

Check Fraud Scams

Be Alert to Phishing — How Not to Fall Prey



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Despite warnings and educational efforts, unsuspecting lawyers and law firms continue to fall victim to fraudsters who commit check fraud. Most of the schemes involve an e-mail from a prospective client who is seeking some type of legal service. Someone needs help collecting a debt, obtaining their share of a divorce settlement — the list goes on. At the WSBA, we receive several “phishing” e-mails a week which are clearly scams. Some of these e-mails appear convincing and can be enticing for lawyers seeking clients and legal work in this tough economy.

The schemes are quickly evolving. As lawyers become more cautious in dealing with Internet clients, so have the fraudsters become more sophisticated in their scams. Previously we saw scams involving debt collection services where the lawyer was sent the debt from a “third party,” then asked by the client to wire the funds (less a generous fee) to the client immediately. Now we’re seeing “clients” pay fee deposits in excess of the requested fee for services, and then ask that the overpayment be refunded via wire.

The FBI recently published information about scams against two Hawaii law firms resulting in losses of \$500,000. Six firms were solicited; two fell prey. According to the FBI, the prospective client sends the law firm a cashier’s check for an amount far in excess of the agreed upon fee or advance fee deposit. When the law firm responds that the client has overpaid,

the client requests and the unsuspecting firm sends a wire transfer with the refund. Only after the refund do the law firms realize that the cashier’s checks are counterfeit. In the current cases in Hawaii, scammers are asking that wire transfers be sent to accounts in South Korea, Taiwan, and Canada.

“Law firms and other professional service providers are cautioned to be on high alert when dealing with clients who come forth via the Internet,” the FBI warns. “Furthermore, no wire transfers should ever be sent to clients as refunds until the initial payment from the client has fully cleared the banking system.”

Rules of Professional Conduct (RPC) 1.15A(h)(7) states that lawyers may not disburse funds from a trust account until deposits have cleared the banking process and been collected. A deposited item does not become collected funds until it has actually cleared the banking system. At times, there is confusion regarding the difference between collected funds and available funds. Often, banks make funds available for withdrawal before the related funds have been collected, but the depositor is still held liable for the amount of the check if the check is uncollectible. Banks may place a hold on the funds, then release the hold before they have actually collected the funds. Banks may tell you the funds are collected when they really are not. There must be certainty that the funds have actually been collected before a disbursement is made. However, this “certainty” is hard to achieve in a timely manner because some-

times it takes a bank a long time to figure out that a check is fraudulent.

A cashier’s check is drawn by a bank on its own funds and signed by the bank’s cashier. Lawyers often naively believe that cashier’s checks, money orders, or certified checks are as good as cash and “safe.” Fraudsters know this and take full advantage of the incorrect assumption. Because the cashier’s check is counterfeit, it is no different than counterfeit cash, dollars that are not real. When looking at a cashier’s check listing the name of a reputable bank, it appears official, just like George Washington’s face on a counterfeit dollar bill. Although a check may look “real,” it might not be. And unlike counterfeit bills, there is no way to tell a cashier’s check is fraudulent until it makes its way through the banking system and gets “discovered” by the issuing bank (who may initially issue the funds to the lawyer’s bank but later take them back after they discover the fraud).

So how can lawyers protect themselves? Here are some tips:

- Do not respond to unsolicited e-mails requesting services similar to those in scams. If the information you are receiving unsolicited is more than a normal person would share with someone they don’t know, don’t respond. How many real clients send crisis “help me” e-mails out of the blue to people they don’t know?
- When confronted with an opportunity that looks too good to be true, be skeptical and take the time to do your own independent and thorough research in locating any companies that might be involved to see if they are legitimate. Do not rely on phone numbers or information provided by the client; make independent contact based upon your research. If you receive a check from a company, call and ask if they issued the check before you try to deposit it.
- Do not be pressured to wire the funds immediately or before you are confident they have cleared the bank. It should be a red flag when you are asked to wire the funds now before you have the time to figure out whether the check is counterfeit or not. The “client” will give you a compelling reason why they need the funds right away, but don’t let that influence your good judgment. Remember, it is your money that is at risk; fraudsters are trying to steal from you.
- Talk to your bank about the possibility of a counterfeit check. Be skeptical and question the information you are getting from

your bank to ensure you are not getting incorrect answers from inexperienced bank employees.

- As part of the initial client interview, and later in the fee agreement, make it perfectly clear that you will not be wiring the funds until the funds have actually been collected and that you cannot make any guarantees as to when that will occur. Fraudsters may move on to another attorney at this point, or they may proceed and hope to bully you into paying them when the time comes.

During times of financial uncertainty, collecting from clients can be particularly difficult, and attorneys, like other professionals, will look for creative, legitimate ways to assist with cash flow. However, always be careful not to fall prey to schemes involving a counterfeit transaction (e.g., counterfeit cashier's checks), where on the face it might appear legitimate but below the surface it is a scam. 

If you have questions, please contact WSBA Audit Manager Rita Swanson at ritas@wsba.org.



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