

**From:** Rooney, Michael [<mailto:Michael.Rooney@Illinois.gov>]  
**Sent:** Monday, December 13, 2010 2:53 PM  
**Subject:** FW: Trust Account Scam Warning

Please see the attached email from the ARDC, the agency that regulates lawyers in Illinois. A variation of the scam for title insurance companies and agents is the foreign buyer purchasing property in multiple jurisdictions where a very large check for the earnest money on an Illinois transaction is sent with instructions to deposit the check to the title company account, then wire the excess to the buyer's representative in another state for a transaction there. Not surprisingly, some time after the wire is sent the original check is found to be fraudulent and the escrow account is short the amount of the wire.

Please make sure your registered agents are aware of these scams, the ways to spot them and to defeat them. Thank you.

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**From:** [seminars@iarcd.org](mailto:seminars@iarcd.org) [<mailto:seminars@iarcd.org>]  
**Sent:** Friday, December 10, 2010 9:54 AM  
**To:** Rooney, Michael  
**Subject:** Trust Account Scam Warning



## E-Mail Scams and Lawyer Trust Accounts

Internet fraud schemes are increasingly targeting lawyers and law firms and the banks where lawyers have their client trust accounts. While many of these scams appear outwardly questionable and, as a result, are usually ignored, there have been reported cases throughout the country where lawyers have fallen prey to these scams resulting in the loss of hundreds of thousands of dollars out of their respective trust accounts. See [ABA Journal, Six Indicted in \\$32M Internet Collection Scam That Snagged 80 Lawyers](#) (Nov. 22, 2010). Scam artists can be persistent, creative and determined; their schemes can be elaborate and sophisticated. Lawyers should be aware that these scams are out there, to be alert to the possibility of fraud, and to proceed with caution and vigilance in dealing with potential clients whose only contact with the lawyer is via the Internet or who request legal representation that requires the use of the lawyer's or law firm's trust account to receive and disburse funds. There are many variations on

how these schemes are set in motion but the motivation is the same: to get the lawyer to send them money.

## The Way it Works

The most common scenario involves an alleged overseas company that contacts a U.S. lawyer by e-mail and purports to retain that lawyer as a settlement agent to collect a debt from a debtor. "Client" tells lawyer that it is imperative that the lawyer wire the money as soon as possible after receiving it from the debtor. Lawyer then promptly receives a check from the purported debtor and deposits it into a trust account. Lawyer confirms with his/her bank that the money has been credited to the account and wires it as directed, minus the lawyer's fee, to the purported client. A few days later, bank tells the lawyer that the check is counterfeit. Bank debits the trust account for monies lost.

## Red Flags

- A prospective client e-mails the lawyer likely through a blast e-mail (e.g., addressed to "Dear Counselor" and vaguely refers to the lawyer's practice as "your jurisdiction");
- The requested representation usually involves the collection of a debt or other obligation;
- One of the parties is out of the country;
- The debt or other obligation resolves itself quickly and easily without much effort by the lawyer;
- Lawyer receives what looks like a very convincing cashier's or certified check (a bank may tell the lawyer that the instrument looks "good") for deposit in the trust account; and
- "Client" wants the funds, minus the lawyer's fee, immediately wire transferred to an out-of-the-country account.

## Avoiding the Scam

- Wait for a check, even a cashier's or certified check, to clear before using the money; provisional credit by your bank is not sufficient. Although your financial institution may quickly make funds available or may tell you that the deposit has been credited to your account within a few days after the deposit (*i.e.*, provisional credit), that does not mean that the check is good or has cleared through the original issuing institution. That can take many days. Sometimes it can take weeks to discover a very good forgery, and the check won't bounce until then. Therefore, verify the authenticity of the check with the issuing bank and confirm

with your depository bank that the check has gone through the check clearing process.

- Be suspicious of a client who insists that you send funds by wire transfer or otherwise pressures you to act quickly before you know the payment you received is good. A lawyer who decides to wait for final clearance of a check, before disbursing funds, is acting properly and is not in violation of a lawyer's duty of prompt delivery of trust funds.
- Know with whom you are dealing before accepting the representation. Take reasonable steps to verify that the "client" is who they say they are, particularly if there are generally no face-to-face communications with the client. Also, verify the information the prospective client provides concerning third parties or even a source of the referral to you. If you are dealing with a stranger, make sure you have that person's name, address and phone number, then verify those independently using reliable online directories or other third party sources.
- Your deposits are your responsibility. If you have deposited a check that then bounces, the bank may withdraw the original dollar amount credited to your trust account and it may result in the conversion of other clients' funds in your trust account. If your trust account does not have enough money to cover the deduction, the bank may freeze your trust account or the bank may sue you to recover the funds. See *Wachovia Bank v. Bartko*, No. 1:08-CV-2636 ( Ga.)

## If You Receive A Counterfeit Check

If you think that you have received a counterfeit check, do not deposit it; contact your bank.

In addition to contacting the appropriate bank, you may report:

- Scams generally - Federal Trade Commission (FTC): by telephone at 1-877-FTC-HELP or file an electronic complaint via their Internet site at [www.ftc.gov](http://www.ftc.gov)
- Internet-based scams - Federal Bureau of Investigation (FBI) Internet Fraud Complaint Center at [www.ic3.gov](http://www.ic3.gov)
- Mail-based scams - U.S. Postal Inspective Service by telephone at 1-888-877-7644, by mail at U.S. Postal Inspection Service, Office of Inspector General, Operations Support Group, 222 S. Riverside Plaza, Suite 1250, Chicago, IL 60606-6100 or via e-mail at <https://postalinspectors.uspis.gov/forms/MailFraudComplaint.aspx>

If you have a complaint or problem involving a check written on or deposited in an account at a national bank, and you cannot resolve the problem with the bank, contact

the Office of the Comptroller of the Currency's Customer Assistance Group, by calling 800-613-6743 or by sending an e-mail to: [customer.assistance@occ.treas.gov](mailto:customer.assistance@occ.treas.gov).

For further information and tips on recognizing and avoiding fake check scams, please go to:

Comptroller of the Currency - <http://www.occ.treas.gov/ftp/bulletin/2007-2.html>;

National Fraud Information Center - <http://www.fraud.org/tips/internet/fakecheck.htm>;

Internet Crime Complaint Center - <http://www.ic3.gov/crimeschemes.aspx>; and

Federal Bureau of Investigation - <http://www.fbi.gov/majcases/fraud/fraudschemes.htm>.

This email is prepared by the ARDC to provide information on current developments of interest to the legal profession in Illinois and is intended to educate Illinois lawyers on their ethical duties. Please do not reply to this email.

For general questions or concerns about the ethical responsibilities of lawyers in Illinois, please call the ARDC Ethics Inquiry Program at either of the ARDC's offices at the telephone numbers listed below. Additional information about the ARDC Ethics Inquiry Program can be obtained at [www.iardc.org/ethics.html](http://www.iardc.org/ethics.html).

*Attorney Registration and Disciplinary Commission of Illinois (ARDC)*

*Chicago Office*

One Prudential Plaza  
130 East Randolph Drive, Suite 1500  
Chicago, IL 60601-6219  
312/565-2600 or 800/826-8625

*Springfield Office*

One North Old Capitol Plaza, Suite 333  
Springfield, Illinois 62701-1625  
217/522-6838 or 800/252-8048

Web Site: [www.iardc.org](http://www.iardc.org)