

Alert: "New" Check-Cashing Scam Hitting Lawyers

A scam that's been reported in the media has recently claimed lawyers as victims. The perpetrators, relying on their targets' ignorance of banking jargon and regulations related to check-cashing and fund availability, have managed to con the attorneys into transferring funds from a client trust account by first submitting bogus cashier's checks for deposit into the account, leaving the attorneys facing claims for reimbursement of the lost funds from their banks, and facing possible professional liability claims and disciplinary action for misappropriation of client funds.

What The Scam Looks Like

A typical scenario goes something like this: Claiming to have found the firm's name in an on-line directory or web search, Bad Guy hires Attorney by telephone or email (usually from another country) for help with a contract dispute. Bad Guy is purportedly currently negotiating with company ABC in another state, and hopes that retaining counsel will convince ABC to fulfill its commitment under the contract.

A few days later, when returning the signed engagement papers, Bad Guy states that ABC has agreed to pay and that Attorney should be receiving a cashier's check from ABC within a day or two. Bad Guy wants Attorney to deposit the check into Attorney's trust account and await further instruction about its disposition because Bad Guy has other matters for Attorney to handle.

The day after Attorney deposits the check in his trust account, Bad Guy requests the money be transferred as soon as possible to XYZ Corp. in another country to close a time-sensitive deal. As a precautionary measure, Attorney first checks with the bank to see if the check has cleared. Three days later, when the bank notifies Attorney that the "funds are available," Attorney wires the money to XYZ. A week later, the bank informs Attorney that the cashier's check was counterfeit and demands Attorney reimburse it for the distributed funds. Bad Guy is nowhere to be found, and Attorney is left with a substantial problem.

Why The Scam Works

The hook for the scam is the attorney's ignorance of the difference between having a check "clear" and the bank making "funds available" for use.

To promote the free flow of funds, federal law and regulation requires that banks make funds available for a customer's use within a few days of their deposit by a bank check – even if the bank handling the check has not completed the check clearing process, which often takes up to two weeks. While this helps consumers access funds, it makes the bank vulnerable; thus the law allows the bank to hold the depositor responsible for the amount of the check should it ultimately prove to be bogus.

What Are The Professional Risks?

Obviously, the biggest risk here is the monetary loss. Even though the bank told the attorney the "funds were available" for use – which they were – the bank can sue the attorney for return of the funds in the amount of the counterfeit check. While the attorney may argue that the bank should have explained the check's and funds' status more clearly, he faces an uphill battle. If the attorney or police can find Bad Guy, they can try to get restitution, but that is certainly nothing to count on.

When the funds are removed from a client trust account, the attorney also faces the problem of having withdrawn another client's money from the account. Arguably, this could lead to disciplinary action for misuse or misappropriation of client funds. Additionally, if because of the scam the attorney is unable to timely disburse those other clients' funds as necessary, he could face various professional liability claims.

How To Manage The Risks

Key here is to be on the lookout for check cashing scams and to exercise a healthy dose of skepticism when approached by potential clients presenting this type of story. (Or for that matter, clients presenting other scenarios requiring you to deposit and then retransmit client funds. Other types of scams can ensnare lawyers into money laundering schemes designed to bypass banking controls and transfer funds to foreign jurisdictions, exposing lawyers to criminal charges as well.) In a tough economy, when it seems more difficult

to turn away clients, it is more important than ever to follow good client screening procedures. Take the time to check to see that the client is legitimate: investigate whether the company is listed on corporate records in the country of origin, ask for references, examine papers carefully, run credit checks. And follow your instincts. If it smells fishy, it probably is.

In the same vein, be wary when clients push you to move more quickly than you feel comfortable with. Time may be of the essence in the client's eyes, but you have an obligation to fulfill your professional duties, and to point out when you feel the client's haste may be detrimental. That may require you to inform the client that you cannot appropriately follow through in the time allotted. If this causes them to move elsewhere, consider that might be the best possible outcome for you under the circumstances.

Additionally, take the time to investigate the risks to both the client and your firm associated with any activity that calls for the quick transfer of money through several accounts. While the scam described above was an "ordinary" financial scam designed to make a quick hit on the unsuspecting attorney, more complex schemes may have money laundering as a goal. Investigate both federal and state law applicable to money transfers prior to agreeing to receive client funds and subsequently transmit them to foreign countries.

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