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The Legal Ethics Project. **Supporting professionalism with information.**

Q: Dear Ethics Lawyer,

Our firm undertook a high-level collection action on a contingent fee basis for a foreign client that we understood to be a lender. The scope of our representation was to collect a substantial debt from an American company that had borrowed a few million dollars from our foreign client. After exchange of a few letters with the debtor, we obtained the debtor's agreement to settle the matter for a substantial payment, which the debtor soon paid by check to our firm (with our client's agreement that we could deposit it in our trust account, then pay the firm its fee and forward the remainder to the client).

When the bank advised that the check had "cleared" and funds were available, we transferred the fee portion to our operating account and wired the rest of the funds to the foreign client. Ten days later, the bank notified us that the check had been fraudulent, and that the firm was responsible for covering the deficiency. Communications to our foreign client at that point went unanswered. Obviously, we have been scammed by the "creditor client," most likely in cahoots with the claimed "debtor." We'd like to report this to relevant law enforcement authorities. But, this entity was our client, and under Model Rule 1.6, we have a general obligation to keep all information relating to the representation confidential unless we have client consent. There is an exception to prevent a future crime or fraud, but this crime or fraud has been completed. Are we able to report this crime?

A: Your firm learned the hard way that a check can be cleared even though a bank has not actually collected the funds, and that a fraudulent check can be reversed much later. ABA Formal Op. 515 (Mar. 15, 2025) addressed this situation as one of several hypotheticals in which a client or prospective client committed a financial or violent crime against a lawyer, law firm or someone associated with them. The Opinion notes that Rule 1.6(b)(5) permits a lawyer to make necessary disclosures to establish a claim or defense in an action between the lawyer and client. For example, if your firm were to file a civil action against the alleged scammers, you could allege and prove facts necessary to your claim. But that exception does not expressly authorize disclosures to law enforcement. Nonetheless, the ABA Committee opined that an implicit exception applies to promote the public interest in enforcement of the criminal law, and prevent lawyers from becoming helpless targets of crime. The Committee would extend this exception to situations in which the lawyer is a witness to a

client's crime against someone associated with or related to the lawyer. In either case, the exception would be limited to only that information necessary for investigation and prosecution.

The Ethics Lawyer

About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by Mark Hinderks, former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's Legal Ethics & Professional Responsibility practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to mark.hinderks@stinson.com.

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.