

# OFFICE OF THE LABETTE COUNTY ATTORNEY

*Hillary McKinney, County Attorney*  
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## **Attorney's Office**

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## **Oswego Courthouse**

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Oswego, Kansas 67356  
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To Whom It May Concern:

While this office wants to help as much as possible to prevent loss due to bad checks, we are not and cannot legally function as a collection agency. Our function is the prosecution of crime. This information and package has been compiled to help increase your chances for a full recovery. Please read it and follow all directions, if you have questions please call our Oswego office for guidance.

All bad check cases are prosecuted by our Oswego office and are filed in District Court sitting in Oswego. Therefore, all questions and correspondence must be directed to our Oswego office.

## **Will this office prosecute a "bad check" case for me?**

You should understand that prosecution is at the discretion of the State. This Office represents the State in criminal matters. Therefore, we have the obligation to review the information presented and determine if we believe the evidence is sufficient to establish guilt beyond a reasonable doubt for the prosecution of each "bad check" case. If at any time during prosecution we become of the opinion that this burden cannot be achieved we will dismiss the case. However, you should be informed that this does not prevent you from filing suit in civil court to recover your damages. In many cases, it is easier for you or your attorney to recover damages in civil court than in criminal court.

### **A. Jurisdiction**

The check must have been exchanged for something of value within the geographical borders of Labette County, Kansas. If not, you must contact the proper authorities in the jurisdiction where the check was passed.

### **B. Intent to Defraud**

We must prove that the check writer intended to defraud you at the time he/she gave you the check and that you accepted the check in good faith that it would clear the bank on the

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**Amanda S. Cardona**, Legal Assistant

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day that it was actually written. We cannot accept post-dated checks that you agree to hold and deposit later. The check must be returned marked "Insufficient funds" or "Account Closed". If the check is marked in any other manner, including "Stop Payment", then we ask that you first contact our office to determine what action to take.

### C. Identification

Because it is not possible to prosecute on a check without a way to identify the maker or passer of the check, we must decline prosecution on checks where there is no basis to identify the maker or issuer of the check. From a practical and legal point of view, the person who received the check must be able to positively identify the check writer under oath in Court. One of the best ways to establish a basis for identification is to require positive picture identification (drivers license, passport, etc.) at the point of sale along with other pertinent information. Merchants are well advised to require the following information, which should appear on the check, when accepting a check:

- Drivers' License Number
- Date of Birth
- Home or Work Phone Number
- Name of Employer

In addition, the person accepting the check should request positive identification at the time the check is given to the merchant (if different than the point of sale). If you do not require positive photo identification and follow the above-stated guidelines, you risk accepting a stolen or forged check and your chances of recovery are thereby severely diminished. You should have a method of identifying the person who took the check such as initials in the upper left-hand corner of the check. It is the merchant's responsibility to maintain contact with employees so they can be located if necessary for trial.

### D. Notification

Kansas's worthless check law at K.S.A. 21-3707 requires you to send a certified letter to the check writer at the address on the check allowing him/her seven (7) days from the receipt of the letter to pay the check. This letter must be sent certified mail, restricted delivery with return receipt requested. If the letter is accepted, the post office will return the signed receipt to you; if it is not accepted, the unclaimed letter will be returned to you upon request.

### E. Time Frame

To be successfully prosecuted a check should reach our office in at least ninety (90) days from the date the worthless check was passed. If all known checks have been collected, charges filed and the case resolved then a merchant brings in more checks that were written in that same time period but did not refer them to use in a timely manner, no new prosecution will be initiated. If a merchant holds checks so that a large number of checks are turned over for prosecution at the same time, this office will handle them as time permits.

**Kathie Trindal**, Paralegal

**Amy E. Crider**, Legal Assistant

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## F. Restitution

Once you have forwarded a check to our office you have given up your rights to collect on the check(s). Please do not accept restitution or partial payment of restitution unless you have first contacted our office. This office will not, as a rule, dismiss a case that has been filed upon payment of restitution to a business. Further, you may subject yourself to civil liability if the check writer has paid you restitution and is later arrested. Please be advised that if you accept partial restitution prior to filing a criminal complaint, the check then legally becomes a promissory note and we cannot prosecute.

## G. Filing the Case

Bring the affidavit, offense report, original check, copy of the notice letter and signed receipt or unclaimed certified letter with the green card from the post office to our Oswego office. Alternative, you may mail these items to our Oswego office (address above).

Our office will first attempt to notify the check writer and give him/her the opportunity to pay the check. If the suspect comes to you to pay the check, please call our office to see whether you should accept restitution (number above).

### Tips

- 1) Read everything and understand it – If you don't understand, ask us!
- 2) Follow directions – if we have a blank, fill it out, even if you have to write "Not Applicable" or "N/A", at least write something in it.
- 3) We do not take checks that are post dated, for rent, payment on a contract or loan.
- 4) We do not take two-party checks.
- 5) All checks must be posted as insufficient funds or account closed only.
- 6) Don't forget to include all information you may have on the passer. Our office must have the passers date of birth and/or their drivers' license number with correct state. We have to be able to properly identify the passer and the above information is critical.
- 7) Our office has the right to not prosecute a check for any reason.

## AFFIDAVIT FOR PROSECUTION OF A WORTHLESS CHECK

STATE OF KANSAS, LABETTE COUNTY, SS:

Comes now the undersigned and after being sworn, on oath, states that:

1. The attached check, number \_\_\_\_\_ dated \_\_\_\_\_ drawn on the Bank of \_\_\_\_\_ (bank name), purporting to have been made and signed by \_\_\_\_\_ (person), was delivered to the payee, \_\_\_\_\_ (person or entity) of \_\_\_\_\_ (location) and passed in Labette County, Kansas by a person identified as \_\_\_\_\_ (person) who in return received merchandise or cash or both at the time the check was passed and said check was personally received by \_\_\_\_\_ (name) who can be served at \_\_\_\_\_ (address) and can be contacted at \_\_\_\_\_ (phone), who can positively identify in Court as the passer of the check. The names of other witnesses having knowledge thereof are (list name, address and phone for each):

2. This check was not postdated and the payee had no information at the time this check was delivered that the maker of this check did not have sufficient funds on deposit with this bank for the payment of this check. The person delivering this check did not request that the check be held or that the payee delay in depositing it for a payment. There was no delay in depositing this check or presenting it for payment, this check was deposited or presented for payment in the usual course of business.

3. The maker or person presenting said check did not borrow any money from the undersigned or the undersigned's employer; said check was not given as security for a loan or a debt. The said check was not given for a gambling debt. Said check was not given for past due rent, or payment on account.

4. The attached check 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 payment on said check are to be accepted by the complainant, its' agents, and employees; and no dismissals or any restitution for said check shall be proposed, planned or agreed upon by the complainant, its' agents or employees, without the prior knowledge and approval of the County Attorney's Office; and that the determination of the manner of prosecution or the dismissal thereof is in the sole discretion of the Labette County Attorney's Office.

5. When the said check was returned unpaid from the bank, a person identified as:  
Name \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_  
did on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by registered letter, return receipt

requested, advise the maker that said check had been returned from the drawee's bank unpaid and marked "\_\_\_\_\_"; and demanded that the maker pay the amount of the check to the undersigned or undersigned's employer within seven (7) days from receipt of the letter. Seven (7) days have passed since said time and no payments have been made.

5. Pursuant to K.S.A. 21-4603 and K.S.A. 74-7335 et. seq.: "The victim of a crime or the victim's family shall be notified of the right to be present at any public hearing where the accused or the convicted person has the right to appear and be heard." Many appearances in front of the Court accomplish nothing besides setting a new date for the next Court setting and the victim might consider it a waste of time. Accordingly, we are willing to notify you of either all court settings or only those where your testimony would be required. As a victim of a bad check case: (Please check one)

\_\_\_\_\_ I do not feel it is necessary to be notified of the defendant's court hearings, except those where I would need to testify.

\_\_\_\_\_ I feel it is necessary to be notified of each of the defendant's court hearings. Please send notification.

I promise to render whatever assistance may be required in the trial of this case if such occurs. I am aware that under the provision of K.S.A. 21-3709, causing an unlawful prosecution for worthless checks is a Class A misdemeanor, punishable by not more than one (1) year in the County Jail and or a fine not to exceed \$2,500.00, and the costs of the unlawful prosecution. Causing an unlawful prosecution for worthless checks is filing this affidavit on a check that was accepted, knowing the same was postdated, or that there were no funds or insufficient funds to pay said check, draft or order upon presentation at the bank or depository.

Having read the foregoing, I do hereby affix my signature this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Name                      Title

\_\_\_\_\_  
Company name, address, and phone

\_\_\_\_\_  
Notary Public

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

My commission expires: \_\_\_\_\_

# Labette County Attorney's Office

## Worthless Check – Offense Report

Rev. December 22, 2010

This document is to be completed by the person that actually took the check. Please answer the following questions, print all information in black ink and sign below.

1. Was check post-dated at time of acceptance?..... [ ] Yes [ ] No
2. Was check received as payment on an account? ..... [ ] Yes [ ] No
3. Were you asked to hold the check?..... [ ] Yes [ ] No
4. Was check in payment of rent, other than deposit? ..... [ ] Yes [ ] No
5. Does this matter involve a verbal or written contract or a sub-contracting..... [ ] Yes [ ] No agreement?
6. Does this matter involve a two-party check? ..... [ ] Yes [ ] No
7. Does the check involve an extension of credit? ..... [ ] Yes [ ] No
8. Was the check marked "stop-payment"?..... [ ] Yes [ ] No
9. Was this a payroll check?..... [ ] Yes [ ] No

A "Yes" answer to any of the above questions indicates this is a civil matter and cannot be prosecuted. You must contact a private attorney, collections agency or handle collections yourself in this matter. If you answered "No" to all questions, please complete this page and the Affidavit for Prosecution of a Worthless Check, have the affidavit notarized, and return to our office along with the bad check.

10. Name of business and address where the check was passed: \_\_\_\_\_
11. Your name and address if different from above: \_\_\_\_\_
12. Name of person who accepted the check(s): \_\_\_\_\_
13. Business Phone: \_\_\_\_\_ 14. Date check was passed: \_\_\_\_/\_\_\_\_/\_\_\_\_
15. Can you identify the person who passed the check? ..... [ ] Maybe [ ] Yes [ ] No
16. Did you accept the check believing it was good? ..... [ ] Yes [ ] No
17. Was the person who passed the check the same person who signed the check? [ ] Yes [ ] No
18. Was the check signed in your presence?..... [ ] Yes [ ] No
19. Was the check made out before you saw it?..... [ ] Yes [ ] No
20. Name any witnesses to the passing of the check: \_\_\_\_\_
21. Name the bad check passer: \_\_\_\_\_
22. The check passer was..... [ ] Male [ ] Female
23. The check passer was..... [ ] White [ ] Black [ ] Other
24. The date of birth of the passer was: \_\_\_\_/\_\_\_\_/\_\_\_\_
25. The drivers' license number of the passer was: \_\_\_\_\_
26. The passer's approximate height: \_\_\_\_\_, weight: \_\_\_\_\_, hair color: \_\_\_\_\_, eye color: \_\_\_\_\_
27. Any peculiar marks or traits: \_\_\_\_\_
28. Any further information concerning the passer: \_\_\_\_\_

- \_\_\_\_\_
29. What property/service was obtained with the check: \_\_\_\_\_
30. Has anyone accepted any payment (partial or full) on the check? ..... [ ] Yes [ ] No
31. Has the merchandise been returned or complained about? ..... [ ] Yes [ ] No

THE UNDERSIGNED STATES HE/SHE HAS ACTUAL KNOWLEDGE OF THE FACTS SET OUT ABOVE AND WILL, IF NECESSARY, BE A WITNESS IN COURT TO THE SAME.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone