

SCAMS TARGETING LAWYERS AND TRUST ACCOUNTS

There are a growing number of scams that target lawyers, law firms, and client trust accounts. The scope and sophistication of these scams is constantly evolving and may focus on any type of representation where a lawyer is hired to assist in the transfer or collection of money, e.g., real estate and other transactions, collection matters, and collaborative law agreements in family law matters.

How these scams usually work

The lawyer receives an email from the prospective “client” who is seeking assistance in collecting or recovering money. In some cases, this “client” even signs a fee agreement with the lawyer’s office.

In fairly short order, the lawyer receives a cashier’s check, purporting to be from the party who owes money to the client. While these checks are counterfeit, they can be virtually identical to legitimate cashier’s checks issued by the financial institution.

The “client” customarily pressures the lawyer to wire the funds immediately, and authorizes the lawyer to deduct a substantial fee. The funds are typically wired overseas, even when the transactions appears to be sent within the continental U.S.

More sophisticated scams

A law firm in North Carolina received an email and a phone call from a woman purporting to be the out-of-state seller in a real estate transaction that the firm was handling. The woman asked the firm to wire funds to her bank account on a Friday. On the following Monday, the firm discovered that the email of the actual seller had been compromised and that the funds had been wired to a hacker. The firm’s attempt to reverse the wire was unsuccessful. The hacker had gained access to the email account of one of the parties to the transaction and ascertained the information necessary to assume the identity of the seller. Another firm in North Carolina reported that the email address of the hacker was different from the actual seller's email address by one letter.

See also, [FBI Alert No. 1-012215-PSA](#)

Overdrafts and loss of funds

OLR has received a number of overdraft notices on lawyer trust accounts stemming from the deposit of counterfeit cashier’s checks. In some of these cases, the lawyer’s bank had placed a hold on the funds, and no money was lost. However, in at least two of the counterfeit check cases reported to OLR, the lawyers had wired funds to their “clients” and, at last report, some or all of the funds have not been recovered. In one of those cases, the lawyer had wired over \$600,000 to the “client.”

If a deposit item, i.e., a check, cashier's checks, etc., is returned due to insufficient funds, your bank may reverse the deposit. If there are other clients' funds in the trust account, the return of the deposit may result in the withdrawal of those clients' funds. The lawyer has a fiduciary obligation to restore those clients' funds. In addition, the lawyer's financial institution may commence litigation to collect any unpaid portion of the deposit reversal. See, *Wachovia Bank v. Bartko*, U.S. District Court, Northern District of Georgia, Case No. 1:08-CV-2636.

How to avoid scams

- ◆ Exercise a reasonable amount of skepticism and an abundance of caution before accepting a representation involving:
 - a client whose initial or only means of contact is email;
 - at least one party who is located outside of the U.S.;
 - the transfer of a significant amount of money; and/or
 - a substantial fee for a limited amount of work.
- ◆ Hold deposits in trust until the funds clear. Clearing means that your financial institution has actually received the funds from the payer's financial institution. While your financial institution may make funds provisionally available prior to that time; disbursing large amounts where one or more of the above-referenced circumstances exist, can be very risky.
- ◆ Notify clients, in advance, that you will be unable to disburse funds until they have cleared. Explain to the client that there is a difference between funds clearing and funds being posted to your account or made provisionally available by your bank. It may take more than a day or two for your bank to receive funds from the payer's bank, particularly in the case of large deposit items. Furthermore, if your bank places a hold on a deposit, do not attempt to disburse the funds until the hold is lifted.
- ◆ Verify the accuracy of the contact information for your client and any adverse or third parties with whom you are dealing. Online directories can be utilized. Be extremely cautious about last minute changes to the disbursement of funds that are made via email and verify such changes by contacting your client at the contact number in your firm's records.
- ◆ Review your firm's wire transfer procedures to confirm that there are adequate safeguards to detect and prevent wire fraud. This should include verification of the authenticity of the deposit item with the payer's financial institution as well as you own.