

## **Bad Checks**

### **1. When are bad check charges filed in a Municipal Court?**

Each year there are thousands of bad check complaints filed in Municipal Court. However, this offense is rarely prosecuted. The reason for this is because the Municipal Courts for the most part don't want to be bothered with handling bad check cases. They don't want to be used as a collection agency for merchants, doctors, and other people. In the majority of cases, bad check charges are dismissed once the issuer of the check makes good on the bad check. In summary, it is very rare that a bad check charge will be prosecuted in Municipal Court. The courts are just too busy handling their own case docket. The clerks are trained to advise the public that bad check charges should be filed in the Civil Courts.

### **2. How are bad check charges filed?**

Bad check charges are filed by a private citizen. A police officer does not sign a bad check charge. This type of charge is called a citizens complaint. Most municipal prosecutors are very reluctant to get involved with prosecuting bad check cases. They view these complaints as purely commercial in nature.

### **3. What is required to prosecute a bad check case?**

In a bad check case the prosecutor must prove two elements. First, the defendant must have knowingly issued or passed a bad check. Second, the defendant must be shown to have known that at the time the check was issued or passed, that it would not be honored by his bank. Each of these two elements required clear proof of knowing conduct.

### **4. Can a person be prosecuted for passing a bad post-dated check?**

Yes, technically a person can be charged with bouncing a post-dated check. However, there are many defenses that can be used to fight these charges. In reality the prosecutor will not be able to prove that the defendant knew that the post-dated check would not be honored. A defendant can always allege that at the time he wrote the post-dated check that he fully believed that it would clear. Therefore, for all practical purposes proving a bad check case for post-dated checks is almost impossible.

### **5. What is the outcome of most bad check charge cases that are filed in Municipal Court?**

The majority of bad check cases are dismissed once the complainant receives restitution for the amount of the bad check. In most cases, the complainant and the court have no interest in giving a person a criminal record for issuing a bad check. In

many cases the defendant is given a payment plan to make good on the check. Nonetheless, the courts do require the defendant to pay court fees even if a bad check case is dismissed. The typical amount of court fees is \$33 per case.

**6. What are the penalties for a bad check charge?**

The potential penalties for a bad check charge are as follows:

- a. A fine from 0 to \$100
- b. A VCCB assessment of \$50
- c. A Safe Neighborhood Assessment of \$75
- d. Court costs of \$33
- e. A potential jail term from 0 to six months
- f. Restitution to the victim
- g. A suspended sentence
- f. Probation
- g. Loss of driver's license