

Scammers Targeting Attorneys

INTRODUCTION

More attorneys are falling prey to various ruses that take advantage of the desire for revenue, as well as a lack of knowledge of banking terms. There are numerous variations on the basic scheme, which usually proceeds in the following manner.

THE SCAM

An attorney receives an email from a potential client (hereinafter, "client") that the attorney has never heard of or known. The "client", usually living in a foreign country, requests the attorney's help in collecting either a judgment or a settlement. The "client" usually attaches to the email a copy of the foreign judgment or settlement agreement. If the attorney responds to the email, the "client" sends out a second email with purported good news—the other party has agreed to pay a significant portion of the judgment or settlement and is sending a check via overnight delivery to the attorney's office. Within a day or two, the check, sometimes written for hundreds of thousands of dollars, arrives at the attorney's office, just as the "client" said it would.

Often, the "client" will urge the attorney to process the check immediately because the funds are needed for some specified emergency. The email instructs the attorney to deduct legal fees and costs from the check and to send the remaining funds to the "client." The "client" may suggest or agree that the attorney keep thousands of dollars as payment, even though the matter was resolved quickly with no direct involvement by the attorney. The check appears to be legitimate with all the appropriate insignia, but is drawn on a bank in another state or foreign country with which the lawyer may not be familiar.

The attorney then deposits the check into a client trust account, withdrawing his or her portion for attorney's fees and expenses. When the attorney's bank processes the check and does not raise

any concerns over it, the attorney concludes that the story and the check are legitimate, and writes a six-figure check to the "client" drawn from the attorney's client trust account, which, of course, contains the funds of the attorney's other clients as well.

Other variations on this scheme are perpetrated as well. For example, fraudfeasors may obtain the attorney's telephone number or email address from the law firm website and send a personalized email. They may follow up by telephone, using a telephone number registered to a local area code to make their scheme more credible if the attorney responds to the email (telephone numbers can be obtained over the Internet through various online providers, causing routed calls to appear to originate from that number).

Still other variations involve the issuance of what appear to be legitimate cashier's checks by reputable national banks. The nine digit magnetic ink character recognition (MICR) line at the bottom of the check is altered by the fraudfeasor. The law firm's bank makes the funds available because it is a valued account, although the check has not cleared with the issuing bank.

THE FALLOUT

The fact that the attorney's bank has verified that funds are "available" from the "client's" check fails to sufficiently demonstrate that the transaction was credible. Days later, when the bank informs the attorney that the "client's" check is bogus, the attorney then realizes the "client" is actually a charlatan who has just stolen hundreds of thousands of dollars. To make matters worse, the funds were removed from a client trust account, so other clients' funds have been pilfered. The attorney may face disciplinary action for the misuse or misappropriation of client funds. Moreover, if the attorney is unable to disburse these other clients' funds when they are due to be released, various claims may be filed against the firm by the clients.

RISK CONTROL MEASURES TO PROTECT AGAINST SCAMS

Attorneys can employ a number of risk control techniques to greatly reduce, if not eliminate, the risk of being victimized by such a scam.

Look for the red flags.

An unsolicited email from someone that the attorney does not know should place the attorney on heightened alert for a scam. If the email contains generic, rather than specific information, such as addressing the attorney as “Dear Counselor” instead of by the attorney’s name, or uses phrases such as “in your jurisdiction” instead of the city or state where the attorney practices law, it may be a blast email being sent to hundreds of other attorneys. The use of poor grammar and awkward syntax also may be a signal that the sender is not a legitimate potential client.

Even an email that appears to be legitimate but is unsolicited should be regarded with extreme caution. Check the email address from which it originated. It may have been issued by an online email service provider. If, at first glance, it appears to be from a legitimate business, the email address may not match the email address posted on the business’s website.

Moreover, if a client is offering to permit an attorney to keep thousands of dollars for essentially processing a check and performing little or no legal work, it may simply be an attempt to bait the attorney as part of a fraudulent scheme. Lawyers also should consider their ethical obligations under ABA Model Rule 1.5 to avoid charging or collecting an unreasonable fee if presented with such generous terms of compensation.

Endeavor to meet potential clients in person.

Meeting a potential client in person not only helps foster a constructive attorney-client relationship but may also assist in protecting against frauds. An in-person meeting allows an attorney to evaluate body language, eye contact, and other non-verbal clues about demeanor. An attorney can usually get a better sense of how truthful and articulate a potential client is through face-to-face consultation. If a potential client responds that an in-person meeting is not possible, the attorney should require, at a minimum, a videoconference or teleconference. The attorney also should independently verify the identity of the client through contact with disinterested third parties. This procedure may cause delay, which is the enemy of con artists. The majority of these rogue clients will be intimidated by an attorney who insists upon conducting investigation and heightened personal communications prior to

accepting the engagement and thus diverted from their intended target. Attorneys who accept clients via only email communications must use extreme caution in their communications and financial dealings with such clients.

Maintain vigilance even if the client attends an in-person meeting.

An in-person meeting is, of course, not a guarantee that a potential or actual client will not attempt to defraud a lawyer. In one case, a con artist met with lawyers, provided voluminous documents to lend a veneer of credibility to the scam, and provided the law firm with a legitimate \$10,000 check as a retainer. The con artist used the initial check as seed money to gain the confidence and trust of the law firm, and subsequently bilked the firm for more money when he later submitted counterfeit checks. The law firm deposited the checks in its client trust account and then wired the proceeds to the con artist before discovering that the checks were not legitimate.¹ While lawyers should strive to maintain good relationships with their clients, with respect to financial matters, they must always maintain vigilance and set appropriate time frames for financial payments to clear with the issuing institution.

Know what key banking terms mean.

Federal regulations require that banks make funds available for a bank 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.² While these regulations help consumers obtain funds more quickly, the risk persists because the check may still be deemed to be counterfeit. If a deposited check is later deemed to be counterfeit, the bank customer, and not the bank, is responsible for the amount of the check at issue.

Wait for the check to clear.

A frequent part of the scam involves pressuring the attorney to release the funds as soon as possible in order for the “client” to handle some emergency situation that requires the funds. A lawyer should not release funds from a deposited check or other negotiable instrument unless and until their own bank has verified that it received the funds from the issuing bank. This constitutes the “clearing” process. It can take an average of two weeks from the time a domestic check is deposited for it to clear, and up to a month for a foreign check to clear. An indication by the bank that the funds are available for use is *not* an acceptable alternative.

¹ Thomas P. McGarry and Thomas P. Sukowicz, “Hit the Delete Key,” *Chicago Lawyer*, October 2011, p. 48.
² 12 CFR Part 229, Subpart B, *Availability of Funds and Collection of Checks*

Caution should be exercised even if the attorney (or the attorney's bank) has verified the legitimacy of the account from which the check is drawn. In more sophisticated scams, fraudfeasors may establish a legitimate bank account but deplete it of all funds in the intervening time period between the attorney presenting the check to his or her bank and the fraudfeasor's bank processing the check. A lawyer should communicate to the client the banking contingencies that must occur before funds will be released, as well as the anticipated timelines for such contingencies. If these conditions are unacceptable to the client and cause the client to seek other counsel, that may be an optimal outcome for the attorney.

CONCLUSION

Email and telephone communications are useful and efficient means of communicating with potential and actual clients. However, they also can serve as a means for scam artists to operate efficiently while simultaneously concealing their identity. The opportunity to mask oneself via electronic communications allows criminals to more easily hide their real names, locations, and motives when engaging in scams. Irrespective of the method attorneys use to communicate with clients, they must exercise caution, look for signs of danger, verify clients' identities to the greatest extent possible, and know and follow banking regulations when handling client funds. Remember that the old adage still applies— if something seems too good to be true, it probably is.



For more information, please call us at 866-262-0540 or email us at lawyersrisk@cna.com.

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