

Bad-check cases bring warnings, little action

The small number of prosecutions may affect lawsuits against a collection agency.

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Polk County Attorney John Sarcone has contracted with a for-profit collection company that threatens prosecution against thousands of people who bounce checks, although his office rarely follows through and files criminal charges, according to a detailed Des Moines Sunday Register analysis of public records.

A federal debt-collection law prohibits threats of arrest or imprisonment unless authorities intend to take action to prosecute.

The collection company, American Corrective Counseling Services of California, is being sued in at least three states, including Iowa, for its practices. The lawsuits allege violation of the federal debt-collection law. The Iowa case was filed in U.S. District Court by an Eldon woman who accuses the company of misrepresentation and deception.

Ben Stone, executive director of the Iowa Civil Liberties Union, said using a private company to threaten court action circumvents accepted methods of prosecution and takes advantage of people who are unfamiliar with the law.

“A lot of this is looking like government-sanctioned extortion,” Stone said. “. . . The government has to prove something before it can take things from you.”

The Iowa attorney general's office has notified county attorneys that failure to prosecute many bounced-check cases could bolster the lawsuit against American Corrective Counseling Services, which also collects money in Jefferson and Dubuque counties.

“Some potential violations of the act, particularly those relating to threats of criminal prosecution, may hinge upon what the prosecutorial practices of the contracting county attorney's office are,” Assistant Attorney General Kathleen Keest wrote in an interoffice newsletter.

It is rare for people to be prosecuted in Polk County for writing bad checks. The Des Moines Sunday Register took several months to hand-check 2,392 theft cases filed in the county last year and found only 75 prosecutions that involved bad checks. Records provided by American Corrective Counseling Services show that even after collection efforts, no money was collected on 7,600 bad checks written last year in Polk County.

That figure surprised Polk County prosecutors. They said American Corrective Counseling Services may be failing to advise the county about all of the cases in which it fails to collect. When told of the Register findings, an assistant to the Polk County attorney vowed Friday to re-evaluate the program to prosecute more writers of bad checks.

American Corrective Counseling Services has recovered \$217,000 for Des Moines-area merchants

over the past two years by telling check-bouncers they must pay restitution, plus fees of \$125 or more, to avoid criminal prosecution.

Christi Burgess, a Des Moines mother of three, said she received a letter from the company several weeks after she gave a Walgreen Drug Store an \$11.83 check that was returned because she did not have enough money in her bank account. Burgess said the collections company told her prosecutors were ready to file charges but would hold off if she paid \$173.83 and attended an eight-hour class on financial responsibility.

“They put the fear of God into me,” Burgess said. “If I did not pay the fee and go to the class, I would go to jail. Those were their exact words.”

Cases involving small amounts such as Burgess' check almost never merit jail time in the Iowa court system. Such cases seldom result in criminal charges at all in Polk County, court records show.

Documents from American Corrective Counseling Services and Polk County District Court showed that officials prosecuted one delinquent check-bouncer for every 35 who were threatened with charges. The people who were prosecuted on theft charges were usually the worst offenders, the documents show. Of the 75 people who were charged during 2000 in Polk County under bad-check laws, more than half owed \$500 or more. Only three owed less than \$100.

“Your figures mystify me,” Assistant County Attorney Fred Gay told the Register.

Gay, who oversees the bad-check program for Sarcone, said he thought American Corrective Counseling Services had been forwarding most uncollected cases to his office.

“We're going to sit down with them and find out how to increase the number of referrals,” Gay said. “If there's not enough teeth in this thing, we're going to find some teeth.”

Sarcone said the check-collection program needs modifications. He said it is an efficient way to deal with the burden that bounced checks place on courts and businesses.

“I don't get where people say this is a bad thing,” Sarcone said. “The reality is we're trying to prevent them from clogging the courts.”

Sarcone said his office wants to help merchants recoup losses yet keep from having to punish check-bouncers with criminal convictions.

Officials of American Corrective Counseling Services did not return telephone calls to explain why more cases are not being prosecuted. Company President Donald Mealing said earlier that the problem is not weak evidence. He also said there is probable cause to arrest on every single check that comes into his company.

Polk County prosecutors said they never review the strength of the cases before the California company sends out collection letters. Under the company's arrangement with Polk County, bounced-check cases are referred directly from merchants to American Corrective Counseling Services.

Most check-bouncers then are sent letters on stationery bearing Sarcone's name that implies prosecution is under way.

“To avoid having a warrant issued for your arrest, we recommend you enroll in the county attorney's bad-check restitution program,” the letter reads. “Successful completion of the class and payment of all fees allows the county attorney to forgo filing a formal criminal charge.”

The company recently eliminated that wording from its letters in response to concerns from Polk County and because of the lawsuits, Assistant County Attorney Gay said Friday.

Officials with Dahl's Food Marts, which signed on with the Polk program last spring, said the warning letters have indirectly helped the Des Moines supermarket chain recover money from bounced checks. Although American Corrective Counseling Services' letters tell bad-check writers not to contact the store, Dahl's said it frequently accepts money from delinquent customers without the company's help.

"We're not out to make them go to class," said John Harold, the accounts payable manager for Dahl's. "As long as they're willing to pay the money, we're not going to push the issue."

Check-bouncers said they are not always met with such good will.

Larry Sloan of Nevada said he tried to reimburse Osco Drug for a \$13.09 check his son bounced but was told he had to pay through the California company, which wanted its \$125 fee. Sloan refused, and the bill was never paid.

Attorney Steven Ort, who represents Iowa plaintiffs in the federal lawsuit against American Corrective Counseling Services, said he doubts that Polk County could win many bad-check cases under present practices.

He said the only sure way to prove a theft case against the writer of a bad check is for the writer to have ignored a 10-day notice from a merchant sent by certified mail. Iowa law says that a judge or jury may assume that the check-writer knew the check was bad if such a notice is ignored. Polk County prosecutors tell merchants they will take action only if such a notice is sent.

Ort said American Corrective Counseling Services sent demands for payment to more than 10,000 check-writers in Polk County last year without regard to whether notices were sent by certified mail.

"My guess is the Polk County attorney couldn't get a conviction on any of those cases," said Ort. "They have to show that you wrote the check knowing there were insufficient funds. If they can't, that makes you a bad bookkeeper. That does not make you a criminal."

Polk County makes no money under its arrangement with the California company. The three-year contract in place since October 1998 saves the county time and the cost of tracking down thousands of bad-check writers.

That is exactly what bothers consumer advocates, who accuse Sarcone's office of delegating its prosecutorial duties to a business.

"It's really sad that John Sarcone has signed on to this group," said Robert Oberbillig, executive director of the Legal Aid Society of Polk County. "I don't think anybody thought it through. They thought about getting the case load off their hands."

Attorney Ort has instructed his Polk County clients not to pay any more fees to American Corrective Counseling Services. None has been prosecuted for failing to do so. The clients continue to receive monthly letters from the company that repeat the threats of prosecution.

Burgess, the Des Moines woman, said she tried to get a refund of her \$125 fee after consulting with lawyers. She was unsuccessful. Burgess said she would have acted differently had she known she stood little chance of being prosecuted by the county attorney's office.

“I probably still would have paid the check, but I wouldn't have paid the extra fee,” Burgess said. “I guess that's whom they're preying on - people who don't know any better, who are scared and pay out of fear.”

Collecting a bounced check

Here is how Polk County's check-collection program with American Corrective Counseling Services is designed to work:

- * **PAY:** A shopper pays for a purchase with a personal check.
- * **BOUNCE:** The shopper's bank refuses to honor the check because the account is closed or has insufficient money in it to cover the amount of the check.
- * **NOTICE:** The merchant mails a 10-day notice to the check-bouncer asking for payment.
- * **COLLECTION:** If the letter goes unanswered, store officials can notify American Corrective Counseling Services, which collects checks on behalf of the Polk County attorney's office.
- * **DEMANDS:** American Corrective Counseling Services sends a notice to the check writer, demanding restitution to the store, plus a \$125 fee for a class on financial responsibility. The notice warns that the only way to avoid prosecution is to pay the full amount and attend the class.
- * **REFERRAL:** If the notice goes unanswered or payment isn't made, American Corrective Counseling Services is supposed to refer the case to the county attorney.
- * **ATTORNEY:** Polk County Attorney John Sarcone's staff decides whether to file charges against the check writer.