

Recent Fraudulent Check Scheme Unveiled
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Our firm was recently the target of a very sophisticated, but unsuccessful, fraudulent check scheme. Practicing attorneys should be warned.

In early March, I receive an unsolicited email from an individual who identified himself as a Canadian, from London, Ontario. He advised that he held a \$510,000 Promissory Note drawn by an individual in Rochester. The email was well written and gave me his full name and telephone number. I called and the prospective client had a heavy foreign accent.

He gave me the individual "debtor's" name and street address in Rochester, and the prospective client gave me his own street address. I explained our firm's retainer policy, and the man invited me to send a proposed engagement letter, which he said he would sign and return with the substantial retainer check that I requested. After sending the engagement letter, I received an express mail package from Canada from the street address I was provided. The package contained the signed engagement letter and the retainer check, which was a bank check drawn on a Canadian bank in Canadian funds despite my request for US funds. The draft appeared to be a bank check, had many security features on it, and I deposited it into our attorney trust account on March 14, 2011.

I advised the client of my receipt of the retainer, and he asked me to start contact with the debtor by demand letter for payment of the balance due under the Promissory Note. He said he would advise the debtor to make all further communications through

my office and he authorized commencement of a collection action in the event voluntary payment was not made promptly.

Approximately one week later, I received an email and a package from the debtor. The communication indicated that the debtor wanted to avoid litigation, and he enclosed what appeared to be a \$190,000 bank check drawn on another Canadian bank. The check had colored, embossed logos of a known Canadian bank with a well known logo, bore two original signatures, and was payable to our firm. I deposited that check into our attorney trust account. Additionally, the debtor indicated in his communication that he could only provide \$190,000 at this time, and wanted to schedule a time to meet in two weeks time to negotiate payment of the outstanding balance. He claimed he needed two weeks because he was in Canada attending business conferences. The \$190,000 check was deposited in our attorney trust account on March 21.

On March 22, my "client" called me repeatedly claiming that he was in Hong Kong. I was unavailable to talk to him that day, and my secretary reported he was very eager to speak with me right away.

On Wednesday, March 23, our law firm's bank called and reported that the \$190,000 check was rejected for insufficient funds. We were surprised because the check appeared to be a bank check. My "client" called later on Wednesday, March 23. Before I could say anything to him, he said that he understood that I received a check, and was looking forward to payment. I told him that I had bad news, that my bank reported that the check was rejected for insufficient funds.

The following day, March 24, the bank on which the \$190,000 check was drawn, advised that the check was a forgery. Suspicious now, I called our law firm's bank to inquire whether the original retainer check had cleared. It stated that it looked like it had cleared, and as far as it was concerned, it was a valid check. Not satisfied, our firm called the bank on which the retainer check had been drawn, and it confirmed within 30 minutes that that check too was a fraudulent check. By this time, ten days had passed since deposit of the retainer check, but it was not rejected as "counterfeit" until we called the bank on which the check had been written.

As forgeries, the two checks were very well crafted. However, our firm did not draw on either of the two checks in our trust account because our practice is to allow them to clear, and we typically confirm large checks with our own bank to determine whether the funds are available. However, the better practice would be for a firm to contact the issuing bank to determine whether it is a legitimate check. In this case, both the retainer check and the payment check were fraudulent.

It is worth checking your law firm's procedure for handling money deposited into trust to avoid an inadvertent misuse of client monies in an attorney trust account by withdrawing money that has been deposited into an attorney trust account prematurely.