services.

A Fatal Misunderstanding about Check Clearing is the Trap in Lawyer Scams:

- *There is a serious misunderstanding by many lawyers on what it means when a bank makes funds available in an account:*
 - Some lawyers are skeptical and will not order a wire transfer until they have confirmed that the cashier's check has "cleared" or that the funds from the check are "available." The problem is that most lawyers do not understand banking jargon. A bank often confirms that funds are "available," may be withdrawn, and agree to wire transfer the funds as directed by the lawyer.
 - **THIS DOES NOT MEAN, HOWEVER, THAT THE FUNDS FROM THE CASHIER'S CHECK ARE IRREVOCABLY CREDITED TO THE LAWYER'S TRUST ACCOUNT AND HAVE BEEN ACTUALLY WITHDRAWN FROM THE ACCOUNT ON WHICH THE CASHIER'S CHECK WAS WRITTEN. RATHER, THE BANK IS PROVIDING PROVISIONAL CREDIT TO THE LAWYER. THIS MEANS THAT THE BANK CAN STILL REVERSE THE TRANSACTION IF THE ISSUING BANK ULTIMATELY DISHONORS THE CASHIER'S CHECK. THE FUNDS FROM THE CASHIER'S CHECK ARE NOT IRREVOCABLY CREDITED UNTIL THERE IS "FINAL SETTLEMENT," AND THIS CAN TAKE A**

CONSIDERABLE PERIOD OF TIME. A LAWYER CAN BE SAFE ONLY BY HOLDING THE FUNDS UNTIL THE BANK CONFIRMS IN WRITING THAT THE FUNDS ARE IRREVOCABLY DEPOSITED IN THE LAWYER'S TRUST ACCOUNT.

Risk Management for Check Clearing:

Remember that the best risk management practice with any check deposited in a client trust account is to make no disbursements on it until the check irrevocably clears; and regardless of its apparent validity or that the bank shows the funds available. The lawyer must wait until the funds are irrevocably credited to the trust account by "final settlement" which can take a considerable period of time. In today's economy bank failures are a common experience making this practice even more important. Check with your bank on its final settlement procedures and how you can verify that funds are irrevocably credited to your trust account. Advise clients at the inception of a representation that they will not receive funds until a check received in payment of their matter is irrevocably credited after final settlement. Put this in your letter of engagement.

The Basic Scam Scenario:

- A person claiming to represent what turns out to be a fictitious company in a foreign country e-mails a lawyer in the U.S. seeking representation.
- This person informs the lawyer that the company has a customer in the U.S. that is delinquent in payment of funds due the company.
- The lawyer is asked to represent the company in collecting the funds. The company is agreeable to virtually any terms of representation. The lawyer accepts the representation and e-mails a retainer agreement that is signed and faxed to the lawyer.
- The company promptly e-mails the lawyer with the information that the customer has agreed to pay some or all of the delinquent funds – often close to \$300,000.
- The lawyer is requested to provide an address to which the customer can send a certified check. The lawyer is instructed that upon receipt of the certified check to deposit it, subtract his fee, and wire the balance to a designated overseas account.
- The lawyer is then sent a counterfeit certified check delivered by an independent overnight carrier. (In one case the certified check was in the amount of \$298,720.) The unsuspecting lawyer deposits the check in his client trust account, withdraws his fee, and, believing that the funds are guaranteed, routinely wires the balance to the overseas account.
- A few days later the bank notifies the lawyer that the check is counterfeit and requires that the lawyer restore the funds to the bank.

More on the Basic Scenario and Risk Management of Scams

The Lawyers' Professional Indemnity Company (LawPro) fact sheet *Fraud – How to avoid becoming its next victim* provides more details on scams and risk management:

Business loan fraud

- New client retains your firm's services to help with buying small business equipment or inventory.
- Documentation in client's file looks real (invoices, letters, etc).
- Background checks (corporate ... searches) may look normal.
- You're asked to represent lender and borrower.
- Certified check from "lender" arrives promptly, gets deposited to your trust account.
- Certified check looks authentic and has all normal security features.
- Funds are disbursed to the client.
- Days later your bank tells you the check/draft is fraudulent.

Debt collection fraud

- Generally targets litigators.
- New client (often offshore) contacts your firm seeking representation on a debt collection.
- Client provides legitimate documentation including invoices, demand letters, etc.
- Collection is hassle-free; debtor returns calls and pays up promptly.
- Certified check looks authentic and has all normal security features.
- You're instructed to send funds, minus legal fees, to an offshore account.
- Days later your bank tells you the check/draft is fraudulent.

Red Flags

- Client is offshore, unknown to the firm and/or in a rush – pressures you to "do the deal" quickly.
- Client willing to pay higher-than-usual fees on a contingent basis from (bogus) funds you are to receive.
- Client shows up around banking holidays – when banks are closed and offices short-staffed.
- Debtor pays without any hassle – unusual given client's need to retain you to get payment in the first place.

Tip: Dig Deeper

- Do a reverse phone number search on the company and use Google to verify phone numbers, addresses and e-mail contacts.
- Contact the company to confirm that they are expecting debtor's payment or business loan.
- Go to bank website to verify branch transit number, address and phone number on the check.

- Hold funds until your bank confirms the funds are “good” by contacting the other bank, and it’s safe to withdraw the deposit.

Go to LawPro’s Website www.practicepro.ca/fraud (*last viewed on 4/1/2011*) for the rest of this article and many other highly useful articles on dealing with fraud from both with-in and without the firm.

A New Fraud Variation: Advanced-Fee Fraud:

(From the United Kingdom Solicitor Regulation Update – January 2011)

In the wake of recent fraudulent activity involving "cloning" identities of bona fide firms and solicitors, we advise firms to be vigilant and to check the Internet regularly to ensure that their details are not being misused.

We are aware that a small number of firms have had their company names used and their websites cloned by criminals, who use firms' identities to obtain money fraudulently.

The circumstances vary. In some cases, an exact copy of a firm's name and website is used. Only the contact details are changed – usually to an address and telephone number abroad.

In other cases, the name of the firm has been very slightly changed. At first sight, the fake website appears to be genuine. Sometimes, the difference from the genuine website is simply a missing letter or punctuation mark in the firm's name.

The cloned websites are used in scams, usually originating from overseas, in which individuals are asked to send money in advance. This is known as advanced-fee fraud.

The criminals provide their targets with details of the cloned solicitor or firm—with false contact details. The involvement of a "solicitor" lends credibility to the transaction. Often, targets are asked to send money to the "solicitor's" false contact details.

We work closely with the police and other law enforcement agencies to stop the activity of those involved. But it is important that all solicitors' firms, no matter how small, are alert to this type of criminal activity—as it can damage credibility and can be difficult to rectify.

We recommend that you regularly search for your own firm name on the internet and report any concerns as soon as possible

If this scam is occurring in the United Kingdom, it is only a matter of time before we see it here in the United States – Caveat!