

Policy No. 20:

Subject: **DECEPTIVE PRACTICES**

For the most part, Article 17 of the Criminal Code governs the bulk of "deceptive practices" cases handled by the State's Attorney's Office ("bad check" cases, including NSF or "insufficient funds" cases, "stop payment" orders, forgery, etc.)<sup>1</sup>. Civil liability is generally not an issue for the prosecutor's office, other than in requests for restitution at sentencing hearings, which for the most part is governed by other statutes.<sup>2</sup>

A typical Criminal Complaint which has been accepted for prosecution by this office may be drafted in language similar to the following illustration:

*"On or about the 1<sup>st</sup> day of January, 2001, Defendant, John L. Sneaky, committed the offense of Deceptive Practices, in that he, with the intent to defraud and the intent to obtain control over certain property of Ralph's Hometown Pharmacy, Inc., a corporation doing business at 1234 Main Street, Kankakee, Illinois, knowingly delivered a certain bank check to Ralph Smith, and employee of said corporation, dated January 1, 2001, drawn on the Hometown City Bank, payable to "Ralph's Pharmacy" in the amount of \$109.66, and signed as drawer John L. Sneaky, knowing said check would not be paid by the depository. (A copy of the check is attached hereto and made a part hereof by reference)."*

Guidelines for Law Enforcement staff and personnel:

When a Complainant first presents to the law enforcement authority on a Deceptive Practices report, the police should advise the Complainant that he needs to present proof, or certification, that he has presented the "bad check" for payment on at least two occasions seven (7) days apart, and that it has been dishonored on each of two occasions seven (7) days apart, and to send a certified letter to the Defendant, stating therein that Complainant has received a "bad check". A police report need not be filed until such time as the police have received the green card receipt of mailing. This receipt will serve as proof that the complainant has made a good faith effort to contact the Defendant.

Once the Complainant receives back the green card receipt, whether served or not, he should bring the receipt of mailing, a copy of his demand-letter for payment, and the check itself to the police department, together with proof or certification that the check was presented and dishonored on each of two occasions at least seven (7) days apart. Complainant should at that time fill out the appropriate Deceptive Practices Fact Sheet. Before a complaint is to be taken, the Complainant must be able to provide the date of birth of the check-passer and either a driver's license number or social security number.<sup>3</sup> When these materials have been assembled and completed, then, at that time, a formal police report should be completed. All materials should be photocopied, and the originals of these materials sent to the State's Attorney's Office for review.

<sup>1</sup> Illinois Criminal code of 1961, as amended; 720 ILCS 5/17-1 et seq.

<sup>2</sup> Uniform Commercial Code, Art. 3 "Negotiable Instruments"; 810 ILCS 5/3-101 et seq.; 720 ILCS 5/17-1a (civil liability for deceptive practices); etc.

<sup>3</sup> If this information cannot be provided, a report should not be taken.

A police intake-officer should not send or direct a Deceptive Practices Complainant directly to the State's Attorney's Office to sign a complaint. A Complainant can and should do this at the police agency, under the guidelines set forth in this policy. If the Complainant has a unique or special problem or situation that needs discussion, then in those circumstances, please call or contact an Assistant to discuss the problem.

Guidelines for State's Attorney's staff and personnel:

If the Office of State's Attorney does accept a deceptive practice complaint for prosecution, restitution should not be guaranteed or outcome or recovery of money assured, as we are not a collection agency, and multiple civil remedies are available; however, once a case is accepted, this Office will make every reasonable effort to recover restitution.

The State's Attorney's Office does **NOT** accept:

- Stop payment check cases;
- Third-party check cases;
- Check cases where the check was accepted for payment of rent;
- Check cases where partial payment has been accepted;
- Check cases where the check is pre-dated or asked to be held  
For presentment;
- Any case where the check is written to pay off a previously  
Incurred debt.

Generally, the Office will not accept any case where:

- The check is in an amount less than \$100; or
- More than 60 days have passed since issuance; or
- The check was written on a business or corporate  
account; or
- In circumstances where a check is to be held as a note until a  
specified time in the future for presentment<sup>4</sup>; or
- Where the Complainant is in the business of lending money for a fee.

Guidelines for the public:

All complaints of Deceptive Practice should be filed through the appropriate police department or law enforcement office, according to the guidelines set forth above. The State's Attorney's Office does not accept complaints directly at this Office. Each police department is instructed not to accept a complaint from the public unless the Complainant can provide it with the proper identification of the check-passer, including at least the check-passer's date-of-birth and his Social Security number or driver's license number.

It is the debt collector's (creditor's) responsibility to draft and mail (by certified mail, return receipt requested) his own demand letter for payment, to present the "bad check" for payment on at least two occasions seven (7) days apart, and to comply with all local, State,

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<sup>4</sup> Compare general comments in *People v. Billingsley*, 213 N.E.2d 765, 67 Ill.App.2d 292; *People v. Samples*, 224 N.E.2d 284, 80 Ill.App.2d 182; etc.

and federal laws, rules and regulations, including, but not limited to, the Fair Debt Collection Practices Act.<sup>5</sup>

If the Defendant pays the check in full after a complaint has been filed, you must notify our office immediately in writing. This information will not be accepted by telephone. Once such a letter has been received, it will be posted to our internal file, and at the next court date, the Assistant State's Attorney handling the case will decide if the case will be dismissed. Any felony case that is sent to the Grand Jury and is returned as a True Bill on Indictment will not necessarily be dismissed, and the Complainant may still need to testify if the case advances to trial or hearing.

Date of adoption: February 13, 2001

Date of amendment: May 4, 2006

/s/ Edward D. Smith  
State's Attorney

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<sup>5</sup> "Fair Debt Collection Practices Act", 15 USC 1601 et seq.; Public Law 104-208, 110 Stat. 3009, as amended; 15 USC 1692 et seq.; etc.

CRIMINAL COMPLAINT

IN THE CIRCUIT COURT OF THE TKNY FIRST JUDICIAL CIRCUIT  
IN THE COUNTY OF KANKAKEE AND STATE OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS )  
VERSUS \_\_\_\_\_ )

CAN;  
CASE NUMBER: \_\_\_\_\_

Race \_\_\_\_\_

Height [ ][ ] DOB [ ][ ][ ][ ][ ][ ][ ][ ][ ]

OFFENSE: DECEPTIVE PRACTICE

Weight [ ][ ][ ]

Address \_\_\_\_\_ Complainant,

on oath says that \_\_\_\_\_ Defendant,

committed the offense of DECEPTIVE PRACTICE in violation of

Chapter 720, Act 5, Section 17-1(B) (d) of the Illinois Compiled Statutes, in that said defendant, on the \_\_\_\_\_ day of

\_\_\_\_\_, [ ][ ][ ] in the County of Kankakee and State of Illinois, knowingly and unlawfully, with the intent to defraud and the intent to obtain control over certain property of

\_\_\_\_\_ a corporation licensed to do business, knowingly delivered a certain bank check to said corporation, drawn upon :

\_\_\_\_\_ and signed him/herself as maker, knowing said check would not be paid by the depository. TO WIT:

CHECK #	DATED	PAYABLE TO	AMOUNT

\_\_\_\_\_ COMPLAINANT

SUBSCRIBED and SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_ NOTARY PUBLIC

DECEPTIVE PRACTICE FACT SHEET

**Company Represented:**

**Your name, address, and daytime phone number:**

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Did you know the defendant prior to this incident?  Yes  NO

if yes, how long: \_\_\_\_\_

Did anyone accompany the check passer?  Yes  NO

if yes, describe individual or state name:

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Date check was accepted:

Amount of check:

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Name, address, and daytime phone of person who accepted check:

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**CAN THIS PERSON IDENTIFY THE CHECK PASSER?**  YES  NO

was the check post-dated?  Yes  NO

Did the passer ask that the check be held?  Yes  NO

Was full value given for the Check?  Yes  NO

Did you hold the check?  Yes  No

if Yes, why:

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Did you ask for identification?  Yes  NO

if Yes, what was shown?

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What was given for the check?  Merchandise  Cash

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Describe any and all efforts that have been made by your company to collect this debt:

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Any partial Payments?  Yes  NO if yes, amount: \_\_\_\_\_

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Complainant