

## **WORTH COUNTY BAD CHECK POLICY**

The following policies need to be followed in connection with prosecution for bad check thefts in Worth County.

1. The Worth County Attorney's Office is solely responsible for decisions relating to prosecution of bad checks. The Worth County Attorney's Office makes no promise, express or implied, that any check will be prosecuted, nor does the Worth County Attorney's Office offer any guarantees.
2. Theft by bad check occurs only when property or service is obtained in exchange for a check and the issuer of the check knows the check will not be paid when presented. The issuance of a bad check in payment on an open account or as payment for an existing debt does not constitute a theft under Section 714.1(6) of the Code of Iowa.
3. Criminal prosecution or the threat of criminal prosecution will not be used solely to obtain an advantage in a civil matter (Iowa Code of Professional Responsibility, rule DR7-105).
4. Requests for prosecution in bad check cases are to be submitted within 90 days from the date of issuance of the check. Prosecution may be declined if not submitted for prosecution within 90 days of the date of the issuance of the check.
5. The complainant or a representative is required to personally appear at the Worth County Attorney's Office to present checks and documents for prosecution. The Worth County Attorney's Office will review all checks for prosecution.
6. Requests for prosecution will be processed no sooner than 30 days after written demand for payment has been made, except in extraordinary circumstances. Requests shall be accompanied by an Affidavit for use in bad check charges using a form provided by the County Attorney's Office, to which must be attached photocopies of the check, bank documentation showing presentation and nonpayment of the check, written demand for payment, and proof of service by copy of a green card if served by certified mail or return of service if personally served. The affidavit must be completed before presentation and signed before a Notary Public.
7. The following are prerequisites for the filing of theft complaints based upon bad check complaints:
  - a. Copy of original check issued, and the original check for examination only.
  - b. Bank documentation showing that the check was presented for payment and was not paid when presented. On closed accounts the check can be presented once; non-sufficient funds checks must be presented twice.
  - c. Identity of the individual who received the check and the date and place where the check was received.

d. Identity of the person giving the check, to include at the minimum, the following:

- (1) Name
- (2) Address
- (3) Date of birth
- (4) Photo state ID number

e. Written demand for payment of dishonored check to be served by accepted service, certified mail or personal service; served at least 10 days prior to request for prosecution.

8. Once a request for prosecution has been made, the victim shall not accept partial or full payment on the check directly from the person who issued the check. Restitution by the person issuing the check shall be made through the office of the Worth County Attorney. The Worth County Attorney's Office will notify the victim/merchant when restitution has been made so that the victim/merchant can pick up the restitution at the Worth County Attorney's Office. Acceptance of payment by the victim for checks, which have been presented for prosecution, may result in refusal to prosecute future bad check cases submitted for prosecution by the victim.

9. A criminal complaint is approved, filed and prosecuted solely by the office of the Worth County Attorney and not by individuals. The complaining witness does not have the right or power to dismiss a criminal complaint once filed.

10. In cases where criminal charges have been filed and a defendant has received notice of the complaint by arrest or notice to appear, criminal charges will not be dismissed based solely upon defendant's offer to make restitution and pay the court costs. It is the policy of the Worth County Attorney's Office that criminal charges shall not be filed solely for the purpose of obtaining restitution in bad check cases.

11. The complaining witness shall agree to voluntarily appear at trial without the necessity of subpoena upon receipt of the notice of trial, or the case will be dismissed with the request that costs be assessed against the complaining witness who fails to appear. If complaining witnesses are not available for trial, or if a change in trial date is required, the County Attorney's Office shall be notified immediately.

12. Service charges not exceeding \$20.00, plus actual costs for serving notice of demand for payment of dishonored checks, will also be requested based upon verification of those charges from the victim.