

Check Scams Becoming More Sophisticated

Attorneys are vulnerable to being victims of fraud, especially during these challenging economic times. Financial pressures may cause attorneys to let down their guard or cut corners on due diligence. Fraudulent schemes and scams are on the rise and have caught some unaware attorneys. Here are some of the reported fraud schemes that have targeted law firms in Canada and the United States, including Oregon.

Anatomy of a Scam

Scammers frequently use one of several common scenarios to approach lawyers:

- **Business loan scam:** The “client” is setting up a business and buying equipment or inventory. The “client” seeks representation to help with borrowing the money.
- **Debt collection scam:** The “client” is seeking representation to collect a debt.
- **Collaborative family law agreement scam:** The “client” is seeking representation to collect spousal support or a lump-sum alimony settlement.

The basic scam goes like this: A (usually but not always) new “client” contacts the lawyer seeking assistance in a seemingly straightforward transaction – usually for the purpose of one of the scenarios outlined above. The lawyer is asked to be the intermediary and encouraged to keep a generous portion of the funds for attorney fees or for the trouble of disbursing the funds. Within days, sometimes even before the lawyer sends a letter on the matter, a third party sends a check for the full amount requested. The “client” asks the lawyer to wire the money to another bank account, less the attorney fees.

What happens if the lawyer complies with the request? Once the money has been wired from the law firm’s bank account or lawyer trust account, it will be quickly transferred to another (often offshore) account and generally cannot be retrieved. Because of today’s sophisticated counterfeiting technology, it may take days, even weeks or months, to catch the fraud. When it is uncovered, the financial institution will usually assert that the lawyer depositor is responsible and will charge it back against the depositor’s bank account. If the account is a law firm trust account, ethical rules require the lawyer to immediately replace the funds to prevent a shortfall. This can be financially devastating.

This scam is popular because it often works. Fraudsters use cashier’s checks to give the recipient a false sense of security that the check is as good as cash. Because many banks issue provisional credit and make the funds almost immediately “available” to the depositor (particularly if the depositor is an established customer), many lawyers mistakenly assume that the funds have been honored and collected. (For further discussion of banking laws and the check-clearing process, see “Check Scams Target Lawyers,” Kimi Nam, *In Brief*, November 2008.)

How to Spot a Scam

Spotting a check scam becomes easier if you’re aware of the three elements common to most of these scams: (1) an apparently legitimate transaction; (2) arrival of a bank or cashier’s check in satisfaction of the transaction; and (3) immediate, urgent, and/or repeated requests by the “client” to wire out the funds.

DISCLAIMER

IN BRIEF includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

Take a look at a typical e-mail from a scammer:

Hi Counsel,

My name is [wife's name]. I am contacting your firm in regard to a divorce settlement with my ex-husband [husband's name] who resides in your jurisdiction. I am currently on assignment in Asia. We had an out-of-court agreement (Collaborative Law Agreement) for him to pay \$848,900.00, plus legal fees. He has only paid me \$184,000.00.

I am hereby requesting your firm to assist in collecting the balance from him. He is willing to pay me the balance, but I would appreciate if your office handles the collection process to avoid further delays or litigate this matter if he fails to pay as promised.

Sincerely,

[wife's name, address and phone number in Asia]

Watch out for the following red flags. This is not an exclusive list, however. Trust your instincts. If you are suspicious, ask more questions.

- **Unknown + Urgency:** The “client” is overseas, unknown to the firm, and/or in a rush and pressures you to close the deal quickly. The “client” may even threaten to report you to the Bar for failing to release the funds promptly.

- **High Fees:** The “client” is willing to pay higher-than-usual attorney fees or percentage on a contingency basis, especially if the fee seems disproportionate to the work required. ORPC 1.5(a) states that a lawyer may not “enter into an agreement for, charge or collect an illegal or clearly excessive fee or clearly excessive amount for expenses.” This is not only unethical but also a red flag for fraud.

- **Bank Holiday:** The “client” shows up shortly before a holiday when banks are closed and law offices are often short-staffed. Long weekends mean extra processing time, so it can take even longer than usual to uncover a fraud.
TIP: Be especially cautious and on the lookout for fraud as the Veterans Day and Thanksgiving holidays approach.

- **Easy Collection:** The “debtor,” “ex-spouse,” or other party to the transaction pays without any hassle, which is unusual given the “client’s” need to retain you to get payment in the first place.

Traps in Disguise

Not all fraud attempts fit the “stereotype.” Stay aware, even if the situation isn’t blatant.

- **Fraudsters are not always new clients.** Sometimes a “client” will retain and pay a lawyer to do work on a smaller

matter that otherwise appears legitimate (e.g., an incorporation) to establish trust and credibility, and then come back months later to hire the lawyer to work on the fraudulent matter.

- **E-mails from fraudsters are not always obvious.**

Most lawyers have received an e-mail that is clearly a fraud attempt, with bad grammar and spelling mistakes. While many of the scam attempts are sloppy and obvious, some are more polished and sophisticated in order to ensnare lawyers. E-mail solicitations may be addressed to you personally and may provide considerable detail about the proposed “representation.”

- **Fraudsters may contact you in any way.** While the initial contact might be an e-mail message or phone call, some successful fraudsters have visited a lawyer’s office multiple times, sometimes over weeks or months. They may even provide valid-looking identification.

- **The amount of money involved may not be large.**

In some instances, the amount of the transaction and proposed attorney fee involved is relatively small, thus appearing more reasonable and realistic.

- **The client may be willing to pay a retainer.**

Fraudsters will sometimes overpay the retainer by a significant amount (with a fraudulent cashier’s check) and then ask the lawyer to wire a refund to their account.

- **All parties involved may be in on the scam.**

The client, lender, seller, and buyer might all be accomplices. Frauds are getting much more sophisticated and brazen, and multiple accomplices frequently work together as a group. The documents may look real and be drafted to make the transaction look legitimate. The contact information may put you in touch with co-conspirators, who provide convincing bank and employment verifications or may even impersonate attorneys from other countries.

Fraudsters appear to be going to ever greater lengths to try to trick lawyers into accepting bogus checks and disbursing funds from their trust accounts. The people behind these scams can be very smooth, persistent, and convincing.

How to Protect Yourself and Your Clients

- **Due Diligence.** Know your client. How well do you vet a prospective client or “new” client? How do you go about verifying identity? Do you check identification documents?

- **Don’t Wire Funds.** Do not wire funds if at all possible.

If you must disburse funds, write a check. (There may be a slim possibility the bank can stop payment on a check; however, a bank cannot recall wired funds once released.)

● **Question Your Bank.** Ask your bank the right question: “Are the funds collected?” The answer tells you whether the issuing bank has released the money and that it is in your bank account. A common error is to ask, “Are the funds available?” which only tells you that you have funds available in your account because the bank has issued provisional credit.

● **Confirmation.** Ask your bank to assist you in confirming the legitimacy of a cashier’s check. Your bank can contact the issuing bank to confirm the details, including whether there has been a stop-payment order placed on it.

● **Collection.** Consider asking your bank to send the check for collection instead of for clearing. The bank may charge a \$25 fee for this service. The funds will be deposited into your account only if the check is legitimate and honored; the funds may not then be reversed or “charged back” from your account.

● **Waiting Period.** Wait a prudent amount of time before releasing funds to a client. The PLF has recommended waiting three business days for locally drawn checks, five business days for state-drawn checks, and ten business days for out-of-state checks.

● **Education.** Educate yourself and everyone in your firm about the possibility of counterfeit cashier’s checks as well as counterfeit checks appearing to be drawn on another lawyer’s trust account.

● **Common Sense.** Use common sense and trust your instincts. Ask questions, verify facts, and do due diligence on your client. Call the PLF for advice if something seems out of the ordinary.

● **Sophisticated Scams.** Scams are constantly changing, and criminals are sophisticated – many know how the legal system works, they know lawyers have ethical rules to follow, and they know banking laws. Some recent scams have involved a lawyer’s PayPal account and scammers doing “test” floater charges of innocent victims using the attorney’s banking information.

● **Online Banking.** Consider using a dedicated computer for your banking transactions only. This will prevent hackers from mining password and banking information obtained through an e-mail download attachment or a virus.

Why You Should Care

Generally, malpractice claims associated with attorney fees or trust accounts are not covered under the PLF’s Claims Made Plan because these claims do not pertain to the legal advice provided but rather to the business aspects of the law practice. A copy of the PLF Primary Plan can be found on the PLF Web site at www.osbplf.org under Primary Coverage, Coverage Plan. For more information about PLF coverage,

Sources and Resources

- “Preventing Check Fraud: Why ‘The Check Is in the Mail’ Isn’t Always a Good Thing,” Jim Calloway, *Law Practice*, July/August 2010 (www.abanet.org/lpm/magazine/articles/v36/is4/pg38.shtml).
- “Scammers Take Aim at Lawyers: How to Avoid Becoming the Next Victim,” Helen Hierschbiel, *Oregon State Bar Bulletin*, May 2010 (www.osbar.org/publications/bulletin/10may/barcounsel.html).
- “Elaborate check fraud scams target solo, small-firm lawyers,” Nora Lockwood Tooher, *Lawyers USA*, April 2010.
- “Lawyers as Targets of Fraud: The Common Misconceptions,” *LawPRO*, September 2009 (www.practicepro.ca/LawPROMag/fraud_misconceptions.pdf).
- “Check Scams Target Lawyers,” Kimi Nam, *In Brief*, November 2008 (www.osbplf.org).

contact Jeff Crawford at 503-639-6911, 1-800-452-1639, or jeffc@osbplf.org.

To protect yourself against these check scams, use your best professional judgment to determine whether accepting a particular matter is worth the risk of (1) a bank chargeback that you are responsible for; (2) a potential malpractice claim; and (3) a potential ethics complaint. Given that there is no guarantee the check you are getting has money behind it and the real facts may take time to surface, your best approach is to carefully scrutinize the money, the client, and the transaction.

SHEILA M. BLACKFORD
PLF PRACTICE MANAGEMENT ADVISOR

Continued on page 4