

Minnesota Lawyers Mutual Insurance Company has seen an alarming number of e-mail scams aimed at lawyers and law firms. Although the scams seem relatively simple, the damage caused to attorneys falling prey to such schemes has been staggering.

ETHICS COMPLAINT SCAM

MLM warns its insureds about more fraudulent e-mails that are being distributed; one with the subject that includes something similar to: “**Ethics Complaint**” or “**Bar Complaint**.” It may also contain a return address or internal links such as Complaint.dept@outlook.com or Complaints@bar.com. Do not click on the link as they appear to be an attempt to put ‘ransomware’ on an affected computer. If you open the links, you may have to pay a “ransom” to have your computer unlocked – seriously.

This Internet scam is targeting lawyers by exploiting their fears of a disciplinary complaint. The e-mails, which typically appear to originate with a state bar association, come with a subject line informing the recipient that they are the subject of an ethics complaint, which is supposedly attached to the e-mail. The attachment contains ransomware.

Ransomware poses serious ethical and practical dilemmas. It essentially installs itself on your computer and starts encrypting your files, and then it notifies you after it’s encrypted your files and says, “Hey, we’ve got your system. Please pay us X number of dollars, and we’ll give you the key to unlock all of your files.”

Bar Associations will never make initial contact with you about an ethics issue or a grievance via e-mail. **Delete any such e-mail immediately.**

CHECK SCAM

Check scams typically involve a foreign client contacting an attorney by way of e-mail, purportedly for the purpose of collecting a debt owed by an American company. Shortly after the attorney communicates with the American company, a cashier’s check from the American company, representing payment of all or a portion of the debt arrives by mail at the attorney’s office. The client then directs the attorney to deposit the check into the attorney’s bank account and to immediately wire transfer the funds, less the attorney’s fee, to a foreign bank. Although correspondence from the American company and the cashier’s check look authentic, the check is a counterfeit. Meanwhile, almost

immediately after the counterfeit check is deposited in the attorney’s bank account, the bank makes funds available to the attorney. By the time the bank determines that the check was counterfeit, the funds have been wired and cannot be recovered. The bank then turns to recover the funds from the attorney. The scam has a few variations – including a request to seek collection on an unpaid property settlement from an ex-spouse pursuant to a divorce decree – but in all cases, the attorney is being asked to run funds through his or her trust account. For the scheme to be successful, the scammer relies on the attorney to transfer the funds, before verifying that their bank has collected the funds from the check issuer’s account.

Another variation worth mentioning is one that is more in the nature of transactional law, instead of collections. In these cases, the foreign client (scammer) claims to have a contract with an American company that is buying a large piece of equipment. The counterfeit checks the attorney receives are the payments for the purchase called for under the contract.

WARNING SIGNS

Of the lawyers encountering the fraudulent activity, many report that the solicitations are not of the variety that are often easily spotted such as the “Advance Fee Scheme” where the request to participate in a money- making venture is usually never personally addressed to the recipient, and confidence-building language riddled with misspellings is used. Instead, the solicitations are personally addressed to the lawyer, and the initial e-mail usually includes detailed information about the foreign company requesting services, the American company owing the debt, the nature of the debt, including the debt amount and past attempts to collect on the debt, as well as web links and telephone numbers to persons who can verify the debt. Attorneys attempting to verify the debt have had mixed results, reporting in some cases that an e-mail or call to the “representative” of the debtor corporation has produced a quick verification response – also part of the scam.

The scheme aimed at attorneys also relies on the attorney’s sense of urgency, by requesting the quick processing of the funds and addressing the large-scale collection matter as if it

were a routine transaction for the target of the scam. The fact that the debt repayment comes in the form of a cashier's check gives the attorney a false sense of security that the check is legitimate. This is ultimately what often

causes the victims of the scam to let their guard down and authorize the wire transfer before verifying the check has cleared and their bank has collected on the check.

As a reminder, counterfeit checks are often not recognized when they are deposited into a bank account. Additionally, confirming with the bank that the funds are "available" is not confirmation that the check has cleared and the funds have been collected from the check issuer's account.

One final twist to the scheme is that the request by the foreign client for quick processing frequently occurs around bank holidays – taking advantage of the fact that bank processing time is postponed over a three-day weekend. Extending the time for processing adds to the amount of time the bank needs to identify whether a check is counterfeit, and ultimately works to the scammer's advantage.

HOW TO AVOID

- The most important advice involving the transfer of escrowed funds is to always wait for bank verification that the deposited funds have been collected from the check issuer's account. A bank representative accepting the funds for deposit or indicating orally that the funds are available is not assurance that the check has cleared. The lawyers who waited for verification that the funds have been collected from the issuer's account – despite the client's fervent requests for quick processing – saved themselves from becoming the victims of large scale fraud.

- If the request for assistance is outside your area of expertise, do not take on the work. Debt collection is fraught with malpractice hazards that can trip up any attorney who is not familiar with the federal Fair Debt Collection Practices Act. Such a request maybe tempting, especially if it involves relatively little work, but it may be aimed at you for that very reason.
- Verify the client seeking legal services is a legitimate company. If you cannot meet personally with a representative of the client company, consider asking the client for references, including the names of other attorneys who have done work for the company.
- Verify the debt is a legitimate. A call to the comptroller of the debtor company can verify whether the debt was owed and that the cashier's check was legitimately issued as repayment. However, it is very important to not rely solely on contact information provided to you by the foreign client.
- Obtain a retainer payment for your anticipated legal services. A payment to your firm from the foreign client is not necessarily proof that their activity is not fraudulent, but most scammers won't bother responding to your request for a retainer payment.
- Trust your gut instincts. If the proposal sounds too good to be true, it probably is. Some scam participants have visited the lawyer personally, presenting false identification documents in order to gain the lawyer's confidence that the legal services being requested are for a legitimate purpose. Your gut instincts are often the best test for determining whether your attorney client relationship will eventually have a successful outcome.

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MLM101032021