

Responding to a Possible Settlement-Check Scam: What Rule 1.6 Allows

Summary: A caller described a scenario raising Rule 1.6 confidentiality issues and the crime-fraud exception. The facts seemed to match the well-known “settlement check scam”: a new client, an unusually fast and generous settlement, a large check drawn on a foreign bank, pressure to disburse funds immediately, and the check later being dishonored. A lawyer who reasonably believes that a client is using a lawyer’s services to commit a fraud, even against the lawyer, may disclose otherwise confidential client information to third parties if done in such a manner as to prevent, lessen or rectify the harm threatened or caused by the client’s fraud.

Question: In this scenario, the caller’s (purported) client is the victim of a dog bite and the caller practices in personal injury law. Before suit is filed, the dog owner quickly agrees to settle for a six-figure sum. The settlement check is inexplicably drawn on a foreign bank. Caller deposits check in their trust account. Before any money was disbursed, the bank reported the check was dishonored. Believing the dog owner was trying to defraud his client, the lawyer contacted police. Only afterward did he consider that *they*, not the client, were the intended victim. The client was upset about the police involvement, and the lawyer worried they had violated Rule 1.6. It is unclear from the caller if the caller ever discussed the suspicious circumstances with the client before contacting authorities.

Discussion: Rule 1.6 of the Illinois Rules of Professional Conduct (which has similarities to, but is also different in some respects from, its counterpart in the American Bar Association’s Model Rules of Professional Conduct) generally requires lawyers to keep all information relating to a representation confidential unless the client has given informed consent to the release of the information or one of the exceptions specified in the Rule applies. One of those exceptions is what is often referred to as the “crime-fraud exception,” which removes that protection when a client uses, or attempts to use, the lawyer’s services to commit or cover up a crime or fraud. This exception prevents attorney-client privilege and confidentiality from becoming tools for wrongdoing.

Under Rule 1.6, a lawyer owes a duty of confidentiality to a client. Specifically, in relevant part (with added emphasis), the Rule states as follows:

- a. A lawyer shall not reveal information relating to the representation of a client unless ... the disclosure is *permitted* by paragraph (b) or *required* by paragraph (c) (which requires disclosure when the lawyer reasonably believes disclosure is necessary to prevent reasonably certain death or substantial bodily harm).

Under Rule 1.6(b), a lawyer has the discretion to disclose confidential client information when the facts fall within one of the seven scenarios established in that paragraph. Subparagraphs (1), (2) and (3), commonly referred to as the crime-fraud exceptions, permit disclosure to the extent the lawyer reasonably believes it necessary to:

- prevent the client from committing a crime or fraud,
- prevent substantial financial injury to another, or
- mitigate harm resulting from the client’s use of the lawyer’s services.

A lawyer has discretion to disclose confidential client information when the lawyer reasonably

believes circumstances fall within one of these exceptions. The exception applies even if the fraud fails, the lawyer is the target, or the client never admits wrongful intent.

In this scenario, the caller described facts characteristic of the well-known “settlement check scam”: a new client with a simple claim, an unusually quick and generous settlement, a large check drawn on an out-of-state or foreign bank, pressure to disburse funds before the check clears, and the check ultimately being dishonored. These red flags could give a lawyer a reasonable basis to believe the “client” was attempting to use the lawyer’s trust account to perpetrate a fraud, usually by citing some urgent circumstances that cause the lawyer to pay a purported advance from the “settlement” before the lawyer learns that the check has been dishonored. Under Rule 1.6(b), a lawyer may disclose information to prevent or mitigate a client’s crime or fraud, and the lawyer limits the disclosure to what was necessary to alert law enforcement. A client’s later objection does not retroactively turn a permitted disclosure into an ethical violation.

Takeaways:

- Vet every new client by verifying their identity, confirming their background, and validating the legitimacy of the underlying matter.
- Never disburse trust account funds until a check has fully cleared the banking system, not merely become available for withdrawal.
- Treat fast settlements, foreign checks, and pressure for quick disbursement with caution.
- When disclosure is necessary, limit it to what Rule 1.6(b) allows.
- If the “client” was never legitimate, an attorney–client relationship may not have formed and the duty of confidentiality owed to a client does not apply.

Bottom line: Rule 1.6 protects client information, but not when a client attempts to use a lawyer’s services to commit fraud. In this scenario, the lawyer’s report to police was ethically permissible.

Resources:

- [E-Mail Scams and Lawyer Trust Accounts First](#) (ARDC website)
- [Scams Targeting Lawyers and Trust Accounts](#) (ARDC website)