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# South Bend Tribune

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## Federal suit targets collection agency

### Mishawaka woman says tactics to collect bad check went too far.

By MATTHEW S. GALBRAITH  
Tribune Staff Writer

SOUTH BEND -- Maria Hamilton could not believe what she was reading in the letter marked "official notice" and signed by St. Joseph County Prosecutor Michael Dvorak.

The prosecutor had received a crime report alleging that she had written a check without sufficient funds to cover it, she was advised in underlined, bold, typed print.

A conviction could mean up to a three-year jail sentence and a \$10,000 fine.

She could avoid a court appearance if she agreed to enroll in a bad check restitution program and pay for all reported bad checks as well as program fees.



Hamilton

Failure to comply, the three-page notice warned her, "may subject you to criminal court proceedings."

Hamilton, a stickler about balancing her checkbook and obeying the law, was bewildered. The Mishawaka resident was being accused of a crime for writing a \$29.48 check to a Big Lots store that bounced, she says, because of a late bank deposit.

But with the added fees, she would have to pay \$251.98 to take care of it.

"Since when is it a crime to make a mistake? I mean, how many people make a mistake with their checking account?" she asked recently.

"I'm not a criminal," she recalled thinking. "Don't be putting me in jail."

When she eventually found out who was behind a barrage of accusatory mail, with the help of the Notre Dame Legal Aid Clinic, Hamilton struck back with a lawsuit.

The federal suit, filed July 19, seeks class-action status on behalf of others who have similar experiences stemming from bad checks.



"It's not fair. It's not right, and someone should do something about it. The people should know," she said.

The suit seeks more than \$100,000 in damages under the Fair Debt Collection Practices Act. It also requests a permanent court injunction barring the defendants from "impersonating the prosecuting attorney."

### The message sender

The notice -- and several more increasingly threatening letters that followed over a seven-month period -- did not come from the prosecutor or any of his employees.

They were sent by a California company that's under contract with the prosecutor to run a pretrial diversion program that consists mainly of restitution and financial management seminars.

The company, American Corrective Counseling Services, calls itself the nation's largest private contractor to prosecuting attorneys who have bad check programs.

Its Web site lists partnerships in 14 states and in six of Indiana's counties.

ACCS is one of several defendants named. The prosecutor's office is not a party to the lawsuit.

Dvorak and ACCS teamed up in a three-year contract signed in March 2004 to help merchants recoup thousands of dollars in annual losses from bad checks and deter future incidents.

ACCS representatives did not return requests for comment, but Dvorak released a statement saying the notices and the wording they contain have been approved by the prosecutor's office.

People are referred to the prosecutor's office for possible charges, Dvorak explained, only after the retailers have made attempts to collect payment on the bad checks.

First-time offenders can enter the diversion program as an alternative to prosecution. They gain personal finance skills, and the victimized businesses receive restitution for unpaid checks.

Check writers are not forced to enter the program, he stated. They can choose instead to defend their case in a criminal court.

"The prosecutor's office," he added, "has received a uniformly positive reaction from retailers in St. Joseph County, who are pleased with the rate of restitution and the lack of recidivism by offenders who enter the program."

No information was provided on the amount of money collected.

### Collection tactics

Hamilton's suit, however, disputes that this is the way the program works.

### Monthly warnings of prosecution, jail, fine

On July 22, 2004, Maria Hamilton received a document titled "Official Notice" on the letterhead of the St. Joseph County prosecuting attorney concerning a check that had been returned for insufficient funds.

After that, she received the following mail concerning her participation in a supposedly optional bad check restitution program, which she says she never entered.

**Sept. 7, 2004:** "Notice of Failure to Comply" ... saying her failure may result in the filing of criminal charges.

**Oct. 4, 2004:** "Notice of Late Payment" ... saying if payment and a \$10 late fee are not received within 72 hours, she will be considered in breach of her agreement.

**Nov. 12, 2004:** "Case Information" ... saying she must pay \$230.28 and complete a class for the prosecutor to discharge a crime report.

**Dec. 13, 2004:** "Notice of Late Payment" ... saying payment plus a \$10 late fee must be paid within 72 hours or she will be

ACCS falsely threatens to prosecute those people who write bad checks, the suit claims, even if the writers did not know their checks would not clear because of insufficient funds.

As Dvorak pointed out, state law says a person must "knowingly or intentionally" write a bad check for the person to commit check deception, a class A misdemeanor.

Hamilton, who has multiple sclerosis, says she gave her pregnant daughter a disability check to deposit. Her daughter went into premature labor and was unable to deposit the money before she wrote some checks, she explained.

"I'm not in the practice of writing bad checks," Hamilton said.

Giving the false impression that civil collection matters are criminally enforceable is a civil rights violation, the suit claims, because an unsophisticated consumer could assume this to mean arrest and imprisonment.

Hamilton also disputes that the bad check program is optional, saying she never enrolled in the program but was consistently treated as if she were locked into the program and its fees.

ACCS, the complaint says, is nothing more than a check collection business that represents itself as an official law enforcement agency.

O. Randolph Bragg, a Chicago lawyer who represents Hamilton, said ACCS violates the debt collection act by failing to identify itself as a collection agency and charging disallowed fees.

Dvorak said his office has discussed the procedures for contacting check writers but did not know if any changes were made as a result.

In 2003, a \$2 million settlement was reached in another class-action suit filed against ACCS. The case still is pending in the courts, Randolph said.

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considered in breach of her agreement.

**Dec. 21, 2004:** "Notice of Payment Agreement Termination" ... saying, "Your failure to keep the payment arrangements constitutes a breach of your agreement with the prosecuting attorney which may result in the formal filing of criminal charges," and adding, "Should criminal charges be filed, you may be punished with a jail sentence and/or fines OVER AND ABOVE the amount of restitution."

**Jan. 4, 2005:** "Notice of Failure to Comply" ... saying her failure to respond may result in the filing of criminal charges.

**Jan. 19, 2005:** "Official Notice" ... saying failure to contact the office by Feb. 2 may result in criminal prosecution.

**Feb. 3, 2005:** "Warning" ... saying to contact the office immediately to avoid potential arrest and prosecution.

**March 21, 2005:** "Important Notice" ... saying to contact the office about a bad check crime report on file.

Jump to a day:

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