

PROTECT YOURSELF:

Trust Accounts & Email Scams



Email scams continue to increase in both volume and sophistication. Recognizing and avoiding these scams is the first step in managing your risk. We hope the following information will help all our policyholders be alert to email scams – especially those that target attorney/client trust accounts.

Many of these scams appear obviously questionable and so may be easily identified and avoided. For example, an email might say something similar to this:

Dear Honorable Counselor,

I am the managing director of XYZ Manufacturing. I wish to enlist your professional assistance to collect \$465,000 due and owing my company from a former vendor in your jurisdiction.

Some emails are more sophisticated. And fraud directed toward lawyer trust accounts is increasingly reported to us by policyholders across the country.

Regardless of the message, we want our policyholders to be aware of these scams, to be alert to the possibility of fraud, and to exercise caution and vigilance in dealing with potential “clients.” This is especially true when the only contact with the lawyer is through the Internet, or when someone requests legal representation that requires the use of the lawyer’s or the law firm’s trust account to receive and disburse funds.

While these schemes come in many guises, the goal is always the same: to get the lawyer to send them money.

What Usually Happens

The targeted lawyer receives an e-mail from a foreign company seeking to retain the lawyer to file suit against a domestic company in the lawyer’s state to collect on an alleged debt.

If the lawyer agrees, the lawyer is soon advised that the debtor has capitulated without suit and will send the lawyer a check in payment of the debt. The lawyer receives what appears to be a legitimate check (sometimes even a cashier’s check) and deposits it into the client trust account. The “client” then urges the lawyer to wire the funds, less the lawyer’s fee, to the client’s foreign bank immediately. The lawyer confirms with his bank that the check has cleared and the funds are available. The lawyer then wires the money as directed.

Sometime later, the lawyer’s bank informs the lawyer that the check was counterfeit or not otherwise honored by the issuing bank. The bank debits the lawyer’s client trust account the amount of the bad check.

The Consequences for the Scammed Lawyer

The lawyer victimized in this fashion finds himself in a truly terrible position.

First, if the lawyer has entered into a true attorney/client relationship with the fraudulent client, the lawyer may not be able to use confidential information to report the client’s conduct to the authorities, or even to defend his or her own conduct.

Second, the lawyer’s bank can pursue the lawyer for the shortfall created by the fraudulent check.

Third, the bank is required to report the overdraft of the client trust account to the state bar. The lawyer may be subject to discipline if client funds were lost from the trust account due to the lawyer’s negligence in dealing with the fraudulent client.

Fourth, those legitimate clients who lost funds from the lawyer’s trust account may pursue the lawyer for those funds.

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Finally, the entire scenario can do enormous damage to the lawyer's reputation.

Needless to say, the lawyer should do everything necessary and appropriate to avoid becoming such a victim.

Red Flags: What to Watch For

- The initial contact is by generic e-mail: "Dear Counsel."
- The e-mail address of the "client company" is from a free e-mail service like G-mail or Yahoo!
- The required service involves the collection of some sort of debt.
- The "client" is in a foreign jurisdiction.
- The lawyer is to be paid a higher than usual contingent fee from the proceeds of the collection.
- The legal problem resolves quickly with little or no actual work by the lawyer.
- The lawyer receives a cashier's or certified check which appears authentic to the lawyer and the bank (but is often drawn on a bank with no apparent reason to be doing business with the debtor, or is even written by a third party company which the "client" advises is "acting as agent" for the alleged debtor).
- The "client" urges the lawyer to wire the funds to a foreign bank immediately.

Protect Yourself

First, thoroughly investigate any new client who approaches you via the Internet.

- Perform a complete conflicts check for anyone identified in the e-mail.
- Do a Google search of the client's e-mail address.
- Check the client's website.
- Check any available government records relating to the client.
- Search the geographical address of the client via Google or Google Maps.

- Telephone the client's offices to verify identities and locations.
- Do a reverse number search on telephone numbers.
- Search www.fbi.gov which lists new e-scams and warnings.

Do these things before you agree to represent the client, so that no confidential information is exchanged and no attorney/client relationship is created before you confirm the client is legitimate.

Second, but probably most important, never use funds from a check until you have written confirmation that the check has cleared. The check should clear the original issuing institution - not just your bank. Your bank may very well tell you the check has cleared, or that you may write checks against the deposit, but that is not good enough. Banks will often give good customers provisional credit for a deposit. Provisional credit may later be withdrawn if the instrument does not clear the issuing bank, and you will be responsible for the funds. Again, never use funds from a check until you are certain the check has cleared the issuing institution.

You should also consider opening a special client trust account for any questionable check of substantial amount. You can thus insulate your legitimate client's funds.

You should be suspicious of a client that insists you wire or otherwise disburse funds before you have confirmation the check you received is good. An honest client will understand the necessity of due diligence.

Finally, Seek Guidance

If you receive a check you believe may be counterfeit, do not deposit it. Contact your bank. They will advise you on how best to investigate or otherwise deal with the check.

If you find yourself in the midst of dealings with an internet-only client and have concerns about the legitimacy of the client and your responsibilities, call your state bar ethics hotline.

If you believe you have been victimized, contact our claims department immediately. We are always here for you.