



MIAMI COUNTY ATTORNEY'S OFFICE

David L. Miller, County Attorney

Miami County Courthouse
120 South Pearl, Room 300

Paola, Kansas 66071

Telephone: (913) 294-3181

Facsimile: (913) 294-9555

E-mail: miamicoatty@classicnet.net

PROSECUTION OF WORTHLESS CHECKS

Not all "bad" checks fall under the jurisdiction of the criminal courts. There are specific elements of the crime we must prove before we can begin prosecution. If you have any questions regarding the following information, please contact our office.

INTENT TO DEFRAUD: The issuance of the check must have caused you to give up something of value. It must not be for the payment of an existing debt. It must be marked "Insufficient Funds" or "Account Closed".

JURISDICTION: The check must have been passed in Miami County, Kansas.

IDENTIFICATION: In order to prosecute a bad check case we must prepare a complaint and issue a summons or a warrant for the arrest of the check writer. Therefore, **we must have positive identification which will include driver's license number and date of birth.** The merchant must actually look at the driver's license of the check writer, compare the picture to the check writer and record the necessary information onto the check. The merchant should have some means of marking the check to indicate that this procedure was followed so the clerk can testify with certainty that he or she went through this process.

Please be advised that bad check writers and forgers know which merchants do not require identification and will frequent those stores in order to obtain cash or merchandise for resale or return. Protect your business and your customers by requesting identification when accepting a check.

NOTIFICATION: You must send a certified and restricted letter, return receipt requested, to the person who signed the check. The letter must be sent to the address on the check. There is no exception to this requirement. You must give the person seven (7) days from their receipt of the letter to make restitution. A suggested "seven day letter" is attached. Keep a copy of the letter you send.

If you do not receive restitution within seven days of the letter's delivery or if the certified and restricted letter is returned to you marked "unclaimed", you still may send the check to us for prosecution. We must, however, receive the check from you within **3 months** of the date written.

Page Two, Prosecution of Worthless Checks

To present a check for prosecution you must fill out the Affidavit for Prosecution, which is to be signed in the presence of a notary public. **The clerk or individual that actually took the check must fill out and sign the Offense Report.** One set of these forms is enclosed. Any check(s) submitted for prosecution must be for an amount in excess of **\$10.00**.

Bring the completed forms; original check; signed green card from certified/restricted letter or entire, unclaimed, unopened, certified/restricted letter; and copy of seven day letter to the Miami County Attorney's Office, Miami County Courthouse, 3rd Floor, East Side, Paola, Kansas.

**PLEASE DO NOT HAVE ANY CONTACT WITH OR ACCEPT ANY
RESTITUTION FROM THE BAD CHECK WRITER AFTER YOU HAVE
SUBMITTED THE COMPLAINT TO OUR OFFICE.**

AFFIDAVIT FOR PROSECUTION OF A WORTHLESS CHECK

(Please complete form fully)

STATE OF KANSAS, MIAMI COUNTY, SS:

COMES NOW, the undersigned and after being sworn on oath, states that:

The attached check(s), dated _____, drawn on the _____ Bank of _____, purporting to have been made and signed by _____ was delivered to the payee, _____ of _____, Miami County, Kansas, by a person identified as _____, who in return received merchandise or cash or both at the time the check(s) was passed and said check(s) was personally received by _____, who can positively identify the defendant in court as the passer of the check(s). The names and addresses of other witnesses having knowledge thereof are:

There was no delay in depositing said check(s) or presentation for payment, said check(s) having been deposited or presented for payment in the usual course of business.

When said check(s) was returned unpaid from the bank, payee did on the _____ day of _____, 200____, by certified and restricted letter, return receipt requested, advise the maker that said check(s) had been returned from drawee's bank unpaid and marked "_____" and demanded that the maker pay the amount of the check(s), plus service charge, to payee within seven (7) days of receipt of the letter. Seven (7) days have passed since said time and no restitution has been paid.

The check writer did not borrow any money from the payee; said check(s) was not given as security for a loan or debt; said check(s) was not given for a gambling debt; and said check(s) was not given for past due rent or payment on account.

The attached check(s) is submitted to the County Attorney's Office for the purpose of prosecution and not collection. It is to be understood and agreed that no payments on said check(s) are to be accepted by payee, its agents, and employees; and dismissal shall not be proposed or agreed upon by payee without prior approval of the Miami County Attorney's Office; and that the determination of the manner of prosecution or dismissal thereof is at the sole discretion of the Miami County Attorney's Office.

OFFENSE REPORT – WORTHLESS CHECK

**THE FOLLOWING FORM MUST BE COMPLETED AND SIGNED
BY PERSON WHO ACCEPTED CHECK.**

1. Name of person who accepted check: _____

2. How can you identify the check writer: _____

3. Was the check postdated? YES NO

4. Did anyone agree to hold the check for deposit? YES NO

5. Did the passer say the check was not good? YES NO

6. Did you accept the check believing it was good? YES NO

7. Was the check signed in your presence? YES NO

8. Was the check made out before you saw it? YES NO

9. Have you done business with this person before? YES NO

10. Did anyone else mark or approve the check? YES NO
If yes, who? _____

11. Names of any witnesses to the passing of the check?

12. Name of person presenting check: _____

13. Male _____ Female _____

14. White _____ Black _____ Other _____

15. Date of birth _____ How obtained? _____

16. Drivers license no. _____ How obtained? _____

17. Height _____ Weight _____ Hair _____ Eye _____

18. Any peculiar marks or traits: _____

19. Any further information concerning passer of check:

Signature Date

Suggested Seven Day Letter Form

Dear _____:

Please be advised that the check you gave us, dated _____, for the amount of \$_____, and drawn on the _____ Bank of _____, has been returned to us marked "Insufficient Funds or Account Closed".

Unless you take care of this matter within seven (7) days of your receipt of this notice, the check will be turned over to the Miami County Attorney's Office, whose decision for handling this matter we will accept.

This is done in accordance with KSA 21-3707.