

E-Mail Scams and Lawyer Trust Accounts

First published December 2010

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UPDATE (April 2022): These scams continue to operate and find new ways of tricking lawyers throughout the country. In Illinois, a number of lawyers have fallen prey to these scam artists. The scams normally work because the victim lawyers do not appreciate the difference between funds that have “cleared” (or are collected), and funds that are available for use. Banks are required to make funds available for use within a few days of the deposit of checks, even though the funds often are not actually collected until nearly two weeks after the checks are deposited, at which time the scam is revealed when the check is found to be fraudulent.

Lawyers should always be extremely wary of email communications from anyone they don't know or emails received unexpectedly from a known contact. It is also extremely important that lawyers know the difference between available funds and collected funds.

The Federal Trade Commission (FTC) in October 2020 launched [ReportFraud.FTC.gov](https://www.ftc.gov/report-fraud), a new consumer-friendly fraud-reporting portal that aims to better protect consumers by identifying and foiling new scams sooner. Consumers can report anything from government imposter scams to phony weight-loss claims, abusive debt collection, and deceptive auto sales, along with all sorts of unwanted phone calls, text messages, and emails.

Further information and tips on recognizing and avoiding fake check scams:

Federal Deposit Insurance Corp. (FDIC): Beware of Fake Checks (August 2019)
<https://www.fdic.gov/consumers/consumer/news/august2019.html>

Avoiding Scams and Scammers (Oct. 2021):
<https://www.fdic.gov/resources/consumers/consumer-news/2021-10.html>

Federal Bureau of Investigation: Scams and Safety
<https://www.fbi.gov/scams-and-safety>

Common Scams and Crimes
<https://www.fbi.gov/scams-and-safety/common-scams-and-crimes>

Internet fraud schemes are increasingly targeting lawyers and law firms and the banks where lawyers have their client trust accounts. While many of these scams appear outwardly questionable and, as a result, are usually ignored, there have been reported cases throughout the country where lawyers have fallen prey to these scams resulting in the loss of hundreds of thousands of dollars out of their respective trust accounts. See [ABA Journal, Six Indicted in \\$32M Internet Collection Scam That Snagged 80 Lawyers](#) (Nov. 22, 2010). Scam artists can be persistent, creative and determined; their schemes can be elaborate and sophisticated. Lawyers should be aware that these scams are out there, to be alert to the possibility of fraud, and to proceed with caution and vigilance in dealing with potential clients whose only contact with the lawyer is via the Internet or who request legal representation that requires the use of the lawyer's or law firm's trust account to receive and disburse funds. There are many variations on how these schemes are set in motion but the motivation is the same: to get the lawyer to send them money.

The Way it Works

The most common scenario involves an alleged overseas company that contacts a U.S. lawyer by e-mail and purports to retain that lawyer as a settlement agent to collect a debt from a debtor. "Client" tells lawyer that it is imperative that the lawyer wire the money as soon as possible after receiving it from the debtor. Lawyer then promptly receives a check from the purported debtor and deposits it into a trust account. Lawyer confirms with his/her bank that the money has been credited to the account and wires it as directed, minus the lawyer's fee, to the purported client. A few days later, bank tells the lawyer that the check is counterfeit. Bank debits the trust account for monies lost.

Red Flags

- A prospective client e-mails the lawyer likely through a blast e-mail (e.g., addressed to "Dear Counselor" and vaguely refers to the lawyer's practice as "your jurisdiction");
- The requested representation usually involves the collection of a debt or other obligation;
- One of the parties is out of the country;
- The debt or other obligation resolves itself quickly and easily without much effort by the lawyer;
- Lawyer receives what looks like a very convincing cashier's or certified check (a bank may tell the lawyer that the instrument looks "good") for deposit in the trust account; and
- "Client" wants the funds, minus the lawyer's fee, immediately wire transferred to an out-of-the-country account.

Avoiding the Scam

- Wait for a check, even a cashier's or certified check, to clear before using the money; provisional credit by your bank is not sufficient. Although your financial institution may quickly make funds available or may tell you that the deposit has been credited to your account within a few days after the deposit (*i.e.*, provisional credit), that does not mean that the check is good or has cleared through the original issuing institution. That can take many days. Sometimes it can take weeks to discover a very good forgery, and the check won't bounce until then. Therefore, verify the authenticity of the check with the issuing bank and confirm with your depository bank that the check has gone through the check clearing process.
- Be suspicious of a client who insists that you send funds by wire transfer or otherwise pressures you to act quickly before you know the payment you received is good. A lawyer who decides to wait for final clearance of a check, before disbursing funds, is acting properly and is not in violation of a lawyer's duty of prompt delivery of trust funds.
- Know with whom you are dealing before accepting the representation. Take reasonable steps to verify that the "client" is who they say they are, particularly if there are generally no face-to-face communications with the client. Also, verify the information the prospective client provides concerning third parties or even a source of the referral to you. If you are dealing with a stranger, make sure you have that person's name, address and phone number, then verify those independently using reliable online directories or other third party sources.
- Your deposits are your responsibility. If you have deposited a check that then bounces, the bank may withdraw the original dollar amount credited to your trust account and it may result in the conversion of other clients' funds in your trust account. If your trust account does not have enough money to cover the deduction, the bank may freeze your trust account or the bank may sue you to recover the funds. See *Wachovia Bank v. Bartko*, No. 1:08-CV-2636 (Ga.)

If You Receive A Counterfeit Check

If you think that you have received a counterfeit check, do not deposit it; contact your bank.

In addition to contacting the appropriate bank, you may report:

- Scams generally - Federal Trade Commission (FTC): by telephone at 1-877-FTC-HELP or file an electronic complaint via their Internet site at www.ftc.gov

- Internet-based scams - Federal Bureau of Investigation (FBI) Internet Fraud Complaint Center at www.ic3.gov
- Mail-based scams - U.S. Postal Inspection Service, Office of the Inspector General at 1-888-877-7644, or online fraud complaint at <https://www.uspsoig.gov/form/file-online-complaint>.

If you have a complaint or problem involving a check written on or deposited in an account at a national bank, and you cannot resolve the problem with the bank, contact the Office of the Comptroller of the Currency's Customer Assistance Group, by calling 1-800-613-6743 or by sending an e-mail to: customer.assistance@occ.treas.gov.

For general questions or concerns about the ethical responsibilities of lawyers in Illinois, please call the ARDC Ethics Inquiry Program at either of the ARDC's offices at the telephone numbers listed below.

Attorney Registration and Disciplinary Commission of Illinois (ARDC)

Chicago Office

One Prudential Plaza
130 East Randolph Drive, Suite 1500
Chicago, IL 60601-6219
312/565-2600 or 800/826-8625

Springfield Office

3161 West White Oaks, Suite 301
Springfield, Illinois 62704
217/546-3523 or 800/252-8048

Web Site: www.iardc.org