



**UNSOLICITED AND UNEXPECTED COMMUNICATIONS  
AND THE TROUBLE THEY CAN CREATE**

2018 ETHICS UPDATE<sup>1</sup>

PRESENTATION TO THE TAX, BUSINESS LAW, REAL ESTATE AND  
TRUST AND ESTATE SECTIONS

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*BY HERRICK K. LIDSTONE, JR.  
BURNS, FIGA & WILL, P.C.  
GREENWOOD VILLAGE, CO*

How many times have we received emails from unknown parties starting off: “Can your firm handle IP Litigation agreement matter matter [*sic*], a referral will be appreciated. Thanks, Michael.”<sup>2</sup> Sometimes they talk about existing agreements, an attorney needed to perform due diligence to validate the assets, or running funds through an attorney trust account because we are so reputable. Another scam is to fund your law firm with working capital: “Get an offer and capital in your account within 24 hours.” DON’T.

Remember the old adage: “If it sounds too good to be true, it probably is.” The following emails reflect the risks that lawyers run in those situations.

**1. SCAMS TO AVOID:**

This is from the [SMBIZ@MAIL.AMERICANBAR.ORG](mailto:SMBIZ@MAIL.AMERICANBAR.ORG) email listserv on November 6, 2018, where they used the actual lawyers’ names, which I have redacted to save the embarrassment for the ethical and financial problems that developed.

***A. Email No. 1 – The Inquiry***

***Subject: Help with Due Diligence***

I have a client who has received a term sheet for a \$1.5 Million convertible note investment from:

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<sup>1</sup> An expanded and updated version is available at Lidstone, Herrick K., “Ethics Rules Lawyers Should Remember,” <https://ssrn.com/abstract=2874398>.

<sup>2</sup> Email (with typos) received on November 7, 2018 – not from “Michael” but from David at [dvonbg@gmail.com](mailto:dvonbg@gmail.com).

AI \*\*\*\*\* Investment LLC  
Bahrain Financial Harbour  
Manama, Bahrain

Our checking supports that this a very well-respected organization. The Term Sheet does not require any upfront payment by the client, other than a trip to the Middle East to attend the closing.

Having heard, and personally seen, quite a number of scams, I am perhaps overly suspicious. I wonder if anyone on the listserv has had any experience with the organization?

I would appreciate anybody with direct experience with AI \*\*\*\*\* Investment LLC letting me know if there is a reason not to proceed.

Thanks,

AAAA BBBBBB, Attorney

***B. Email No. 2 – The Rule of Law Is a Suggestion – Not a Law***

I have done business in that area for years and you must be very careful. The Rule of Law is a suggestion so once you're burned it, it is very difficult to seek justice from the Court. I would do a very through Due Diligence including asking for money up front.

CCCC DDDDDD, Attorney

***C. Email No. 3 – Don't Get Taken***

I disagree with the suggestion that an attorney or client request money "up front" before the identity and legitimacy of the counterparty and funder is determined definitively. Accepting money from an unverified foreign source can bite the lawyer in the tuchas.<sup>3</sup>

EEEE FFFFFFF, Attorney

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<sup>3</sup> EEEE was probably referring to anti-money laundering and similar laws discussed briefly below in Section 2.B.

*D. Email No. 4 – I Was Burned; There Were Criminal and Ethical Consequences*

Hello AAAA and all:

Let me recommend that you be more than cautious. I was burned earlier this year in a matter by a foreign business that did everything to verify that they were legitimate and that all the facts of the story lined up without a problem. It was supposed to be a straightforward matter that they wanted to do on contingency, they agreed to pay the going rate on the matter. I had a retainer agreement from them, the existing contracts that were in dispute, email communications between the parties, term sheets, verification of everything, etc. I had contacts that verified their existence, their addresses were verified via passport, LinkedIn, corporate records, and register of deeds searches on the property they claimed to be located be at. I thought I had been extra careful and verified everything possible. Little did I know.

Once we started the litigation on the contract, the other side settled really fast to protect their “business reputation” and signed a settlement offer and cut the first payment on a large settlement, just as they said they would. We never got the formal papers filed with the courts or the government agencies involved in the dispute, because it was “settled.” I received the first payment, deducted my fees, and got ready to transfer the monies back overseas to the Plaintiff corporation. I did everything I could to verify their existence and then some.

In the end, the settlement check ended up being a fraudulent check, drawn on a major Canadian Bank (my client was a Canadian Co.). The check cleared my bank, the Federal Reserve Bank, the international clearing house, but when it was presented back to Canada Bank and Trust for payment, they stated the check was fraudulent. Contemporaneous to this realization, my bank clawed back as much of the funds they dispersed, as they could, from my operating account and people I paid with that money from my fees. Because the check washed thru my IOLTA, they made a formal complaint to the Bar, and the police, claiming I passed a bad check.

It is now being investigated by the bar, and the bank and I, who are both the victims here, are suing each other. They are suing me for passing a bad check; I am suing them on my banking agreement and reliance on the fact that the funds cleared my bank and all the clearing houses, and we all believed the system would work normally and the funds being paid out from Canada, to my bank, upon presentment of the check. That never happened.

The only saving grace here was that I insisted upon some legal fees up front, so they would have some “skin in the game.” They were happy to do that because I reduced the contingency I was going to collect to insure I got something. That check was fraudulent also. I would have transferred the initial settlement payout to them, and they would have made out like bandits (which they were) had the system run just a couple of days slower. In the end, we are fighting over \$152,250.00 and I am probably going to get stuck with it. Who knows what the MI Bar is going to do. The police have dismissed the matter against me and my firm.

The moral of this is, be very, very careful. Don't use any phone number they give you. Check the websites, physical addresses, names of people, and everything else you possibly can. Even then, unless you actually meet face-to-face, you still might get burned. I have no idea what the ABA's opinion is on this, what they would say about this, or what anybody else's experience is with this type of fraud, but I got burned. Good luck.

Respectfully yours,

GGGG HHHHHH, Attorney

*E. Email No. 5 – Scammers Prey On Smaller Firms; A Less Costly Mistake*

Thank you GGGG for sharing this story. This is heartbreaking!

These scammers prey on us smaller firms, as they think we don't conduct our due diligence. But even if we do, they are very slick with how much effort they go to in order to make it look real.

1. I too spent 5 hours into an Asset Purchase Agreement, making deal suggestions and higher level of comment and edit, with a totally fake company. Looking back, it was probably going to be a money laundering scheme to get money into the US. They offered to send me a \$10,000 retainer and the next question they had was, "oh BTW, can I hold the entire \$1.5 million sale proceeds in my own lawyer's escrow account." No WAY!

Luckily, I had spent only 5 hours of my time making comments and suggestions on the POS (piece of junk) Asset Purchase Agreement, on their promise of sending a retainer "shortly." Luckily I didn't receive any money from them, so I was not tied into it like you were but sadly I was out 5 hours of time, which PALES compared to what you are out. As soon as I asked the guys I dealt with for the name of their US Accountant and their general corporate counsel, they disappeared.

2. In two other situations, these scammers emailed me seeking to buy a company here in Illinois, in one case they were very clever, they picked an address in Downers Grove (Chicago suburb where my office is located) thinking I'd take the bite, to do a local deal. I did....for a just a short while.....until I physically drove over to the location address they provided (5 minutes from my office) and it was a completely different company, not the one they said.

3. In another case I called the purported target company the scammers were buying, but instead of using their fake phone numbers, I used the website phone number. The people at the REAL company, including the CFO, had no idea what I was talking about and said they were not selling the company.

4. I've also had clients ripped off in similar situations with scammers who say they want to buy their company, or invest into it.

IIII JJJJJ, Attorney

***F. Email No. 6 – Catch Me If You Can***

This entire thread is crazy to me, especially since I work in the blockchain space and it's supposed to solve stuff like this. It's like "Catch Me If You Can" except 50 years later, the problem still persists.

MMMM NNNNNN, Attorney

**2. AVOID CHECKS – DOES A FED WIRE WORK?**

***A. Contact the Issuing Bank Before Counting the Money***

In case this was not already mentioned in this thread, for those who ask for a retainer up front in these types of situations, another option is to contact the relevant bank prior to depositing the check. My former firm dealt with a very similar situation to what GGGG described, circa 2010-11, up through receipt of the initial retainer fee. We also insisted on some legal fees up front, so they would have skin in the game. When a certified bank check from Chase arrived via UPS, I asked an associate at our firm to walk it into a Chase branch across the street from our offices. No surprise for this thread – upon entering the check number into their system, the bank advised that the check was not real.

KKKK LLLLLL, Attorney

***B. Payment Terms.***

I always insist that any large sum be paid by wire transfer. That makes the money go through the entire system up front. Even so I wait several days before taking any money out or disbursing any funds. I also check with my banker before disbursing. Wire transfers seem to work. However, I have gotten large checks, presumably in payment, which I did not deposit. Oddly, the senders did not make much of a fuss – because they were frauds. However, I never had a situation which went so far as you describe.

OOOO PPPPPP, Attorney

**C. *Unexpected \$199,800 Cashier's Check Issued By A Major Canadian Bank***

We recently received a large cashier's check purportedly issued by a major Canadian bank for the account of a person who was not a client and had communicated with us several months before. Our staff was suspicious and brought it to my attention. I contacted our bank who referred me to the bank's fraud department. The fraud investigator declared the check fraudulent in less than a minute because of the routing and account numbers not being consistent with the balance of the check.

Trying to learn, I asked her how she was going to proceed. She was going to do more investigation (I had sent her all of our communications and information) and write a fraud report which she would send to the U.S. Secret Service. The Secret Service tracks these fraudulent checks and takes action where they can identify the participants and obtain jurisdiction. The fraud examiner said that she receives approximately 20 of these checks for examination each month from clients – and they are all fraudulent.

I asked her how innocent law firms and others can protect themselves from this situation – thus avoiding the problems that Email #4 pointed out. Her comment was client awareness – each bank client must be aware of the risk of fraudulent checks. Awareness goes to staff opening the mail; attorneys receiving the mail; bookkeeping persons depositing the checks.

We did not deposit the check. We did respond to the person who had contacted us earlier that we did not and have not represented that person in any matter – to ensure that there could be no allegation of the existence of an attorney-client relationship.

**D. *Money Laundering and Other Issues***

Even when the funds are real, there are issues under AML Laws, FIRPTA, FIRRMA (Foreign Investment Risk Review Modernization Act of 2018), FinCEN regulation requiring disclosure of beneficial owners of foreign investments (including through geographic targeting orders), and other regulations.<sup>4</sup>

**3. ETHICAL RULES AT ISSUE**

There is always a question of “who is your client” – implicating the establishment of the attorney-client relationship. If you cannot obtain and verify sufficient information to identify your client, you will be taking risks on the authority of the persons giving you information, the ability

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<sup>4</sup> For a brief discussion of anti-money laundering and related issues, see Lidstone, “*Beneficial Ownership Legislation and Geographic Targeting Orders*,” available at <https://ssrn.com/abstract=2923842>. For a discussion of “*New CFIUS Mandatory Filings for Foreign Investments In Critical Technologies and Industries*,” see the Taft Stettinius & Hollister LLP newsletter available at <https://www.taftlaw.com/news-events/law-bulletins/new-cfius-mandatory-filings-for-foreign-investments-in-critical-technologies-and-industries>.

to provide the client competent representation and meet your communication obligations, manage conflicts and protect confidentiality, and comply with the anti-money laundering rules. Consider Rules 1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 1.8, 1.9, 1.13, and 8.4.

Many of these opportunities as described above use checks, even cashiers' checks, which the banking system can take a long while to clear (even though we as customers think differently). Similarly, for credit cards – most issuers allow holders to challenge charges 90 days or more after made – after, of course, we have spent the funds we thought we received. This, of course implicates Rules 1.5, 1015A through 1.15E, and again Rule 8.4. CAUTION should be the word of the day.