

Malpractice Alert: E-mail Scheme Targets Attorneys' Trust Accounts

The Scheme

Beware of criminal activity that targets practicing attorneys and could affect you. This nationwide problem has now come to Alabama. It is a fraudulent scheme that tricks attorneys into believing they are collecting a debt owed for a client when, in fact, the attorneys employed are being used by criminals to steal money. Reportedly, money may ultimately be wired to China, Korea or some other Asian nation, sometimes after going to one or more U. S. banks.

There are variations on this scheme, but usually it involves contact via e-mail from an unknown person wanting your services. This "new client" claims to have a controversy with someone or a business who purportedly owes new client a large amount of money. Your help is needed to collect it because new client claims to be unknowledgeable (a foreign national) or needs you involved as an attorney so that new client can tell debtor that he has an attorney and, thereby, encourage payment. You never meet new client. In most reported instances, you never speak to new client on the telephone. You have no independent proof of new client's name, address or the debt purportedly owed.

You receive a check drawn on an international or an American bank. New client is now anxious for you to disburse and wire funds quickly. Instructions are given for you to wire funds to another bank either out-of-state or out of the United States. The check appears to have "cleared" and you disburse new client's funds after deducting your attorney's fee. Thereafter, you are informed by your bank that the deposit was fraudulent. Your bank now demands restitution and offsets the fraudulent transfer against accounts you have on deposit with it.¹

Do not assume that because your bank tells you that the time for "clearing" has passed that you are free to disburse funds. Time can pass, and the deposit can "clear" but a fraud committed against the account of the payor bank can be challenged and reversed after the normal "clearing" time. (See, for example: Ala. Code 1975, Sec. 7-4-406.) Too quick a disbursement may place you in an adversarial relationship with your bank which now claims you are responsible for the fraudulently transferred money that it wired under your instructions. Even verifying with the payor bank that it has sufficient funds on deposit to pay the amount deposited or wired into your trust account, does not mean that withdrawal is legitimate and authorized. It can ultimately be dishonored. Under such circumstances, you cannot even assume that because you have what appears to be a certified or other bank check that the check represents good funds. Criminals have reportedly counterfeited certified and other official bank checks, and in other cases, changed routing and account numbers on others to delay payment beyond the normal time for clearing.

¹It is wise and desirable for attorneys to use one bank for their trust account and a different bank for their other accounts to prevent a bank from offsetting debts between accounts.

Warning Signs

Be wary of this scheme so that you do not become a victim. It is unwise to represent someone with whom you have only had e-mail correspondence. Know who your client is by independent verification when contact is made via e-mail. The greater the number of factors that exist below, the greater is the chance that you and your trust account will be a victim:

Initial contact is made with you or your office via e-mail.

You have never spoken to your new client.

You have never met your new client.

Your client claims to be in another state or country.

You have only e-mail communication **to** new client and no communication **to** new client by U.S. mail or courier service.

There is no common sense reason that you have been contacted. For example, the referral was not from a person or client known to you and/or you do not have a likely profile to attract this type of client or a client from out-of-state or outside the United States.

New client's address and identity cannot be verified by traditional (non-internet) sources. These would include telephone directories, governmental records, business directories or verification from other reliable sources knowing that new client, whether a person or business, actually exists.

You are asked to receive funds into your trust account and there is no substantive work for you to do (such as file suit, negotiate a settlement, garnish a bank account, etc.).

There is a large amount of money involved, hundreds of thousands of dollars or more.

You have no contact with the person or business claimed to be the debtor obligated to pay the funds into your trust account, or if you do, you cannot verify their identity either.

You received only documents via e-mail which claim to support the debt but have no verification that they are real.

New client is anxious for you to disburse the money.

The more of the above warning signs you see, the more likely it is you are the intended victim of criminal activity.

How to Protect Yourself

All attorneys are at risk to be targeted by this criminal scheme. Many have been victimized ranging from attorneys in large firms to sole practitioners. The scheme covers attorneys in virtually any practice area, including but not limited to litigators, business practitioners and domestic relations attorneys. Be cautious when contacted by e-mail and use business common sense. You must know your prospective new client's identity. Remember that all documents sent to you via e-mail can be fabricated to look real. If new client claims to be owed a debt, what evidence is there of it? Is it a judgment, if so, you can verify that with the court of record. Is it a contractual debt? Is there evidence of it in public record (mortgages, leases, UCC-1 filings, lawsuits, etc.). Have you had contact with the debtor or someone who claims to be debtor's attorney? Are you certain of their identity? Variations of this scheme have included criminals posing as out-of-state attorneys. Does proof of their identity depend on e-mail or internet sources? If it does, be aware that there are cases reported in other states where this scheme has used more than one person to attempt to give it credibility.

If you receive a check, attempt to call the payor bank to verify the existence of the account and sufficiency of funds on deposit. (Note this will only help you know that the purported debtor's account exists and has funds, it does not help you know that there is proper authorization for the check.) Consider telling new client at the outset that disbursement cannot be made until two weeks after deposit. This period of delay will allow some fraudulent transactions to come to light. It will also discourage criminals from employing you because they want you to disburse quickly. The longer the delay, the more likely a fraud will come to light. Consult your banker to ask advice as to how long it takes for the deposit in question to be paid by the payor bank and become good funds. This period of time will vary depending on the bank upon which funds are drawn and where it is located. Caution in this regard will help eliminate much, but not all, fraud (account holders may still be able to challenge unauthorized withdrawals at an even later date).

There is no substitute for knowing who your client is and that your new client is legitimate. Until you can satisfy yourself that you know your new client's true identity and trustworthiness, do not engage your new client. If new client wants to have funds wired to you, do not provide new client with your trust account name, number or other bank information of yours. With that information in hand, new client could attempt to steal funds from you! Lastly, if you have a suspicion that something does not appear right about new client, decline representation.