

## COLLECTING THE JUDGMENT

### A. USE OF GARNISHMENTS

A useful website for garnishment forms is found at the Colorado Judicial Branch – Self Help Center website found at: [http://www.courts.state.co.us/Self\\_Help/Forms/Index.cfm](http://www.courts.state.co.us/Self_Help/Forms/Index.cfm). All forms are found at this website and there is an instructional sheet on how to fill them out. I recommend checking these forms every time you do a new garnishment as they are updated frequently.

Pursuant to C.R.C.P. 103 § 4(a), a judgment creditor may garnish any money owed a judgment debtor whether due at the time of service of the writ or to become due thereafter. If the debtor could bring an immediate action to recover the debt from the garnishee, then the debt is due within the meaning of the rule. *Martinez v. Dixon*, 710 P.2d 498 (Colo.App.1985). Contingent liabilities, however, are not garnishable. *Haselden Langley Constructors, Inc. v. Graybar Electric Co.*, 662 P.2d 1064 (Colo.1983). *Flanders Electric v. Davall Controls and Engineering*, 831 P.2d 492 (Colo. App. 1992)

The Rule concerning garnishments is found at Rule 103, C.R.C.P. There are five types of garnishments.

#### 1. WRIT OF CONTINUING GARNISHMENT

This garnishment is used to garnish earnings of a judgment debtor. The garnishment automatically garnishes earnings paid for a period of 182 days after the garnishment is served upon the employer. After the automatic stay of fourteen days for district court judgments has expired, the clerk of the court will issue a writ of garnishment for a fee of \$45.00. (There is no automatic stay for county court judgments).

**PROCEDURE:** The creditor must serve two copies of the writ of continuing garnishment, together with a blank copy of the Form, “Objection to the Calculation of the Amount of Exempt Earnings” upon the employer. The employer delivers one copy of the writ of garnishment and the objection to the amount of exempt earnings to the employee. The employer must file the answer with the clerk of the court and send a copy to the creditor no less than seven (7) and no more than fourteen (14) days following the time the judgment debtor receives earnings for the

first pay period affected by the writ or forty two (42) days following the date of service of the writ, whichever is less.

**WHAT EARNINGS DO YOU GET:** The employee gets to keep at minimum 75% of disposable earnings. Disposable earnings are gross earnings less deductions required by law. Approximately 25% of the employee's earnings are subject to the garnishment. If there is a wage or income assignment existing, then that is deducted before any amounts are paid to the creditor. If there is an income assignment for child support on the debtor's wages and there are no disposable earnings left after deducting the 75% exemption and the child support, then you will not be able to garnish the debtor's wages until the child support assignment is gone.

**OBJECTION:** The employee can object to the calculation of the exempt earnings by the employer under Section 6 of Rule 103, C.R.C.P., and can negotiate with the garnishee for up to 7 days from receipt of the garnishment. If the objection is not resolved with the garnishee within 7 days upon good faith effort, then the judgment debtor/employee may file a written objection, setting forth with reasonable detail, the grounds for objection. A ground for exemption does not include "I can't afford this garnishment." The objection must be filed within 14 days of receipt of the garnishment. A copy must be mailed, by certified mail, to the garnishee and the judgment creditor's attorney. Upon the filing of the objection, all proceedings with regard to the garnishment are stayed until the written objection is determined by the court. The hearing is to be set not more than 14 days after the filing of the objection. A hearing is conducted at which all interested parties are present and can testify.

## **2. WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY**

This is the exclusive garnishment to gain control over personal property of any kind (other than earnings), including intangible personal property, tangible personal property capable of manual delivery, or money owed to the judgment debtor, whether due at time of service of garnishment or thereafter. Typically, this type of garnishment is served upon banks, accounts receivable and current contracts who owe money to the debtor.

The writ of garnishment is issued by the clerk and served upon the garnishee. The garnishee is ordered to answer the questions on the writ and file the answers with the clerk of the court

within fourteen (14) days after service. If a stamped envelope is attached, then the garnishee is required to send a copy of the answers to the judgment creditor. Once the answer is received by the creditor and it shows that money or property is being withheld, then the judgment creditor has to serve the notice to judgment debtor of exemption and pending levy. I normally serve the copy which has been answered by the garnishee upon the debtor, so the debtor can see what amounts were withheld. The debtor then has fourteen (14) days to file a claim of exemption. A partial list of the claims of exemption is listed on the garnishment form. A copy of the claim of exemption must be delivered to the attorney or Plaintiff. The Court must then set a hearing within fourteen (14) days of the filing of the claim of exemption. The hearing is held as set forth in Section 6(c) of C.R.C. P. Rule 103.

### **3. WRIT OF GARNISHMENT FOR SUPPORT**

A writ of garnishment for support is the exclusive procedure for withholding earnings of a judgment debtor to pay debts for child support arrearages, maintenance, or child support. A writ of garnishment for support has priority over any other garnishment, even if the other writ was served first. The exempt amounts of income vary from 50% to 35%, depending on whether the debtor has dependents and how old the judgment is. This garnishment can be used to garnish retirement and pension funds, worker's compensation funds, and other types of income which are not normally considered earnings, and which are normally exempt from garnishment. A writ of garnishment for support is continuing until the judgment is paid or the garnishment released by the court or the judgment creditor.

### **4. WRIT OF GARNISHMENT – JUDGMENT DEBTOR OTHER THAN A NATURAL PERSON**

This is the exclusive garnishment to garnish any personal property of a judgment debtor other than a natural person, i.e. a corporation, LLC, partnership, etc. The judgment debtor does not have any claims of exemption. If the answer of the garnishee shows that money, credits, debts, or choses in action are being held, the court will order the garnishee to pay the amounts owed

into the court registry. Some counties will order the funds in themselves; other counties require the judgment creditor to file a motion and order to order in the funds.

## **5. WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT**

This is the exclusive procedure in which personal property of any kind may be garnished by the Plaintiff in attachment owed to or owned by the defendant in attachment and in the possession or control of the garnishee. At any time a writ of attachment issues, a writ of garnishment shall be issued by the clerk upon request. If the defendant is a natural person, a notice of levy must be served upon the defendant. If the answer to the writ of garnishment shows that the garnishee is indebted to the defendant, then the clerk shall enter judgment against the garnishee and order such amount paid into the court. If the answer to the writ of garnishment shows the garnishee possesses personal property of the Defendant, the Court shall order the Garnishee to deliver the property to the sheriff to be sold upon execution and the Court may enter any order necessary to protect the interests of the parties.

## **GARNISHMENTS ON MILITARY PAY**

Congress authorized involuntary allotments against the pay of active duty and reserve military members. A creditor may initiate this process against a military member by submitting an Involuntary Allotment Application (DD form 2653) along with a certified copy of a final judgment issued by a civil court. A judge, not a clerk, must sign the final judgment. An original and two copies of the form and judgment must be served upon:

Defense Finance and Accounting Service  
Cleveland Center, Code PGL  
P.O. Box 998002  
Cleveland, OH 44199-8002.  
1-888-332-7411

The DD form 2653 may be obtained by downloading the form from the web site: <http://www.dfas.mil/garnishment/milcommdebt/faqs.html> or by writing to the above address or calling the phone number above. Military members are allowed 90 days notice before payments can begin, so payments will start 90 to 120 days after the complete application is received. This method is good for all branches of the military, except for the Coast Guard. An initial legal review is performed and if the application passes, it is forwarded to the military member's commander. The commander must notify the member of the action and inform the member of the right to either consent to or contest the involuntary allotment. If the member consents, he or she will complete and return the Form DD 2654. Within 30 days of receipt of this form, payments will start.

If the military member contests the allotment, he or she must provide evidence to their commander of the basis for contention. The commander will forward the evidence to the accounting center, except the commander will make a determination if the exigencies of military duty prevented the member from appearing during the judicial proceeding. The commander's decision as to this is binding on the accounting center and the accounting center will return the application to the creditor stating they cannot process the application.

#### **FEDERAL DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEE GARNISHMENT**

Creditors must serve commercial garnishments on the Defense Finance and Accounting Service as the designated agent for service on civilian employees of the Department of Defense. Service may be done by mail, fax, or personal service. The address for service is:

Defense Finance and Accounting Service  
Cleveland DFAS-DGG/CL  
P.O. Box 998002  
Cleveland, OH 44199-8002  
1-888-332-7411

Garnishments must contain the full name and social security number of the employee. The same web site as listed above gives further information regarding this garnishment.

Section 13 of Rule 103, C.R.C.P. provides if a public body is the garnishee, the writ shall be served upon the officer of such body whose duty it is to issue warrants, checks or money to the judgment debtor or such officer designated to accept service.

### **WHAT IF THE GARNISHEE FAILS TO ANSWER OR FALSELY ANSWERS?**

If the garnishee fails to answer and at least 35 days have passed after service, then the Judgment Creditor can ask the clerk to enter a default against the garnishee. This is usually done by a motion. After default is entered, the judgment creditor sets up a hearing to prove the liability of the garnishee. The garnishee should be subpoenaed to the hearing, along with any documents necessary to prove that the garnishee is indebted to the Judgment Debtor. The Court has the ability to make orders as to reasonable attorney fees, costs, and expenses of the parties to such hearing.

If the Judgment Creditor disagrees with the answer of the garnishee, a traverse can be filed to the answer within twenty one (21) days from the date the answer was filed or should have been filed with the court. The Judgment Creditor must file a verified statement of the grounds of traverse with the Court. The traverse is then set for hearing. The garnishee should be subpoenaed to the hearing. The Court determines if the garnishee is indebted to the Judgment Debtor and can make orders regarding reasonable attorney fees, costs, and expenses.

### **SET-OFFS, INTERVENTION, AND DEFENSE OF THIRD PARTY CLAIMS**

Sections 9, 10, and 11 of C.R.C.P. Rule 103 deal with set-offs, intervention, and defense of third party claims.

**SECTION 10-SET-OFF:** “Every garnishee shall be allowed to claim as a set-off and retain or deduct all demands or claims on the part of the garnishee against any party to the garnishment proceedings, which the garnishee might have claimed if not summoned as a garnishee, whither such are payable or not at the time of service of any form or writ provided for by this rule.” The garnishee is allowed to claim set-offs against the garnishment. You will often see this on a bank garnishment. If the judgment debtor has a loan with the bank you are

garnishing, the bank can set off any amount garnished against the loan, even if the loan is not in default. This effectively prevents any garnishment on that bank account. The garnishee is not required to defend the claims of third parties to the property. Under no circumstances shall a garnishee be placed in any worse condition than he would be if the defendant's claim against him were enforced by the Defendant himself. *Tabor v. Bank of Leadville*, 85 P.1060, (Colo. 1905); *Day v. Bank of Del Norte*, 230 P. 785, (Colo. 1924). The case of *People ex rel. J.W.*, 174 P.3d 315 (Colo. App. 2007) specifically states that an attorney's lien on personal injury proceeds has priority over a child support judgment. The writ of garnishment could only attach to the net personal injury proceeds, which is the amount the judgment debtor would receive, after the attorney fees and costs were deducted.

SECTION 9-INTERVENTION. "Any person who claims an interest in any personal property of any description of a judgment debtor or defendant in attachment which property is the subject of any answer made by a garnishee, may intervene as provided in C.R.C.P. 24 at any time prior to entry of judgment against the garnishee." Any person who claims an interest in the property which is subject to a garnishment can intervene at any time prior to the entry of judgment against the garnishee. A good example of this can be found in the case of Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC, 37 P.3d 485 (Colo. App. 2001, cert. denied 1-14-2002). Mitchel Rhoads was the sole shareholder of Le Peep Restaurants, Inc., Le Peep's Grill, Inc., Rhoads Holding, Ltd, and Le Peep Restaurants, LLC. The Plaintiff received a judgment against Le Peep Restaurants and Grill, but not the LLC, which did not exist at the time the lawsuit was started. The judgment was domesticated in Colorado and Plaintiff garnished the funds of the LLC in a bank in Colorado. The judgment named only the Grill and Restaurants, but listed the tax identification and bank account number of the LLC. The LLC intervened and objected to the garnishment. At the hearing, the Court concluded that the LLC's assets were owned by Grill; that Grill, Restaurants, and LLC were alter egos of each other; that fraudulent conveyances had occurred; and defendants and intervenors had acted in concert to insulate assets from plaintiff's judgment. Thus, the funds in the bank were owned by the judgment debtor and subject to garnishment. Intervenors argue that the Court improperly considered issues of alter ego and fraudulent transfer. The Appellate Court disagreed and held "Garnishment proceedings fall

under the equity powers of the court, the purpose of garnishment being to reach ordinarily nonleviable evidences of debt, to prevent the loss and dissipation of such assets, to determine the ownership of such funds, and to provide for the equitable distribution of such funds.” Great Neck at 488.

## EXEMPTIONS

The judgment debtor has rights to certain exemptions which will protect all or parts of certain specific types of property. These exemptions are as follows:

- **HOMESTEAD EXEMPTION**

The homestead exemption was increased on July 1, 2015 to Ninety Thousand Dollars, if the homestead is occupied as a home by an owner or an owner’s family or to One Hundred Five Thousand Dollars, if an owner, spouse or dependent is 60 years older or older or is disabled. (See C.R.S. §38-41-201) This exemption also includes proceeds of the sale of homesteaded property for one year. (See C.R.S. §38-41-207)

- Exemptions found at C.R.S. §13-54-102:

Wearing apparel:	\$ 2,000.00
Watches or Jewelry:	\$ 2,500.00
Family Pictures and books:	\$ 2,000.00
Burial sites:	one site per debtor and each dependent
Household goods:	\$ 3,000.00
Provisions & fuel:	\$ 600.00
Agricultural items, if principal occupation:	\$50,000.00
All monies received as military pension, compensation, or allowance	
All articles of military equipment personally owned by members of the National Guard	
Business personal property:	\$30,000.00
Motor vehicles/ Bicycles:	\$7,000.00
Motor vehicle for the elderly or disabled:	\$12,000.00
Professional library, including minister or priest:	\$ 3,000.00



Cash surrender value of Life insurance policies: \$100,000.00

- Proceeds of Life insurance policies, paid to a designated beneficiary, for debts of deceased insured are without limitation as to amount, for writs of attachment or writs of execution
- Proceeds for personal injury claims, except for debts incurred to treat the injury – unlimited:
- The full amount of any federal or state income tax refund for earned income tax credit or child tax credit:
- Professionally prescribed Health aids for debtor or dependent:
- Victim compensation:
- Security deposits or utility deposits:
- Certain pension and retirement funds:
- Child support or maintenance:
- Private or public disability benefits up to \$3,000 per month:
- All or part of earnings as set forth under §13-54-104, C.R.S.
- Worker's compensation benefits under §8-42-124, C.R.S.
- Unemployment compensation benefits under §8-80-103, C.R.S.
- Group life insurance benefits under §10-7-205, C.R.S.
- Health insurance benefits under §10-16-212, C.R.S.
- Fraternal Society benefits under §10-14-403, C.R.S.
- Family allowances under §15-11-404, C.R.S.
- Teacher's retirement benefits under §22-64-120, C.R.S.
- PERA benefits under §24-51-212 and 24-54-111, C.R.S.
- Social Security benefits under 42 U.S. C. 407
- Railroad employee retirement benefits under 45 U.S.C. 231
- Public assistance benefits under §26-2-131, C.R.S.
- Police Officer and Firefighter's pension fund payments under §§§31-30-1117, 31-30.5-208, and 31-31-203, C.R.S.
- Veteran's Administration benefits under 38 U.S.C. 5301

- Civil Service retirement benefits under 5 U.S.C. 8346
- Mobile homes and trailers under §38-41-201.6 C.R.S.

There are certain exceptions to the exemptions. All property of a person who has committed a felonious killing shall be subject to attachment or levy in satisfaction of a judgment awarded for such killing. A debtor can establish a consensual lien on exempt property. If child support is intermingled with other moneys of the recipient, the child support payment is no longer exempt. It is exempt if it is deposited in a custodial account for the benefit of the child or no monies other than child support are deposited into the account. (C.R.S. §13-54-102.5)

## **PROPERTY EXECUTION**

One of the most effective collection tools in your arsenal is the transcript of judgment. You can lien any real property owned by the judgment debtor. (See 13-52-102, C.R.S.) . As soon as judgment is entered, you should obtain the transcript of judgment from the Clerk of the Court for a fee of \$25.00 (as of July 1, 2008) and record it with the Clerk and Recorder of each county where the judgment debtor owns property. The transcript of judgment only encumbers real property in the county that it is recorded in, so you need to verify the correct county prior to recording the lien. You can record the transcript in multiple counties. The recording of the transcript does not effectuate execution of the judgment. Recording the transcript makes the judgment a lien against the property, which needs to be paid off if the property is sold or refinanced. It may also make the judgment creditor a secured creditor in the event of a bankruptcy as long as the transcript is recorded at least 90 days prior to the filing of bankruptcy. It also gives the creditor the right to redeem the property in the event of a foreclosure.

**REVIVAL OF THE JUDGMENT LIEN:** Pursuant to §13-52-102(1), C.R.S., the lien expires 6 years from the judgment date, unless revived as set forth in Rule 54, C.R.C.P. A Motion to Revive the Judgment Lien must be filed with the Court requesting the Court to issue a Show Cause Order, ordering the judgment debtor to file cause, in writing, within 14 days as to why the judgment lien should not be revived. The Order to Show Cause must be served upon the judgment debtor. If the debtor files an answer, a hearing must be held. If the Court finds no

cause or no answer is filed, then the Court will enter an order reviving the judgment lien and the clerk will issue a revived transcript of judgment. The revived transcript of judgment must be recorded in the same county to keep the same priority date.

### **INSTALLMENT AND LUMP SUM PAYMENTS**

Often a creditor will ask the Court if they can make payments on the debt they owe. The Court has no jurisdiction to allow a debtor to make installment payments; that is totally in the discretion of the Creditor. The Creditor can enter into a post-judgment stipulation with the Debtor to pay off the judgment over time by making installment payments. A simple Stipulation for Payment of Judgment with the terms of payment that the parties have agreed to can be prepared and filed with the Court. A Creditor also has the discretion to accept a lump sum payment that may be less than the amount owed on a judgment. This is voluntary on the part of the Creditor, but a Creditor may be willing to take a lesser sum now than wait months or years to collect the full judgment. A Debtor cannot force a Creditor to accept installment or lump sum payments.

### **FORECLOSURES**

**SHERIFF'S SALE OF REAL PROPERTY:** If no sale or refinance is imminent and there is sufficient equity, real property can be sold at a sheriff's sale. It is advisable to get an appraisal of the property before you determine whether a sale is in the best interests of your client. If the real property is residential and occupied by the owner as his or her principal residence, the appraisal is mandatory and the appraiser must prepare an affidavit stating that the fair market value of the property, less the liens, exceeds the homestead exemption. This affidavit must be recorded. (See C.R.S. § 38-41-206) The homestead exemption was increased on July 1, 2015 to Ninety Thousand Dollars, if the homestead is occupied as a home by an owner or an owner's family or to One Hundred Five Thousand Dollars, if an owner, spouse or dependent is 60 years old or older or is disabled. (See C.R.S. §38-41-201, C.R.S.) You must get a writ of execution from the court and conduct a sheriff's sale to sell the property pursuant to a judgment lien. However, the land on which a debtor resides is to "be last taken in execution". (See C.R.S. §13-52-101). The debtor can designate property to be taken in place of his residence. The Sheriff will require

a Writ of Execution, Notice of Levy, Certificate of Levy, Homestead Affidavit, Notice of Rights to Redeem, Certificate of Mailing, 2 sets of pre-addressed and stamped envelopes, Notice of Sheriff's sale, Certificate of Purchase, Report, and Return, and Sheriff's Deed. Each sheriff's office generally has a package that they will send you with the fees and required paperwork to start the sheriff's sale. The judgment creditor must be prepared to pay in cash, at the time of the sale, the amount of the homestead exemption to the judgment debtor. (See C.R.S. § 38-41-206(3)). If the amount offered at the sale of the homesteaded property does not exceed 70% of the fair market value of the property as shown by the appraiser's affidavit, then all proceedings to sell must terminate and the levy must be released. The judgment creditor must pay all costs of the proceedings. (See C.R.S. §38-41-206 (2)). If a sale is made, the proceeds are applied in the following order:

- 1). To the discharge of all prior liens and encumbrances on the property;
- 2). To the judgment debtor in the amount of the homestead exemption;
- 3). To the sheriff to cover the costs of the sale;
- 4). To the satisfaction of the judgment; and
- 5). The balance, if any, to the homestead claimant.

**SHERIFF'S SALE OF PERSONAL PROPERTY:** A sheriff can also sell personal property. The difference in procedure is that the personal property must be seized by the sheriff and stored. The sheriff will not actually seize the property, but will go along to assist and keep the peace. The creditor must actually provide the people and/or transport to move the personal property. The creditor is responsible to payment of the moving, towing and storage costs along with arranging for the storage facility. The creditor must also provide a notarized lien statement on the property, including serial numbers if known.

**TILL TAP:** The sheriff can also seize money in the cash register at a business that would maintain a cash register. The Court issues a Writ of Execution directing the Sheriff of the county where the business is located what property to seize. A Notice of Levy or Seizure is also

prepared and sent to the Sheriff to be served upon the Defendant at the time the till tap is executed. The Sheriff can execute multiple times on the same Writ of Execution until it expires 90 days from the date it was issued.

## **ETHICAL ISSUES OF REPRESENTATION**

### **SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

Rule 1.2 of Colorado Rules of Professional Conduct deals with the scope of representation and allocation of authority between a client and the lawyer. Subsection (a) states

“.... A lawyer shall abide by a client’s decision concerning the objectives of representation and, as required by Rule 1.4 shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter.

Rule 1.4 requires a lawyer to communicate with a client about any decision or circumstances to which the client’s informed consent, as defined by Rule 1.0 (e), is required. Informed consent is defined as “the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonable available alternatives to the proposed course of conduct.” (Rule 1.0 (e)). Obtaining informed consent will usually require an affirmative response by the client.

A lawyer cannot limit the client’s right to control settlement by agreement, as this is against public policy. A client’s right to reject settlement is absolute and unqualified. *Jones v. Fieger, Collison & Killmer*, 903 P.2d 27, (Colo. App. 1994), rev’d on other grounds, 926 P.2d 1244 (Colo. 1996)

## INDEX OF ATTACHMENTS

1. Instructions for collecting a garnishment and completing a writ of garnishment
2. Writ of Continuing Garnishment (revised 3-17)
3. Writ of Garnishment with Notice of Exemption and Pending Levy (revised 3-17)
4. Writ of Garnishment for Support (revised 3-17)
5. *People ex rel. J.W.*, 174 P.3d 315 (Colo. App. 2007)
6. *Jones v. Feiger, Collison, and Killmer*, 903 P.2d 27 (Colo. App. 1994)

## INSTRUCTIONS FOR COLLECTING A JUDGMENT AND COMPLETING A WRIT OF GARNISHMENT

These standard instructions are for informational purposes only and do not constitute legal advice about your case. If you choose to represent yourself, you are bound by the same rules and procedures as an attorney.

### GENERAL INFORMATION

- ◆ The Court must have awarded a money judgment in your favor.
- ◆ The money judgment is good for six years in County Court and for 20 years in District Court.
- ◆ The Court cannot collect your money judgment for you.
- ◆ For additional information, please review Colorado Rules of County Court Civil Procedure - Rule 369 and Rule 403.
- ◆ For additional information, please review Colorado Rules of Civil Procedure - Rule 69 and Rule 103.
- ◆ If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website:  
[http://www.courts.state.co.us/Administration/HR/ADA/Coordinator\\_List.cfm](http://www.courts.state.co.us/Administration/HR/ADA/Coordinator_List.cfm)

### COMMON TERMS

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Plaintiff(s):                     | The person(s), company or other entity filing a Complaint against another person(s), company or other entity.   |
| <input checked="" type="checkbox"/> Defendant(s):                     | The person(s), company or other entity that the case is filed against.  |
| <input checked="" type="checkbox"/> Garnishee(s)                      | The person(s) or company the Writ is being served upon.   |
| <input checked="" type="checkbox"/> Judgment Debtor(s):               | The person(s), company or other entity who owes the money as ordered by the Court.  |
| <input checked="" type="checkbox"/> Judgment Creditor(s):<br>ordered  | The person(s), company or other entity who should receive the money as by the Court.  |
| <input checked="" type="checkbox"/> Service of Process:               | The official means by which a Defendant is notified that a lawsuit has been filed against him/her and provided a copy of the complaint and a description of the person's rights and obligations as a party to the case.                               |
| <input checked="" type="checkbox"/> Interrogatories:                  | Written set of questions prepared by the Judgment Creditor and served to the Judgment Debtor.   |
| <input checked="" type="checkbox"/> Return Date:                      | The date that the Defendant must file his/her answer by and/or appear in Court that is listed on the Summons.   |
| <input checked="" type="checkbox"/> Continuing Garnishment:           | The exclusive procedure for withholding the earnings of a Judgment Debtor for successive pay periods for payment of a judgment debt.  |
| <input checked="" type="checkbox"/> Transcript of Judgment:           | A one-page document that states the name of the Judgment Debtor, Judgment Creditor and the date and amount of the judgment.   |
| <input checked="" type="checkbox"/> Satisfaction of Judgment:<br>must | The document stating the Judgment Debtor has satisfied the judgment. This be filed by the Judgment Creditor with the Clerk of Court in order to remove the judgment from credit reports as being unpaid. The satisfaction can be "Full" or "Partial". |
| <input checked="" type="checkbox"/> May:                              | In legal terms, "may" is defined as "optional" or "can."  |
| <input checked="" type="checkbox"/> Shall:                            | In legal terms, "shall" is defined as "required."   |

**If you do not understand this information, please contact an attorney.**

## FEES

- ☐ Fees that a party to the case may encounter are as follows:
- ☐ Copy of Documents \$ .75 per page
- ☐ Service Fees Varies (Payable to Process Server)
- ☐ Issue Writ of Garnishment \$45.00
- ☐ Certification Fee \$20.00
- ☐ Transcript of Judgment \$25.00
- ☐ Execution \$45.00
- ☐ Satisfaction of Judgment \$20.00
- ☐ Hearing for Interrogatories \$70.00

## FORMS

To access a form online go to [www.courts.state.co.us](http://www.courts.state.co.us) and click on the “Self Help/Forms” tab. The packet/forms are available in PDF or WORD by selecting “All Court Forms and Instructions” and then “Garnishments and Judgments”. You may complete a form online or you may print it and type or print legibly in black ink. **You may need all or some of these forms. Read these instructions carefully to determine what forms you may need.**

- ☐ JDF 76 General Motion
- ☐ JDF 77 General Order
- ☐ JDF 89 Notice to Garnishee, Application of Funds to Judgment and Release of Funds to Judgment Creditor
- ☐ JDF 105 Pattern Interrogatories Under C.R.C.P. 369(g) - Individual
- ☐ JDF 108 Pattern Interrogatories Under C.R.C.P. 369(g) - Business
- ☐ JDF 111 Satisfaction of Judgment
- ☐ Form 26 Writ of Continuing Garnishment
- ☐ Form 27 Calculation of the Amount of Exempt Earnings
- ☐ Form 28 Objection to Calculation of Amount of Exempt Earnings
- ☐ Form 29 Writ of Garnishment with Notice of Exemption and Pending Levy
- ☐ Form 30 Claim of Exemption to Writ of Garnishment with Notice
- ☐ Form 32 Writ of Garnishment - Judgment Debtor other than Natural Person

## FIRST STEPS TO COLLECTING YOUR JUDGMENT

**Step 1:** First ask the Judgment Debtor to pay, preferably in writing.

**Step 2:** If the Judgment Debtor refuses to pay and you do not know where the Judgment Debtor works, banks or owns property, you will need to have the interrogatories served. The Judgment Debtor is ordered by the Court to answer the questions truthfully. The answers provided in the interrogatories can be helpful in collecting your judgment, such as employer's name and pay dates, location of bank accounts and/or other assets.

- ☐ If you received an Order for Entry of Judgment, the Court has already authorized you to serve the Interrogatories and for the Judgment Debtor to answer them. Pursuant to Rule 369(g) of the Colorado Rules of Civil Procedure, the Judgment Creditor can automatically issue the Form Interrogatories (JDF 105 or 108) as part of the judgment order without further order of the Court.
- ☐ If you want to use any interrogatories other than the Pattern Interrogatories forms mentioned in these instructions, you will need to have them approved by the court before they can be used.

**Step 3:** Serve the Court Order and the interrogatories on the Judgment Debtor.

- ☐ You can have the Judgment Debtor served by doing one of the following:



☐ Select either the Sheriff's Department, a private process server, or someone you know who is 18 years or older and not a party to the action and who knows the rules of service to serve the Judgment Debtor. The process server must follow the Service of Process requirements stated in Rule 4 or 304. Be sure to direct the sheriff, private process server, or person serving the Interrogatories to return the Affidavit of Service to the Court as soon as possible after service has been completed. **OR**

☐ Ask the court clerk to mail the interrogatories to the Judgment Debtor. You will be responsible for the cost of mailing.

**Step 4:** Await return of the interrogatories.

☐ The answers must be filed with the Court and a copy mailed to the sender no later than 14 days after the Judgment Debtor received them.

**Step 5:** Upon receipt of the interrogatories, you are ready to file a Writ of Garnishment **OR** you may request to place a lien against real estate owned by the Judgment Debtor. If the Judgment Debtor does not comply with the order in answering the interrogatories, you will need to file a request for an Order to Issue a Contempt Citation to the Judgment Debtor, with return of service of interrogatories on debtor.

## STEPS TO FILING A WRIT

**Step 1: Determine Appropriate Forms to Complete.**

Determine the appropriate writ of garnishment that you wish the Court to issue based on the types listed below (**A – C**) and the information you obtained from the interrogatories. Below each type of garnishment is a listing of the forms that you will need:

**A. Garnishment of an Individual's Wages**

- ☐ Form 26 - Writ of Continuing Garnishment  
Required Paperwork - 1 original and 3 copies
- ☐ Form 27 - Calculation of the Amount of Exempt Earnings  
Required Paperwork - 1 original and 2 copies
- ☐ Form 28 - Objection to Calculation of the Amount of Exempt Earnings  
Required Paperwork - 1 original

**B. Garnishment of an individual's bank / savings institution, or assets other than earnings**

- ☐ Form 29 - Writ of Garnishment with Notice of Exemption and Pending Levy  
Required Paperwork - 1 original and 4 copies (5 if two debtors)
- ☐ Form 30 - Claim of Exemption to Writ of Garnishment with Notice  
Required Paperwork - 1 original

**C. Garnishment of debtor which is a business entity**

- ☐ Form 32 - Writ of Garnishment - Judgment Debtor other than Natural Person  
Required Paperwork - 1 original and 2 copies.

**Step 2: Complete Forms.**

**You must complete Lines 1 – 5 on the Writ in the upper portion of the form.**

- ☐ **Line 1.** Original Amount of Judgment Entered or the revived amount, if applicable.
  - ◆ Original amount refers to the actual judgment amount entered by the magistrate or judge. If court costs, interest, and/or attorney fees were granted on the judgment date, include them as part of the original judgment.
  - ◆ Revived amount refers to the judgment amount that remains unsatisfied, plus any costs and interest granted. The revived amount will be per the Order for Revival of Judgment – JDF 125.

- ☐ **Line 2. Plus any Interest Due on Judgment**  
This is the amount of interest accrued from the date of judgment. Unless there was a different interest rate granted on the judgment date, interest is 8% per annum for all cases except child support arrearages, which is 12% per annum.
- ☐ **Line 3. Taxable Costs (including estimated cost of service of this Writ)**  
This refers to post-judgment costs only. Cost of issuance of the Writ, service costs, etc.
- ☐ **Line 4. Less any Amount Paid**  
Enter all amounts you have received as payment on the judgment here.
- ☐ **Line 5. Principal Balance/Total Amount Due and owing**

<b>Complete the remaining two sections on the bottom portion of the form.</b>
---

- ☐ Fill in the name of the employer, bank, etc. on whom the Writ is to be served. You will need to provide the process server with complete address(es) to serve the documents. This can be included on the Return of Service or on separate documentation.
- ☐ Section "c" requires that you choose how checks are payable. **Make Checks Payable to:**
  - ☐ If you are pro-se (representing yourself), your checks must be made payable to the Clerk of the Court.
  - ☐ If you are a judgment creditor with an attorney entered on your case or a licensed collection agency, checks may be made payable to either to you or your attorney.

**Step 3: File Writ and appropriate documents with the Court.**

The Clerk will issue the Writ upon your payment. \$45.00. If you do not have an attorney and are requesting a garnishment of the Judgment Debtor'(s) wages please provide self-addressed stamped envelopes so that the Court can forward money received from the garnishee/employer.

**Step 4: Serve the Writ and appropriate documents.**

Select either the Sheriff's Department, a private process server, or someone you know who is 18 years or older and not a party to the action and who knows the rules of service to serve the Garnishee. There is a service fee that is payable to the Sheriff's Department or Private Process Server.

- ☐ You can locate private process servers in the yellow pages under Process Servers.
- ☐ Make sure you provide the process server with complete address information to serve the Writ.
- ☐ If you need to have the Writ served to a bank, employer, etc. outside of Colorado, you will need to follow the rules of service in that state.
- ☐ When service is complete, proof of service (Return of Service) must be filed with the Court.
- ☐ **Make sure you have the appropriate copies and any other forms as described below to provide to the process server.**

**A. Writ of Continuing Garnishment (Wages) Form 26:**

- ☐ Two copies of the Writ are served on the Garnishee together with a blank copy of Form 28.

**B. Writ of Garnishment with Notice of Exemption and Pending Levy (Bank Account, Tenants, Etc.) Form 29:**

- ☐ A copy of the Writ is served on the Garnishee together with a blank copy of Form 30.
- ☐ A copy of the Writ is served on the Judgment Debtor.
- ☐ Provide a self-addressed stamped envelope to receive the completed Writ.

**C. Writ of Garnishment Judgment Debtor other than Natural person (Judgment Debtor is Business) Form 32:**

- ☐ A copy of the Writ is served on the Garnishee.

**Step 5: Responsibilities of the Garnishee and Judgment Creditor after Service.**

Go to Section A, B, C as appropriate.

**A. Writ of Continuing Garnishment (Wages) Form 26**

- ☐ The Garnishee shall complete the Writ by answering the questions on page 2.

- ☐ The Garnishee shall deliver a copy of the completed Writ, together with the Calculation of the Amount of Exempt Earnings (Form 27) and a blank copy of the Objection to the Calculation of the Amount of Exempt Earnings (Form 28) to the Judgment Debtor at the time the Judgment Debtor receives earnings for the first pay period affected by such writ. For all subsequent pay periods within the effective garnishment period, the Garnishee shall provide a copy of the Calculation of the Amount of Exempt Earnings (Form 27) to the Judgment Debtor for that pay period.
- ☐ The Garnishee shall file the answer to the Writ with the Clerk of Court and send a copy to the Judgment Creditor no less than 7 and no more than 14 days following the time the Judgment Debtor receives earnings for the first pay period affected by the Writ or 42 days following the date such Writ was served upon the Garnishee, whichever is less.
- ☐ If the Judgment Debtor does not file an objection with the Court within 14 days of receiving a copy of the Writ, the Garnishee shall send the nonexempt earnings to the individual designated on page 2 section "e" of the Writ. If you are pro se (representing yourself), the Court will send you the money in the self-addressed stamped envelope that you provided when you filed the Writ.
- ☐ If the Judgment Debtor does object, you will receive a copy of the objection and a hearing will be set within 14 days.

**B. Writ of Garnishment with Notice of Exemption and Pending Levy (Bank Account, Tenants, Etc.)**  
Form 29:

- ☐ The Garnishee shall complete the Writ by answering the questions on page 2.
- ☐ The Garnishee shall file a completed copy with the Court and mail a copy to the Judgment Creditor.
- ☐ If the Garnishee is a Bank and is holding money or if the Garnishee has possession of the identified property, the Judgment Creditor shall serve a copy of the completed Writ along with a blank copy of the Claim of Exemption to Writ of Garnishment with Notice (Form 30) to the Judgment Debtor.
- ☐ If the Judgment Debtor does not file a written Claim of Exemption with the Court within 14 days of receiving a copy of the Writ, complete the Notice to Garnishee, Application of Funds to Judgment, and Release of Funds to Judgment Creditor (JDF 89). This form must be filed and approved by the Court before the Garnishee who is holding money can release such funds.
- ☐ If the Garnishee is holding money of the Judgment Debtor, such as a bank, the Garnishee shall pay the amount not to exceed the total amount due and owing on the judgment to the Court.
- ☐ Once the Court has signed the Notice to Garnishee, Application of Funds to Judgment, and Release of Funds to Judgment Creditor (JDF 89), it is the responsibility of the Judgment Creditor to get the Notice (JDF 89) to the Garnishee who is holding the funds.
- ☐ If the Judgment Debtor does object, you will receive a copy of the objection and a hearing will be set within 14 days after the filing of such objection.

**C. Writ of Garnishment Judgment Debtor other than Natural Person (Judgment Debtor is Business)**  
Form 32:

- ☐ The Garnishee shall complete the Writ by answering the questions on page 2.
- ☐ The Garnishee shall file a completed copy with the Court and mail a copy to the Judgment Creditor.
- ☐ If the answers to the writ of garnishment show that the Garnishee has property or holds money owed to the Judgment Debtor, the Court shall enter judgment in favor of the Judgment Debtor and against the Garnishee for the use of the Judgment Creditor.
- ☐ This order shall direct the Garnishee to deliver personal property to the sheriff or if the Garnishee holds money of the Judgment Debtor bank to pay the amount not to exceed the total amount due and owing on the judgment to the Registry of the Court.

**A Writ of Continuing Garnishment is good for 182 days for any judgment ordered on or after August 8, 2001 and for 91 days for any judgment ordered prior to August 8, 2001. When the Effective Garnishment Period expires, you will need to complete a new Writ, file it with the Court and Serve the Garnishee.**

## **STEPS TO REQUESTING A LIEN AGAINST REAL ESTATE**

- Step 1:** Ask the Court for a Transcript of Judgment. The cost is \$25.00.
- Step 2:** Take the Transcript of Judgment to the County Clerk and Recorder where the Judgment Debtor owns the real estate. The lien continues for 6 years if the judgment was awarded in County Court and for 20 years if the judgment was awarded in District Court.
- Step 3:** Advise the Judgment Debtor that he or she will not be able to sell or mortgage the real estate until the Judgment amount has been paid and you release the judgment lien.

## **WHAT TO DO AFTER YOU COLLECT YOUR JUDGMENT**

- Step 1:** Complete a Satisfaction of Judgment (JDF 111) and file with the Court.
- Step 2:** Mail a copy of the Satisfaction of Judgment to the Judgment Debtor, and Garnishee if any.
- Step 3:** If you placed a lien on the real estate owned by the Judgment Debtor, notify the Clerk and Recorder to release the lien.

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court Address: _____  Plaintiff(s)/Petitioner(s): _____  v. Defendant(s)/Respondent(s): _____		<b>▲ COURT USE ONLY ▲</b>
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): _____  Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____		
Case Number: _____  Division _____ Courtroom _____		
<b>WRIT OF CONTINUING GARNISHMENT</b>		

Judgment Debtor's name, last known address, other identifying information: \_\_\_\_\_

1. Original or Revived Amount of Judgment Entered on \_\_\_\_\_ (date) for \$ \_\_\_\_\_
  - a. Effective Garnishment Period
 

☐ 91 days (Judgment entered prior to August 8, 2001)  
☐ 182 days (Judgment entered on or after August 8, 2001)
2. Plus any Interest Due on Judgment (currently \_\_\_\_\_ % per annum)      \$ \_\_\_\_\_
3. Taxable Costs (including estimated cost of service of this Writ)      \$ \_\_\_\_\_
4. Less any Amount Paid      \$ \_\_\_\_\_
5. Principal Balance/Total Amount Due and Owing      \$ \_\_\_\_\_

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of \_\_\_\_\_ (date).

\_\_\_\_\_  
Print Judgment Creditor's Name

\_\_\_\_\_  
Address:

By: \_\_\_\_\_  
Signature (Type Name, Title, Address and Phone)

### WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and who is not a party to this action:

You are directed to serve **TWO COPIES** of this Writ of Continuing Garnishment upon \_\_\_\_\_, Garnishee, with proper return of service to be made to the Court.

**TO THE GARNISHEE: YOU ARE SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:**

- a. To answer the following questions under oath and file your answers with the Clerk of Court AND mail a completed copy with your answers to the Judgment Creditor or attorney no less than 7 nor more than 14 days following the time you pay the Judgment Debtor for the first time following service of this Writ, or 42 days following service of this Writ upon you, whichever is less. **YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**

- b. To pay any nonexempt earnings to the party designated in "e" below no less than 7 nor more than 14 days following each time you pay the Judgment Debtor during the effective Garnishment Period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).
- c. To deliver a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings and a blank Objection to Calculation of the Amount of Exempt Earnings form, the first time you pay the Judgment Debtor.
- d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.
- e. **MAKE CHECKS PAYABLE AND MAIL TO:** ☐ Judgment Creditor named above (only if the Judgment Creditor is a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.); ☐ Judgment Creditor's Attorney (if applicable); or to the ☐ Clerk of the ☐ County Court or ☐ District Court in \_\_\_\_\_ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.)

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_

**PLEASE PUT THE CASE NUMBER (shown above) ON THE FRONT OF THE CHECK.**

CLERK OF THE COURT

By Deputy Clerk: \_\_\_\_\_

Date: \_\_\_\_\_

### NOTICE TO GARNISHEE

- a. This Writ applies to all nonexempt earnings owed or owing during the Effective Garnishment Period shown on Line 1a on the front of this Writ or until you have paid to the party, designated in paragraph "e" on the front of this Writ, the amount shown on Line 5 on the front of this Writ, whichever occurs first. **However, if you have already been served with a Writ of Continuing Garnishment for Child Support, this new Writ is effective for the Effective Garnishment Period after any prior Writ terminates.**
- b. "Earnings" includes all forms of compensation for Personal Services. Also read "Notice to Judgment Debtor" below.
- c. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.

### QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

The following questions MUST be answered by you under oath:

- a. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):
- 1. ☐ WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES (Earnings)
- 2. ☐ Health, Accident or Disability Insurance Funds or Payments
- 3. ☐ Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)  
 If you marked any box above, indicate how the Judgment debtor is paid: ☐ weekly ☐ bi-weekly ☐ semi-monthly ☐ monthly ☐ other The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line 1a (front of this Writ): \_\_\_\_\_
- b. Are you under one or more of the following writs of garnishment? (Mark appropriate box(es)):
- 4. ☐ Writ of Continuing Garnishment (Expected Termination Date: \_\_\_\_\_)
- 5. ☐ Writ of Garnishment for Support (Expected Termination Date: \_\_\_\_\_)

- c. If you marked Box 1 and you did NOT mark either Box 4 or 5, complete the Calculation below for each pay period following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).
- d. If you marked Box 2 or 3 and you did NOT mark either Box 4 or 5, complete the Calculation below for each pay period following receipt of this Writ. If you marked either box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s). However, there are a number of total exemptions, and you should seek legal advice about such exemptions. **If the earnings are totally exempt, please mark box 6 below:**
6. ☐ The earnings are totally exempt because: \_\_\_\_\_

### CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (Each Pay Period)

Gross Earnings for the pay period from _____ thru _____	\$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA)	- \$ _____
Disposable Earnings (Gross Earnings less Deductions)	= \$ _____
Less Statutory Exemption (Use Exemption Chart Below)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
<b>Amount to be withheld and paid</b>	<b>= \$ _____</b>

EXEMPTION CHART (“Minimum Hourly Wage” means state or federal minimum wage, whichever is greater.)	PAY PERIOD	AMOUNT EXEMPT IS THE GREATER OF:
	Weekly	30 x Minimum Hourly Wage or 75% of Disposable Earnings
	Bi-weekly	60 x Minimum Hourly Wage or 75% of Disposable Earnings
	Semi-monthly	65 x Minimum Hourly Wage or 75% of Disposable Earnings
	Monthly	130 x Minimum Hourly Wage or 75% of Disposable Earnings

I certify that I am authorized to act for the Garnishee; that the above answers are true and correct; and that I have delivered a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings and a blank Objection to Calculation of the Amount of Exempt Earnings form to the Judgment Debtor at the time earnings were paid for each pay period (if earnings were paid).

Name of Garnishee (Print) \_\_\_\_\_  
 Address \_\_\_\_\_  
 Phone Number \_\_\_\_\_

\_\_\_\_\_  
 Name of Person Answering (Print)

\_\_\_\_\_  
 Signature of Person Answering

### NOTICE TO JUDGMENT DEBTOR

- a. The Garnishee may only withhold nonexempt earnings from the amount due you, but in no event more than the amount on Line 5 on the front of this Writ, **UNLESS YOUR EARNINGS ARE TOTALLY EXEMPT**, in which case **NO EARNINGS CAN BE WITHHELD**. You may wish to contact a lawyer who can explain your rights.
- b. If you disagree with the amount withheld, you must talk with the Garnishee within 7 days after being paid.
- c. If you cannot settle the disagreement with the Garnishee, you may complete and file the attached Objection with the Clerk of the Court issuing this Writ within 14 days after being paid. **YOU MUST USE THE FORM ATTACHED** or a copy of it.
- d. You are entitled to a court hearing on your written objection.
- e. Your employer cannot fire you because your earnings have been garnished. If your employer discharges you in violation of your legal rights, you may, within 91 days, bring a civil action for the recovery of wages lost because you were fired and for an order requiring that you be reinstated. Damages will not exceed 6 weeks' wages and attorney fees.

<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court Address: _____  Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s): _____	<b>▲ COURT USE ONLY ▲</b>
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): _____  Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____  Division _____ Courtroom _____
<b>WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY</b>	

The Judgment creditor is (check one): ☐ a licensed collection agency pursuant to §12-14-101, et. seq., C.R.S.;  
☐ represented by an attorney; or ☐ not represented by an attorney and is not a licensed collection agency pursuant to §12-14-101, et. seq., C.R.S.

Judgment Debtor's name, last known address, other identifying information: \_\_\_\_\_

1. Original Amount of Judgment Entered _____ (date)	\$	
2. Plus any Interest Due on Judgment (currently _____ % per annum)	+ \$	
3. Taxable Costs (including estimated cost of service of this Writ)	+ \$	
4. Less any Amount Paid	- \$	
5. Principal Balance/Total Amount Due and Owning	= \$	

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of \_\_\_\_\_ (date).

\_\_\_\_\_  
 Print Judgment Creditor's Name

Address: \_\_\_\_\_

By: \_\_\_\_\_  
 Signature (Type Name, Title, Address and Phone No.)

### WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:  
 You are directed to serve a copy of this Writ of Garnishment upon \_\_\_\_\_, Garnishee,  
 with proper return of service to be made to the Court.

#### TO THE GARNISHEE:

YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

- a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**
- b. To hold pending court order the personal property of any kind (other than earnings of a natural person) in your possession or control, including the debts, credits, choses in action or money owed to the Judgment Debtor whether they are due at the time of the service of the writ or are to become due thereafter.

#### YOU ARE NOTIFIED:

- a. This Writ with Notice applies to all personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.



- b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.
- c. After you file your answers to the following questions, **and after receiving a separate notice or order from the court, MAKE CHECKS PAYABLE AND MAIL TO:** ☐ the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.); ☐ the Judgment Creditor's Attorney (if applicable); or to the ☐ Clerk of the ☐ County Court or ☐ District Court in \_\_\_\_\_ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 12-14-101, et. seq., C.R.S.) at the address below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

PLEASE PUT THE CASE NUMBER (above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT

By Deputy Clerk: \_\_\_\_\_

Date: \_\_\_\_\_

### QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

The following questions MUST be answered by you under oath:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Judgment Debtor?

☐ YES ☐ NO

b. If YES, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): \_\_\_\_\_

c. Do you claim any setoff against any property, debt or obligation listed above? ☐ YES ☐ NO

d. If you answered YES to question c, describe the nature and amount of the setoff claimed: (Attach additional pages if necessary): \_\_\_\_\_

I affirm that I am authorized to act for the Garnishee and the above answers are true and correct.

Name of Garnishee (Print) \_\_\_\_\_

Subscribed under oath before me on \_\_\_\_\_ (date) Address: \_\_\_\_\_

\_\_\_\_\_  
Phone Number \_\_\_\_\_

Notary Public/Deputy Clerk

My Commission Expires: \_\_\_\_\_ Name of Person Answering (Print) \_\_\_\_\_

Signature of Person Answering \_\_\_\_\_

### NOTICE TO JUDGMENT DEBTOR OF EXEMPTION AND PENDING LEVY

This Writ with Notice is a Court order which may cause your property or money to be held and taken to pay a judgment entered against you. You have legal rights which may prevent all or part of your money or property from being taken. That part of the money or property which may not be taken is called "exempt property". A partial list of "exempt property" is shown below, along with the law which may make all or part of your money or property exempt. The purpose of this notice is to tell you about these rights.

#### PARTIAL LIST OF EXEMPT PROPERTY

1. All or part of your property listed in Sections 13-54-101 and 102, C.R.S., including clothing, jewelry, books, burial sites, household goods, food and fuel, farm animals, seed, tools, equipment and implements, military allowances, stock-in-trade and certain items used in your occupation, bicycles, motor vehicles (greater for disabled persons), life insurance, income tax refunds, attributed to an earned income tax credit or child tax credit, money received because of loss of property or for personal injury, equipment that you need because of your health, or money received because you were a victim of a crime.
2. All or part of your earnings under Section 13-54-104, C.R.S.
3. Worker's compensation benefits under Section 8-42-124, C.R.S.
4. Unemployment compensation benefits under Section 8-80-103, C.R.S.
5. Group life insurance benefits under Section 10-7-205, C.R.S.
6. Health insurance benefits under Section 10-16-212, C.R.S.
7. Fraternal society benefits under Section 10-14-403, C.R.S.

8. Family allowances under Section 15-11-404, C.R.S.
9. Teachers' retirement fund benefits under Section 22-64-120, C.R.S.
10. Public employees' retirement benefits (PERA) under Sections 24-51-212 and 24-54-111, C.R.S.
11. Social security benefits (OASDI, SSI) under 42 U.S.C. §407.
12. Railroad employee retirement benefits under 45 U.S.C. §231m.
13. Public assistance benefits (OAP, AFDC, TANF, AND, AB, LEAP) under Section 26-2-131, C.R.S.
14. Police Officer's and Firefighter's pension fund payments under Sections 31-30-1117 & 31-30.5-208 and 31-31-203, C.R.S.
15. Utility and security deposits under Section 13-54-102(1)(r), C.R.S.
16. Proceeds of the sale of homestead property under Section 38-41-207, C.R.S.
17. Veteran's Administration benefits under 38 U.S.C. §5301.
18. Civil service retirement benefits under 5 U.S.C. §8346.
19. Mobile homes and trailers under Section 38-41-201.6, C.R.S.
20. Certain retirement and pension funds and benefits under Section 13-54-102(1)(s), C.R.S.
21. A Court-ordered child support or maintenance obligation or payment under Section 13-54-102(1)(u), C.R.S.
22. Public or private disability benefits under Section 13-54-102(1)(v), C.R.S.

If the money or property which is being withheld from you includes any "exempt property," you must file within 14 days of receiving this notice a written Claim of Exemption with the Clerk of the Court describing what money or property you think is "exempt property" and the reason that it is exempt. YOU MUST USE THE APPROVED FORM attached to this Writ or a copy of it. When you file the claim, you must immediately deliver, by certified mail, return receipt requested, a copy of your claim to the Garnishee (person/place that was garnished) and to the Judgment Creditor's attorney, or if none, to the Judgment Creditor at the address shown on this Writ with Notice. Notwithstanding your right to claim the property as "exempt," no exemption other than the exemptions set forth in Section 13-54-104(3), C.R.S., may be claimed for a Writ which is the result of a judgment taken for arrearages for child support or for child support debt.

Once you have properly filed your claim, the court will schedule a hearing within 14 days. The Clerk of the Court will notify you and the Judgment Creditor or attorney of the date and time of the hearing, by telephone, by mail or in person.

When you come to your hearing, you should be ready to explain why you believe your money or property is "exempt property". If you do not appear at the scheduled time, your money or property may be taken by the Court to pay the judgment entered against you.

REMEMBER THAT THIS IS ONLY A PARTIAL LIST OF "EXEMPT PROPERTY"; you may wish to consult with a lawyer who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

You must act quickly to protect your rights. Remember, you only have 14 days after receiving this notice to file your claim of exemption with the Clerk of the Court.

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<input type="checkbox"/> District Court <input type="checkbox"/> Denver Juvenile Court _____ County, Colorado Court Address: _____  <hr/> In re <input type="checkbox"/> The Marriage of: <input type="checkbox"/> Parental responsibilities concerning: _____  Petitioner: and Co-Petitioner/Respondent: _____	<b>▲ COURT USE ONLY ▲</b>
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): _____  <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">           Phone Number: _____            FAX Number: _____         </div> <div style="width: 45%;">           E-mail: _____            Atty. Reg. #: _____         </div> </div>	Case Number: _____  <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Division _____</div> <div style="width: 45%;">Courtroom _____</div> </div>
<b>WRIT OF GARNISHMENT FOR SUPPORT</b>	

Judgment Debtor's name, last known address, other identifying information: \_\_\_\_\_

- |   |            |  |
|---|------------|--|
| 1. Original Amount of Judgment Entered _____ (date)                           | \$ _____   | JUDGMENT FOR:<br>(Mark Appropriate Boxes)              |
| 2. Plus any Interest Due on Judgment (currently _____ % per annum) + \$ _____ |            | <input type="checkbox"/> Child Support ONLY            |
|   |            | (Date of Order _____)                                  |
| 3. Taxable Costs (including estimated cost of service of this Writ)           | + \$ _____ | <input type="checkbox"/> Maintenance ONLY              |
| 4. Less any Amount Paid   | - \$ _____ | <input type="checkbox"/> Child Support and Maintenance |
| 5. Principal Balance/Total Amount Due and Owing                               | \$ _____   | <input type="checkbox"/> Case commenced after 4/30/91  |

Mark the Appropriate Box Below to Determine the Amount of the Statutory Exemption (MARK ONLY ONE BOX)

- ☐ The Judgment Debtor is supporting a spouse or a dependent child, and the judgment is for a period which is 12 weeks or older (Write "45" in the blank space on Line c, below).
- ☐ The Judgment Debtor is supporting a spouse or dependent child, and the judgment is for a period which is less than 12 weeks old (Write "50" in the blank space on Line c, below).
- ☐ The Judgment Debtor is not supporting a spouse or dependent child, and the judgment is for a period which is 12 weeks or older (Write "35" in the blank space on Line c, below).
- ☐ The Judgment Debtor is not supporting a spouse or dependent child, and the judgment is for a period which is less than 12 weeks old (Write "40" in the blank space on Line c, below).
- ☐ I do not know whether the Judgment Debtor is supporting a spouse or dependent child, but the judgment is for a period which is 12 weeks or older (Write "45" in the blank space on Line c, below).
- ☐ I do not know whether the Judgment Debtor is supporting a spouse or dependent child, but the judgment is for a period which is less than 12 weeks old (Write "50" in the blank space on Line c, below).

I affirm under penalty of perjury that I am authorized to act for the Judgment Creditor and this is a correct statement as of \_\_\_\_\_ (date).

\_\_\_\_\_  
Print Judgment Creditor's Name

\_\_\_\_\_  
Address:

\_\_\_\_\_  
By: \_\_\_\_\_  
Signature (Type Name, Title, Address and Phone)

## WRIT OF GARNISHMENT FOR SUPPORT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:

You are directed to serve A COPY of this Writ of Garnishment for Support upon \_\_\_\_\_ Garnishee, with proper return of service to be made to the Court.

**TO THE GARNISHEE:**

**YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:**

- a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) no less than 7 nor more than 14 days following the time you pay the Judgment Debtor for the first time following service of this Writ or 42 days following service of this Writ upon you, whichever is less. YOUR FAILURE TO ANSWER THIS WRIT OF GARNISHMENT FOR SUPPORT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.
- b. To pay any nonexempt earnings to the payee as indicated in section d below no less than 7 nor more than 14 days following each time you pay the Judgment Debtor during the effective period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).
- c. The amount of the exemption is \_\_\_\_\_% of disposable earnings.
- d. Payments shall be mailed to the:

☐ Family Support Registry  
P. O. Box 2171  
Denver, CO 80201-2171  
Acct #: \_\_\_\_\_

☐ Judgment Creditor  
\_\_\_\_\_  
\_\_\_\_\_

CLERK OF THE COURT

By Deputy Clerk: \_\_\_\_\_

DATE: \_\_\_\_\_

### NOTICE TO GARNISHEE

- a. This Writ applies to all nonexempt earnings owed or owing until the Principal Balance/Total Amount Due and Owing (Line 5 on the front of this Writ) has been withheld or the garnishment is released by the court or in writing by the Judgment Creditor. If you are presently under a Writ of Continuing Garnishment or served with such Writ while this Writ of Garnishment for Support is in effect, this Writ takes priority over the other Writs, and this is the only one in force and effect.
- b. "EARNINGS" INCLUDES ALL FORMS OF COMPENSATION FOR PERSONAL SERVICES.
- c. The percentage of disposable earnings shown on Line c above is exempt from this Writ of Garnishment for Support.
- d. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.

### QUESTIONS TO BE ANSWERED BY GARNISHEE

**Judgment Debtor's Name:** \_\_\_\_\_ **Case Number:** \_\_\_\_\_

The following questions MUST be answered by you under oath:

- a. On the date and time this Writ of Garnishment for Support was served upon you, did you owe or do you anticipate owing any of the following to the Judgment Debtor? (Mark appropriate box(es)).
  1. ☐ WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES (Earnings)
  2. ☐ Pension or Retirement Benefits or Health/Accident/Disability/Casualty Insurance Funds or Payments.
  3. ☐ Workers' Compensation Benefits or Payments (For child support in cases filed after 4/30/91 ONLY)
  4. ☐ Payments to an Independent Contractor for Labor or Services, Dividends, Severance Pay, Royalties, Monetary Gifts/Prizes, Interest, Trust Income, Annuities, Capital Gains, Rents, or Taxable Distributions from Certain Business Entities (For child support orders entered after 6/30/96 ONLY)  
If you marked any box above, indicate how the Judgment Debtor is paid:  
☐ WEEKLY ☐ BI-WEEKLY ☐ SEMI-MONTHLY ☐ MONTHLY ☐ OTHER
- b. If you marked Box 1, complete the Calculation below for the "First Pay Period" following receipt of this Writ.
- c. If you marked Box 2, 3 or 4, complete the Calculation below for the "First Pay Period" following receipt of this Writ; however, if the judgment includes maintenance (as indicated on the front of this Writ) the earnings may be totally exempt, and you should seek legal advice about such exemption. IF THE EARNINGS ARE TOTALLY EXEMPT, PLEASE MARK BOX 5 BELOW:
  5. ☐ THE EARNINGS ARE TOTALLY EXEMPT BECAUSE \_\_\_\_\_

### CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (First Pay Period)

Gross Earnings for the First Pay Period from _____ through _____	\$ _____
Plus Tips Reported or Imputed by Federal Law (Child Support Orders after 6/30/96)	+ \$ _____
Less Deductions Required by Law (e.g., Withholding Taxes, FICA)	- \$ _____
Disposable Earnings (Gross Earnings Plus Tips (where applicable) Less Deductions)	= \$ _____
Less Statutory Exemption (Use percentage shown on Line c in the Writ portion above)	- \$ _____
Net Amount Subject to Garnishment	= \$ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- \$ _____
<b>Amount to be withheld</b>	<b>= \$ _____</b>

I affirm that I am authorized to act for the Garnishee and the above answers are true and correct.

	Name of Garnishee (Print) _____
Subscribed under oath before me on _____ (date)	Address: _____
	Phone Number: _____
_____ Notary Public	Name of Person Answering (Print) _____
My Commission Expires: _____	Signature of Person Answering _____

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Cited  
As of: May 1, 2017 8:00 PM Z

## *People ex rel. J.W.*

Court of Appeals of Colorado, Division Five

November 1, 2007, Decided

Court of Appeals No. 06CA2117

### Reporter

174 P.3d 315 \*; 2007 Colo. App. LEXIS 2089 \*\*

The People of the State of Colorado through the 18th Judicial District of the District Attorney Family Support Division, Intervenor-Appellant, In the Interest of J.W., a Child, Upon the Petition of D.D., Petitioner, and Concerning P.W., Respondent, and Frankl & Tasker, P.C., Garnishee-Appellee.

**Prior History:** [\*\*1] Arapahoe County District Court No. 92JP202. Honorable Gerald J. Rafferty, Judge.

**Disposition:** ORDER AFFIRMED.

### Core Terms

attorney's, law firm, garnishment, personal injury, settlement proceeds, attorney's fees, child support, settlement, earnings

### Case Summary

#### Procedural Posture

In a paternity action, the People appealed the order of the Arapahoe County District Court, Colorado, affirming the magistrate's determination that the attorney's lien on personal injury settlement proceeds obtained for respondent father had priority over a child support judgment.

#### Overview

The People filed a verified entry of support judgment in the amount of \$ 24,160.28, representing child support arrearages that the father owed the mother. He had obtained a personal injury settlement for \$ 17,000. The People obtained a writ of garnishment and served both the father and his counsel. The law firm filed an entry of appearance and answer. The magistrate correctly concluded that the law firm was entitled to disburse the portion of the settlement funds representing its attorney fees prior to disbursing the garnished funds to the People. The father had an interest only in the net personal injury settlement proceeds after the deduction of the law firm's attorney fees; therefore, the People's writ of garnishment could attach only to the net proceeds. The settlement proceeds did not constitute "earnings," as that term was defined in *Colo. Rev. Stat. § 13-54-104(1)(b)(I)*. The People's appeal was not frivolous.

#### Outcome

The order was affirmed.


### LexisNexis® Headnotes

Civil Procedure > Remedies > Judgment Liens > General Overview


HN1  It is not necessary to obtain a judgment in order for an attorney's lien to attach.

Civil Procedure > ... > Default & Default Judgments > Default Judgments > Entry of Default Judgments


Civil Procedure > Judgments > Enforcement & Execution > Garnishment

HN2  *Colo. R. Civ. P. 103(7)(a)(1)* requires default only if the garnishee fails to answer or pay any nonexempt earnings.

Civil Procedure > Judgments > Enforcement & Execution > Garnishment


HN3  A judgment creditor, by garnishment, secures only the judgment debtor's interest against the garnishee. A judgment creditor cannot garnish sums that the judgment debtor himself could not recover from the garnishee.

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > General Overview

HN4  An attorney's lien begins to accrue from the moment services commence and attaches automatically to any monies or property due or owing to the client that the attorney obtains or assists in obtaining.

Civil Procedure > Remedies > Judgment Liens > General Overview


Family Law > ... > Support Obligations > Enforcement > Garnishment

HN5  Courts have addressed and rejected the specific argument that a writ of garnishment for child support arrearages must be given priority over all other liens.

Constitutional Law > Separation of Powers


Constitutional Law > State Constitutional Operation

Governments > Legislation > General Overview

HN6  One of the fundamental tenets of the constitutional system is that courts do not approve or disapprove the wisdom of legislative decisions or the desirability of legislative acts.

Civil Procedure > Appeals > Costs & Attorney Fees

Governments > State & Territorial Governments > Claims By & Against

HN7  An award against the state under *Colo. App. R. 38(d)* is allowed only to the extent authorized by law.

**Counsel:** Carol Chambers, District Attorney, Rachel Leone, Deputy District Attorney, Alison Barrett, Deputy District Attorney, Centennial, Colorado, for Intervenor-Appellant.

No Appearance for Respondent.

Frankl & Tasker, P.C., Thomas G. Tasker, Denver, Colorado, for Garnishee-Appellee.

**Judges:** Opinion by: JUDGE ROMAN. Loeb and Plank \*, JJ., concur.

**Opinion by:** ROMAN

## Opinion

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[\*317] In this paternity action, the People appeal from the trial court's order affirming the magistrate's determination that the attorney's lien on personal injury settlement proceeds obtained for Paul Harding Wood (father) had priority over a child support judgment. We affirm.

The People filed a verified entry of support judgment in the amount of \$ 24,160.28, representing child support arrearages that father owed Deborah DeThomas (mother) for the period between May 1993 and March 2006.

The People subsequently obtained a writ of garnishment for the support judgment, and served both father and Thomas George Tasker (counsel), a member of Frankl & [\*2] Tasker, P.C. (law firm), who had obtained a personal injury settlement in the amount of \$ 17,000 for father. Eleven days after service, counsel sent the People answers to the questions in the writ and disbursed \$ 9,830.03 of the \$ 17,000 settlement from the personal injury case to the Arapahoe Child Support Enforcement Unit (CSEU). However, counsel did not file the answers with the court within ten days of service, as instructed by the writ. Counsel also withheld \$ 6,593.22 to cover law firm's legal fees and costs and \$ 576.75 for a medical lien.

The People then filed a motion for entry of default judgment and verified traverse, seeking entry of judgment in the amount of \$ 17,000 against counsel based on his failure to file an answer with the court and withholding the sum for attorney fees and costs. Three days later, law firm filed an entry of appearance and answer, indicating that it had paid all net personal injury settlement proceeds to the CSEU. Law firm opposed entry of default, claiming the right to setoff under C.R.C.P. 103(10) and arguing that the writ extended only to the net settlement proceeds after deduction of attorney fees and expenses.

Upon review of the pleadings, and [\*3] after distinguishing the cases relied on by the People, the magistrate rejected the People's argument that the child support judgment had priority over all other judgments and liens. The magistrate found that law firm had a statutory charging lien on the settlement proceeds, which were not child support but would merely be used to satisfy a child support judgment, and that law firm did not fail to answer or pay pursuant to the writ. Relying on out-of-state authority, the magistrate concluded that law firm was entitled to disburse the portion of the settlement funds representing its attorney fees prior to disbursing the garnished funds to the People. On the People's timely filed petition for review, the trial court affirmed the magistrate's order.

### I. Judgment and Notice

We reject the People's assertion that the personal injury settlement was not subject to the attorney's charging lien because it did not constitute a judgment. See Cope v. Woznicki, 140 P.3d 239, 241 (Colo. App. 2006) (it HN1 [T] is not necessary to obtain a judgment in order for the attorney's lien to attach).

We also reject the People's assertion that the attorney's lien was not enforceable against them because law firm failed [\*4] to file a notice of the lien. The People had actual notice of the lien. See Aleman v. Annable, 110 Colo. 61, 63, 129 P.2d 987, 988 (1942). Nevertheless, notice was not required because the settlement funds were in counsel's possession. See In re Oiltech, Inc., 38 B.R. 484, 486 (Bankr. D. Nev. 1984); Clark v. O'Donnell, 68 Colo. 279, 286, 187 P. 534, 537 (1920).

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\* Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2007.



[\*\*18] II. C.R.C.P. 103

The magistrate and the trial court expressly found that law firm did not fail "to answer or pay" as provided for in C.R.C.P. 103(7)(a)(1). HN2 [†] The rule requires default only if the garnishee fails to answer or pay any nonexempt earnings. The trial court also found that the writ required law firm to hold only that property "owed to or owned by the judgment debtor," and concluded that entry of default was not required because law firm paid such amounts within the time required. Thus, the magistrate and the court did not disregard the procedure set forth in C.R.C.P. 103.

Finally, the magistrate also found, and we agree, that the settlement proceeds did not constitute "earnings," as that term is defined in section 13-54-104 (1) (b) (I), C.R.S. 2007. Therefore, the statutory exemptions and method of computing "disposable [\*\*5] earnings" subject to garnishment of earnings do not apply.

## III. Law and Policy

The People finally assert that it was error not to extend priority given to child support garnishments over all other liens. We disagree under the circumstances of this case.

HN3 [†] A judgment creditor, by garnishment, secures only the judgment debtor's interest against the garnishee. Law Offices of Andrew L. Quiat, P.C. v. Ellithorpe, 917 P.2d 300, 304 (Colo. App. 1995); see Collins v. Thuringer, 92 Colo. 433, 437, 21 P.2d 709, 710 (1933). In other words, a judgment creditor cannot garnish sums that the judgment debtor himself could not recover from the garnishee. In re Stone, 194 Colo. 394, 397, 573 P.2d 98, 100 (1977); Salle v. Howe, 793 P.2d 628, 630 (Colo. App. 1990) (judgment creditor's rights were subject to attorney's lien).

HN4 [†] An attorney's lien begins to accrue from the moment services commence and attaches automatically to any monies or property due or owing to the client that the attorney obtains or assists in obtaining. In re Marriage of Shapard, 129 P.3d 1007, 1009 (Colo. App. 2004).

Here, father had an interest only in the net personal injury settlement proceeds, after deduction of law firm's attorney fees, [\*\*6] which he agreed to, and, therefore, the People's writ of garnishment could attach only to such net proceeds. See Salle v. Howe, 793 P.2d at 630. Accordingly, the decision of the magistrate and the trial court was correct under application of state law.

The holding in Rios v. Mireles, 937 P.2d 840 (Colo. App. 1996), is not dispositive because it concerned calculation of the exempt portion of "earnings," not a personal injury settlement, and the parties agreed there that the attorney's lien should be satisfied first. In re Marriage of Etcheverry, 921 P.2d 82 (Colo. App. 1996), concerned an attempt, unlike here, to enforce an attorney's charging lien against ongoing monthly child support payments paid to the custodial parent.

We recognize the public policy generally favoring the satisfaction of child support obligations. See, e.g., In re Marriage of Etcheverry, 921 P.2d at 83. However, other HN5 [†] courts have addressed and rejected the specific argument that a writ of garnishment for child support arrearages must be given priority over all other liens, and their rulings are persuasive. See Wujcik v. Wujcik, 21 Cal. App. 4th 1790, 1794-95, 27 Cal. Rptr. 2d 102, 104 (1994) (duty to pay child support [\*\*7] does not create equitable lien favoring wife over attorney's lien on damages obtained in husband's automobile accident claim); Cappa v. F & K Rock & Sand, Inc., 203 Cal. App. 3d 172, 175-76, 249 Cal. Rptr. 718, 720 (1988) (state's lien for child support arrearages did not have priority over previously created lien for attorney fees); Morrone v. Thuring, 334 N.J. Super. 456, 462, 759 A.2d 1238, 1241 (2000) (priority given to child support in garnishment of ongoing wages is not extended to statutory lien for health care provider); Daniels v. Monroe County Child Support Collection Unit, 196 Misc. 2d 595, 597, 763 N.Y.S.2d 461, 462 (N.Y. Sup. Ct. 2003) (attorney's charging lien has priority over lien of child support collection unit), *aff'd*, 11 A.D.3d 944, 783 N.Y.S.2d 443 (2004).

As stated in *Daniels*, 196 Misc. 2d at 597, 763 N.Y.S.2d at 462, "[t]here would be no monies payable to [father] if his [personal [\*319] injury] attorney had not taken the case and pressed it to a successful conclusion." Our supreme court recognized this factor long ago. See *Dankwardt v. Kermode*, 68 Colo. 225, 230, 187 P. 519, 521 (1920) ("[T]he attorney's lien should, in equity and good conscience, prevail . . . as it [\*\*8] was only through [the attorney's] professional skill and efforts that the demand finally became of any settled and definite value at all . . . .").

If the General Assembly means to give priority to child support arrearages over all other liens, it is for that body, not this court, expressly to say so. See *Kallenberger v. Buchanan*, 649 P.2d 314, 318 (Colo. 1982) ("One *HN6* [↑] of the fundamental tenets of our constitutional system is that courts do not approve or disapprove the wisdom of legislative decisions or the desirability of legislative acts."); *In re Marriage of Lishnevsky*, 981 P.2d 609, 611 (Colo. App. 1999).

#### IV. Frivolous appeal

Law firm's request that we impose attorney fees, costs, and damages against the People for a frivolous appeal is denied for lack of statutory authority allowing such an award. See *People in Interest of W.M.*, 643 P.2d 794, 796 (Colo. App. 1982)(award *HN7* [↑] against state under *C.A.R. 38(d)* is allowed only to the extent authorized by law).

The order is affirmed.

JUDGE LOEB and JUDGE PLANK concur.

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## *Jones v. Feiger, Collison & Killmer*

Court of Appeals of Colorado, Division Five

December 29, 1994, Decided

No. 93CA1709

### Reporter

903 P.2d 27 \*; 1994 Colo. App. LEXIS 387 \*\*; 10 I.E.R. Cas. (BNA) 344; 18 BTR 2252

George Jones, Plaintiff-Appellant, v. Feiger, Collison & Killmer, Defendant-Appellee.

**Subsequent History:** [\*\*1] Opinion Modified, and as Modified Rehearing Denied February 2, 1995. Certiorari Granted September 11, 1995 (95SC150). Certiorari Granted on the following issues: Whether the court of appeals erred in holding tht the denial of a motion for summary judgment is an appealable order. Whether the court of appeals erred in holding that the petitioner's contingent fee agreement was void as against public policy. Whether the court of appeals erred by awarding quantum meruit to a law firm where it held tht the law firm's contingent fee agreement was void as against public policy. Released for Publication September 25, 1995.

**Prior History:** Appeal from the District Court of the City and County of Denver. Honorable H. Jeffrey Bayless, Judge. No. 91CV8289.

**Disposition:** JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED WITH DIRECTIONS

### Core Terms

law firm, settlement, trial court, public policy, withdraw, point of law, unenforceable, provisions, parties, summary judgment, summary judgment motion, attorneys, rebuttal, negotiations, denial of summary judgment, client's right, unreasonably, calculating, contends, services, void, pretrial, settle, right to control, fiduciary duty, legal services, circumstances, counterclaim, hourly

### Case Summary

#### Procedural Posture

Plaintiff client sought review of the decision of the District Court of the City and County of Denver (Colorado), which found in favor of defendant law firm in plaintiff's action alleging breach of contract and fiduciary duty, and in favor of defendant on its counterclaim for legal fees.

#### Overview

Plaintiff client engaged defendant law firm to render legal services in connection with plaintiff's allegedly wrongful termination from employment. A senior attorney informed plaintiff that if matters did not get worked out, defendant might have to withdraw. Plaintiff subsequently agreed to settlement, but refused to pay defendant any fees. Plaintiff then filed an action against defendant asserting claims of breach of contract and fiduciary duty. The jury found in favor of defendant and awarded fees to defendant. The court affirmed the judgment on plaintiff's claims against defendant, but remanded for a new trial solely on the issue of the amount of fees to which defendant was entitled on its counterclaim. The court agreed that that certain provisions of the representation agreement were unenforceable. However, because defendant did not contract to perform an act that is itself illegal, prohibited by statute, or against public policy, and because payment for the legal services provided in the circumstances

presented was contemplated by the parties and included in the contract, the court concluded that defendant was entitled to recover the reasonable value of the services rendered.

### Outcome

The court affirmed the decision of the lower court with regard to plaintiff client's claims against defendant law firm. The court reversed and remanded on defendant's counterclaim awarding defendant fees it claimed pursuant to a representation agreement because defendant was entitled to recover the reasonable value of the services rendered only.

## LexisNexis® Headnotes

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Evidence > Relevance > Relevant Evidence

HN1 [📄] A party may introduce in rebuttal any competent evidence which explains, refutes, counteracts, or disproves the evidence put on by the opposing party even if the evidence also tends to support the party's case-in-chief. Even when evidence offered in rebuttal is not squarely within the scope of the opposing party's evidence, otherwise material and competent evidence should not be rejected merely because offered out of regular order, especially where no unfair advantage is taken and the opponent is not prejudiced.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

HN2 [📄] The decision whether to allow rebuttal testimony is within the discretion of the trial court. That decision will not be disturbed on review absent an abuse of that discretion.

Civil Procedure > Discovery & Disclosure > Disclosure > Mandatory Disclosures

HN3 [📄] *Colo. R. Civ. P. 16* requires parties to disclose information concerning persons who "may" be called to testify. It is not unreasonable to require compliance with the rule when the need for the testimony could be reasonably anticipated.

Civil Procedure > Trials > Closing Arguments > General Overview

Criminal Law & Procedure > Trials > Closing Arguments > General Overview

HN4 [📄] The scope of closing argument is a matter within the trial court's discretion.

Civil Procedure > Judgments > Summary Judgment > General Overview

HN5 [📄] Review of a denial of summary judgment is available after trial when it is clear that the denial is based on a point of law.

Civil Procedure > Judgments > Summary Judgment > General Overview

Civil Procedure > Judgments > Preclusion of Judgments > Law of the Case

**HN6** [↓] A party may raise at trial an issue previously raised on a motion for summary judgment and a court is not precluded under the doctrine of the law of the case from revising or reversing its prior order on that issue. Nevertheless, no such duplication of time, effort, and expense should be required.

Civil Procedure > Settlements > General Overview

Civil Procedure > Settlements > Settlement Agreements > General Overview

Business & Corporate Compliance > ... > Formation of Contracts > Acceptance > General Overview

Business & Corporate Compliance > ... > Contracts Law > Formation of Contracts > Execution

**HN7** [↓] It is for the client to decide whether he will accept a settlement offer. The same principle is set forth in *Colo. R. Prof. Conduct 1.2(a)*, which states that a lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. A client's right to reject settlement is "absolute" and "unqualified." Any provision in an agreement to provide legal services that would deprive a client of the right to control settlement is unenforceable as against public policy.

**Counsel:** Gersh & Danielson, Miles M. Gersh, James S. Helfrich, Denver, Colorado, for Plaintiff-Appellant.

Kennedy & Christopher, P.C., Elizabeth A. Starrs, Ronald H. Nemirow, Denver, Colorado, for Defendant-Appellee.

**Judges:** Opinion by JUDGE BRIGGS Taubman, J., concurs. Ruland, J., concurs in part and dissents in part.

**Opinion by:** BRIGGS

## Opinion

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**[\*29]** Plaintiff, George Jones (client), appeals the judgment entered on a jury verdict in favor of defendant, Feiger, Collison & Killmer, his former attorneys (law firm). The jury found against the client on his claims of breach of contract and fiduciary duty and for the law firm on its counterclaim for legal fees. We affirm the judgment against the client on his claims against the law firm. However, because we conclude that certain provisions of the representation agreement between the client and the law firm are unenforceable, we reverse the judgment on the counterclaim awarding the law firm as damages the **[\*\*2]** fees it claimed pursuant to the representation agreement and remand for a new trial to determine the reasonable value of the law firm's services.

I.

The client engaged the law firm to render legal services in connection with the client's allegedly wrongful termination from employment as an executive for an investment company. The parties entered into a representation agreement, which established a reduced hourly rate and contingency fee schedule for representation.

The agreement provided in regard to settlement:

The law firm is not to settle any of the client's claims without the consent of the client. The client agrees to consider seriously any recommendation of settlement that the law firm makes. The client agrees not to refuse unreasonably to settle his claims should such an opportunity arise.

Another provision stated in pertinent part:

The law firm shall have the right to withdraw . . . for any other justifiable reason, including the client's failure to comply with any provision of this agreement. . . . At the time of withdrawal, . . . the client will pay [the law firm for work performed] an amount for fees and costs sufficient to equal 100% of . . . normal hourly rates. . . .

[\*\*3] The law firm filed a complaint against the client's employer. As the trial date approached, settlement negotiations intensified.

Although there was conflicting evidence concerning the negotiations, some facts were undisputed. On one occasion, the client met personally with the employer's attorney to discuss settlement. The two sides' bargaining positions were further apart after this meeting than when the meeting began. The next day, one of law firm's senior attorneys, without the client's authorization, inquired of the employer's attorney whether the employer might offer \$ 800,000, a figure between the parties' starting positions the previous day.

When the client learned of the communication he was upset. However, nine days later, after the employer's attorney presented an offer that included the settlement figure of \$ 800,000, together with other terms and conditions, the client authorized a counteroffer that included the same figure. The negotiations became focused on the other terms and conditions of settlement.

For a brief time it appeared that the parties were near settlement. However, the client then communicated to the law firm that he would not accept \$ 800,000 with the conditions [\*\*4] sought by the employer's attorney.

The law firm at this point issued a letter to the client urging him to accept the figure being discussed and reminding him of his contractual obligation "not to refuse unreasonably to settle." In the letter, the law firm characterized the client's refusal to accept this figure as "unreasonable." In a meeting a short time later, and two months before trial, the senior attorney responsible for negotiations expressed her concern about the "breakdown" in the relationship with the client. She informed the client that if matters did not "get worked out," the law firm might have to withdraw.

Without discharging the law firm, the client retained separate counsel for advice on settlement. Soon afterwards the client agreed to settlement with the employer for the figure previously discussed, but refused to pay the law firm any fees.

In the present action against the law firm, the client asserted claims of breach of contract and fiduciary duty. Before trial, the client filed a motion for partial summary [\*\*30] judgment, contending that the representation agreement was void because it unreasonably restricted his right to control settlement. The court denied the motion, [\*\*5] stating that matters having to do with reasonableness are inappropriate for summary judgment. The court concluded it "was not satisfied" that the representation agreement "on its face" was void as against public policy and further concluded "that a factual presentation is necessary."

At trial, counsel for the client did not raise the issue of whether the representation agreement was unenforceable as against public policy. The client's theory of liability was that, in making the unauthorized "inquiry," the law firm had effectively put a cap on any possible settlement and that, by pressuring him with threat of withdrawal pursuant to the representation agreement, it had forced him to accept the settlement the law firm had wanted. The client contended that the law firm's conduct during the settlement negotiations was in breach of the representation agreement and of the fiduciary duty the law firm owed to him.

Both the client and the attorneys from the law firm testified to the course of negotiations. The client then sought to call the employer's attorney as an unendorsed rebuttal witness. The trial court refused to permit the testimony.

The jury returned a verdict in which it found for [\*\*6] the law firm on the client's claims for breach of contract and breach of fiduciary duty. On the law firm's counterclaim, the jury awarded all the fees the law firm had claimed were owed under the representation agreement.

II.

The client contends that the trial court committed reversible error when it refused to permit the client to call as a rebuttal witness the attorney who had negotiated the settlement on behalf of the employer and that the court compounded the error by allowing opposing counsel to make comments on the absence of the testimony and then describing those comments in front of the jury as fair argument. We are not persuaded.

A.

The client had not endorsed the employer's attorney as a witness. The law firm at one time had endorsed the attorney and attempted to depose him. However, because the final settlement agreement contained a confidentiality provision, which had been incorporated into a court order, the employer's attorney refused to respond to questions concerning the negotiations without a court order directing him to do so.

Neither the law firm nor the client sought a court order to compel the attorney to testify. Instead, the law firm removed the employer's **[\*\*7]** attorney from its list of endorsed witnesses. Because of the lack of discovery, the client's offer of proof at trial was limited to a representation that testimony by the employer's attorney would be "different" from the testimony of the attorney in the law firm.

The trial court reasoned that it appeared the testimony of the employer's attorney would rebut not only the law firm's evidence but also the client's evidence. Further, because the testimony would go "to the very heart of the case," to allow the attorney to testify without having been endorsed would be improper.

B.

**HN1**<sup>(↑)</sup> A party may introduce in rebuttal any competent evidence which explains, refutes, counteracts, or disproves the evidence put on by the opposing party even if the evidence also tends to support the party's case-in-chief. Even when evidence offered in rebuttal is not squarely within the scope of the opposing party's evidence, otherwise material and competent evidence should not be rejected "merely because offered out of regular order, especially where . . . no unfair advantage is taken and the opponent is not prejudiced." *Taylor v. Mazzola*, 150 Colo. 553, 558, 375 P.2d 96, 99 (1962) **[\*\*8]** (emphasis added).

**HN2**<sup>(↑)</sup> The decision whether to allow rebuttal testimony is within the discretion of the trial **[\*31]** court. That decision will not be disturbed on review absent an abuse of that discretion. *People v. Silburn*, 807 P.2d 1167 (Colo. App. 1990).

Here, because the client prior to trial did not request the trial court to abrogate the confidentiality order, the client's attorney failed to make an offer of proof sufficiently indicating the anticipated substance of the rebuttal testimony. Therefore, we cannot determine whether the testimony would have been proper rebuttal.

Further, the trial court's disallowance of this testimony was not based merely on its presentation out of the regular order. As noted by the trial court, the employer's attorney's testimony was central to the case. The client at no time claimed that any of the testimony of attorneys from the law firm had been a surprise to him such that rebuttal with an unendorsed witness was required.


A different ruling by the trial court would have permitted the client to circumvent the dictates of **HN3**<sup>(↑)</sup> C.R.C.P. 16, which require parties to disclose information concerning persons who "may" be called to testify. **[\*\*9]** It is not unreasonable to require compliance with the rule when the need for the testimony could be reasonably anticipated. Cf. *Keyes v. Lauga*, 635 F.2d 330 (5th Cir. 1981).

In these circumstances, with no specific offer of proof on the attorney's anticipated testimony, no attempt to obtain prior disclosure of testimony that would go "very much to the heart of the case," and no claim of surprise in the testimony already presented, the client has failed to demonstrate that the trial court abused its discretion in refusing to allow the unendorsed witness to be called as a rebuttal witness. Cf. *In re Apex Oil Co.*, 958 F.2d 243 (8th Cir. 1992), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 180, 121 L. Ed. 2d 125 (1992); *Peterson v. General Motors Corp.*, 904 F.2d 436 (8th Cir. 1990). The trial court therefore did not commit reversible error in excluding the testimony of the rebuttal witness.

C.

Finally, the client contends that the trial court erred in overruling his counsel's objection when opposing counsel, during closing argument, referred to the absence of the employer's **[\*\*10]** attorney as a witness. He further contends that the court's characterization of counsel's statement as "fair argument" encouraged the jury to assume the employer's attorney would have testified unfavorably to the client's case. We again disagree.

The jury was not asked to infer that the testimony of the attorney would be contrary to that of the client or consistent with that of the attorneys from the law firm. Rather, the reference was part of an argument that the client had failed to satisfy his burden of proving that the law firm's unauthorized inquiry about settlement was actually perceived as an offer of settlement.

HN4  The scope of closing argument is a matter within the trial court's discretion. *People v. Alvarez*, 187 Colo. 290, 530 P.2d 506 (1975). In the context in which the reference was made, we find no abuse of discretion in overruling the objection on the grounds of fair argument.

In addition, the jury was instructed to disregard in its deliberations any remarks of the court not directed to the jury. It is presumed that the jury followed those instructions. See *People v. Carrier*, 791 P.2d 1204 (Colo. App. 1990). **[\*\*11]**

We therefore find no reversible error in the court's ruling or comment.

III.

The client contends the trial court erred in denying his pretrial motion for partial summary judgment. In that motion the client had argued that the representation agreement was void as against public policy because it restricted his right to control settlement.

On appeal, the client contends that, because the representation agreement is void, the law firm is not entitled to recover as damages on its counterclaim fees calculated pursuant to the representation agreement. We agree that certain provisions of the representation agreement are unenforceable. However, because the law firm did not contract **[\*32]** to perform an act that is itself illegal, prohibited by statute, or against public policy, and because payment for the legal services provided in the circumstances presented here was contemplated by the parties and included in the contract, we conclude that the law firm is entitled to recover the reasonable value of the services rendered.

A.

As an initial issue, we must determine whether **[\*\*12]** the trial court's denial of the client's motion for partial summary judgment was a final order that may now be appealed. Because the denial was based on a point of law and not the existence of disputed facts, we conclude that the issue is properly before this court.

In *Manuel v. Fort Collins Newspapers, Inc.*, 631 P.2d 1114 (Colo. 1981), our supreme court concluded that the propriety of the district court's denial of a motion for summary judgment in a defamation case was not reviewable on appeal. However, in his motion for summary judgment, the defendant in Manuel had argued that the plaintiff had failed to present facts showing that the defendant had acted with actual malice. After trial, the plaintiff had been awarded compensatory damages on the claim.

The supreme court, quoting from the decision in *Navajo Freight Lines, Inc. v. Liberty Mutual Insurance Co.*, 12 Ariz. App. 424, 471 P.2d 309 (1970), based its conclusion on the existence of a dispute over material facts. It reasoned that to address the appeal of the motion for summary judgment after the trial could lead to the "absurd" result that the plaintiff, who **[\*\*13]** had sustained his position after a full trial and a more complete presentation of the evidence, might nevertheless be reversed on appeal because he had failed to prove the viability of his case at the time of the hearing on the motion for summary judgment.



In the Arizona case quoted in Manuel, the court distinguished between a resolution of a motion for summary judgment based on the facts and one based on a point of law. It recognized that review on appeal might be appropriate if it were "abundantly clear" that the denial was made on a point of law and as a result the losing party was precluded from offering evidence or urging the point at the time of the trial on the merits. Navajo Freight Lines, Inc. v. Liberty Mutual Insurance, Co., supra. at 313.

The rule announced in Manuel has been applied on several occasions in Colorado in refusing to address the merits of an appeal from a denial of summary judgment. See e.g. Askew v. Gerace, 851 P.2d 199 (Colo. App. 1992); Garcia v. Estate of Wilkinson, 800 P.2d 1380 (Colo. App. 1990). However, none of those decisions appears to have involved a denial of summary judgment clearly based [\*\*14] on a point of law, as distinct from one based on the existence of disputed facts. Nor does it appear that the federal courts have addressed this distinction. Cf. Switzerland Cheese Ass'n, Inc. v. E. Horne's Market, Inc., 385 U.S. 23, 87 S.Ct. 193, 17 L. Ed. 2d 23 (1966); Whalen v. Unit Rig, Inc., 974 F.2d 1248 (10th Cir. 1992), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1417, 122 L. Ed. 2d 787 (1993) (denial of summary judgment challenging sufficiency of evidence merely a judge's determination that genuine issues of material fact exist and not appealable); see generally R.F. Chase, Annotation, Reviewability of Order Denying Motion for Summary Judgment, 15 A.L.R. 3d 899 (1967).

The logic in not reviewing a denial of summary judgment based on the existence of disputed facts - to prevent a decision based on less evidence from prevailing over one reached on more - does not apply when the denial is based on a point of law. Further, that it may not always be possible to determine the basis on which the trial court denied summary judgment should not [\*\*15] prevent review when the basis is clear. We therefore conclude, consistent with those courts that have addressed the issue, that HNS review of a denial of summary judgment is available after trial when it is clear that the denial is based on a point of law. See Larsen v. Pacesetter Systems, Inc., 837 P.2d 1273 (Haw. 1992); Gumm v. Combs, 302 S.W.2d 616 (Ky. 1957); Magill v. Owen Construction Co., 434 So. 2d 520 (La. App. 1983); Payless Drug Stores Northwest v. Brown, 300 Or. 243, 708 P.2d 1143 (1985).

[\*33] A separate question is whether it is necessary to raise again at trial a point of law on which a denial of summary judgment was based in order to preserve that point for appeal. We conclude it is not.

Under C.R.C.P. 56(h), a party may move for determination of a question of law at any time after the last required pleading. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question. The result is to save time and expense and simplify the trial. See Werkmeister v. Robinson Dairy, Inc., 669 P.2d 1042 (Colo. App. 1983); [\*\*16] see generally 10A C. Wright & A. Miller, Federal Practice & Procedure § 2737 (1983).

In Uptain v. Huntington Lab, Inc., 723 P.2d 1322 (Colo. 1986), the plaintiff argued that an objection to evidence was sufficiently preserved when it was raised in a motion in limine before trial, even though no contemporaneous objection was made when the evidence was admitted at trial. The supreme court agreed.

Reaffirming that objections duly made and ruled on in a pre-trial order are sufficiently preserved for review on appeal, the court in Uptain found no meaningful distinction between the effect of a ruling on an objection as a result of a pretrial conference and a similar ruling on a motion in limine. In either case, when a specific issue had been presented to the trial court in advance of trial, the court had been permitted to evaluate the legal issue and the appellate court was able to apprehend the issue and the basis for the trial court's ruling. This satisfied the purpose of requiring a contemporaneous objection at trial.

We likewise find no meaningful distinction between the effect of a pretrial ruling on a point of law and a similar ruling on a motion for summary [\*\*17] judgment. See 6 Moore's Federal Practice §§ 56.04[2] and 56.20[1] at 56-681 (2d ed. 1976) ("While the extent of pretrial under [Fed. R. Civ. P.] 16 rests in the discretion of the [federal] district court and the duty to make a pretrial order under Rule 56(d) is compulsory if practicable, the order which the court makes under Rule 56(d) is nevertheless closely akin to a pretrial order that is made under Rule 16."). In either case, if the issue is clearly based on a point of law, then the trial court will have been permitted to evaluate the legal issue, and an appellate court will be able to apprehend both the issue and the basis for the trial court's ruling.

We recognize that HN6 [T] a party may raise at trial an issue previously raised on a motion for summary judgment and that a court is not precluded under the doctrine of the law of the case from revising or reversing its prior order on that issue. See *Forbes v. Goldenhersh*, \_\_\_ P.2d \_\_\_ (Colo. App. No. 93CA1951, November 17, 1994); 6 Moore's Federal Practice, *supra*, § 56.20[2]. Nevertheless, to avoid creating an unnecessary pitfall for the unwary and, in doing so, frustrating the efficient administration of justice, we conclude that no such **[\*\*18]** duplication of time, effort, and expense should be required. Cf. *Uptain v. Huntington Lab, Inc.*, *supra*.

Whether any particular provision of a contract between attorney and client is unenforceable as against public policy is a question for the court. See *Tolman v. CenCor Career Colleges, Inc.*, 851 P.2d 203 (Colo. App. 1992), *aff'd sub nom. CenCor, Inc. v. Tolman*, 868 P.2d 396 (Colo. 1994); *Batterman v. Wells Fargo Ag Credit Corp.*, 802 P.2d 1112 (Colo. App. 1990).

Here, the fact that the parties had entered into the representation agreement and the terms of the agreement were undisputed. No other facts were necessary for the trial court to resolve the issue of whether any provisions of the agreement were unenforceable as against public policy. Indeed, because it was an issue of law for the court, no other evidence would have been admissible. See *Specht v. Jensen*, 853 F.2d 805 (10th Cir. 1988), *cert. denied*, 488 U.S. 1008, 109 S.Ct. 792, 102 L. Ed. 2d 783 (1989); see also *Boettcher DTC Building Joint Venture v. Falcon Ventures*, 762 P.2d 788 (Colo. App. 1988). **[\*\*19]**

In these circumstances, we conclude that the issue of whether any provisions of the representation agreement are unenforceable because they unreasonably restrict the **[\*34]** client's right to control settlement is properly before us.

B.

It is the declared public policy of this state that parties to litigation have the right to control their own cases. *Jones v. Jones*, 117 Colo. 420, 188 P.2d 892 (1948). At the time the parties signed the representation agreement, that policy was incorporated in Code of Professional Responsibility EC 7-7, which provided that in civil cases HN7 [T] "it is for the client to decide whether he will accept a settlement offer." The same principle is now set forth in *Colorado Rules of Professional Conduct Rule 1.2(a)*: "A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter."

A client's right to reject settlement is "absolute" and "unqualified." See *Estate of Falco*, 188 Cal. App. 3d 1004, 233 Cal. Rptr. 807 (1987); *Tsavaris v. Tsavaris*, 244 So. 2d 450 (Fla. App. 1971); *Michael D. Tully Co. v. Dollney*, 42 Ohio App. 3d 138, 537 N.E.2d 242 (1987). **[\*\*20]** Any provision in an agreement to provide legal services that would deprive a client of the right to control settlement is unenforceable as against public policy. *Jones v. Jones*, *supra*; *Nichols v. Orr*, 63 Colo. 333, 335, 166 P. 561, 561 (1917) ("Any agreement which deprives the litigant of the right to control his case, before it is finally determined, is void as against public policy.").

Here, the representation agreement included a provision prohibiting the client from "unreasonably" refusing settlement. Another provision permitted the law firm to withdraw if the client did so and, upon such withdrawal, to recover costs and fees equal to the law firm's "normal" hourly rates for the work it had performed. At the same time, the agreement failed to inform the client that the court must approve any request by the law firm to withdraw, see *C.R.C.P. 121* § 1.1(2), and that under the applicable rules of ethics, refusal of a client to accept a settlement was not a specified basis for withdrawal. See Code of Professional Responsibility DR 2-110 (1992); see also *Colorado Rules of Professional Conduct Rule 1.16*.

**[\*\*21]** An attorney's withdrawal near the date scheduled for trial could necessitate a continuance that would be contrary to a client's interests and, if the attorney were entitled to collect for work performed fees at the full amount of the specified hourly rates, could result in increasing the total expenses the client would have to incur. These provisions of the representation agreement thus make the client vulnerable to pressure from the law firm to accept a settlement the law firm deems "reasonable." Because they inappropriately impinge on the client's right to control settlement, we conclude that these provisions of the agreement are unenforceable as against public policy. See *Jones v. Jones*, *supra*; *Nichols v. Orr*, *supra*.

The law firm argues that representation agreements which provide for contingent fees should be scrutinized for reasonableness and that, because of the risk to the attorney, the terms of the law firm's representation agreement are reasonable. In support of the argument the law firm relies on Ramirez v. Sturdevant, 21 Cal. App. 4th 904, 26 Cal. Rptr. 2d 554 (1994). **[\*\*22]** There, the court found a fee agreement which provided that the client would not refuse any settlement over a stated amount, though the attorney would attempt to obtain a greater amount, was not "inherently wrong or unfair."

However, unlike the agreement in question in Ramirez, the provisions of the agreement challenged here have the potential to create unanticipated pressure on the client to settle after the attorney-client relationship has been established and representation begun. The pressure may be greatest as the trial date approaches, when settlement negotiations are most intense and a lawyer's concerns about success at trial and the ability to recover advanced costs are the strongest.

We recognize that attorneys working under contingent fee arrangements risk their investment of time and, potentially, their advancement of costs on behalf of a client, and that clients can attempt to use the right of settlement to renegotiate a more favorable fee arrangement with the attorney facing such risks. Nevertheless, absent a change by the supreme court or General Assembly **[\*35]** in existing public policy, the client's right to control settlement cannot be diminished by a contingent fee arrangement. **[\*\*23]** See Jones v. Jones, *supra*; Nichols v. Orr, *supra*; see also Michael D. Tully Co., L.P.A. v. Dollney, *supra*.

The law firm further contends that, even if the provisions for withdrawal if the client unreasonably refuses to settle are unenforceable, they may be severed. As a result, the law firm argues that the terms providing for calculation of fees, which are not inherently unreasonable, may be upheld.

However, these terms are inextricably intertwined. Both pertain to the consequences to the client of accepting or refusing settlement and both are part of the consideration for the agreement of the law firm to provide legal services. Furthermore, as already noted, the provision for calculating hourly fees if the law firm withdraws can itself be a source of pressure on the client to accept what the law firm considers a reasonable settlement. Conversely, our enforcement of the provision for calculating fees if the law firm does not withdraw can provide an incentive to insert provisions in fee agreements that would impinge on the client's right to control settlement.

Accordingly, the public policy of protecting **[\*\*24]** a client's right to control settlement will be better served by not treating a clause that restricts the client's right to control settlement as severable from the provision for calculating fees. See Cummings v. Patterson, 59 Tenn. App. 536, 442 S.W.2d 640 (1968); see also Annot., Compromise Without Attorney's Consent, 121 A.L.R. 1122 § IIIa (1939).

We therefore hold that the provisions of the representation agreement prohibiting the client from unreasonably refusing to settle and permitting the law firm, in such event, to withdraw, together with the provision for calculating fees, are unenforceable. See generally Restatement (Second) of Contracts § 178 (1981).

C.

That these provisions of the representation agreement are unenforceable does not, however, relieve the client of all obligation to pay the law firm for the services it has rendered. The representation agreement is not a contract to do an act that is itself illegal, prohibited by statute, or against public policy. See Potter v. Swinehart, 117 Colo. 23, 184 P.2d 149 (1947)(court will leave parties who contract to **[\*\*25]** violate the law where it finds them); see also Meyer v. State Farm Mutual Automobile Insurance Co., 689 P.2d 585 (Colo. 1984)(if a provision in a contract is void because it is contrary to public policy, the remaining portions of the agreement are enforceable to the extent the illegal provision can be separated from the valid promises). Further, payment of legal fees in the circumstances presented here is not beyond the contemplation of the parties as memorialized in the representation agreement. Cf. Elliott v. Joyce, \_\_\_ P.2d \_\_\_ (Colo. No. 93SC528, November 7, 1994)(attorney who withdrew not entitled to recovery in quantum meruit when fee agreement silent as to any client obligation if attorney withdraws).

In these circumstances, at least when an attorney has not engaged in fraudulent or grossly unprofessional conduct, the reasonable value of services may be recovered even if other provisions of the representation agreement, including those providing for calculation of fees, are unenforceable. See Ross v. Scannell, 647 P.2d 1004 (Wash. 1982); cf. Wall v. Lindner, 159 Colo. 83, 410 P.2d 186 (1966); **[\*\*26]** Law Offices of Losavio v. Law Firm of McDivitt, 865 P.2d 934 (Colo. App. 1993).

Here, the court included an instruction to the jury, over the law firm's objection, which provided in pertinent part:

In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on his lawyer. As a typical example in a civil case, it is for the client to decide whether he will accept a settlement offer.

**[\*36]** The jury found, on conflicting evidence, that the law firm did not breach its fiduciary duty to the client during the course of representation. Hence, it is not inequitable that the law firm be compensated on the basis of quantum meruit for the reasonable value of its services. See Wall v. Lindner, *supra*; Olsen & Brown v. City of Englewood, 867 P.2d 96 (Colo. App. 1993); Law Offices of Losavio v. Law Firm of McDivitt, *supra*; **[\*\*27]** see also Cummings v. Patterson, *supra*.

It is therefore necessary to remand for a new trial solely on the issue of the amount of fees to which the law firm is entitled on its counterclaim.

That part of the judgment awarding damages to the law firm under the representation agreement is reversed, and the cause is remanded for a new trial on the reasonable value of the law firm's services to the client. In all other respects, the judgment is affirmed.

JUDGE TAUBMAN concurs.

JUDGE RULAND concurs in part and dissents in part.

**Concur by:** RULAND (In Part)

**Dissent by:** RULAND (In Part)

## **Dissent**

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JUDGE RULAND concurring in part and dissenting in part.

I concur with the result reached in part II of the majority opinion. However, I disagree with the majority that the validity of the attorney-client agreement has been preserved for appellate review, and thus, I respectfully dissent as to that determination.

The trial court denied the client's motion for summary judgment on the basis that: "The court is not satisfied that this contract on its face is void as against public policy, and the court believes that a factual presentation is necessary." As to that ruling, I view the rule announced **[\*\*28]** in Manuel v. Fort Collins Newspapers, Inc., 631 P.2d 1114 (Colo. 1981) as controlling. Hence, I would not review the trial court's decision on the motion for summary judgment.

In nine published opinions issued by this court since Manuel was announced, we have consistently declined to review the denial of a motion for summary judgment. Among others, these cases include Grogan v. Taylor, 877 P.2d 1374 (Colo. App. 1994); Askew v. Gerace, 851 P.2d 199 (Colo. App. 1992); Garcia v. Estate of Wilkinson, 800 P.2d 1380 (Colo. App. 1990); Vogel v. Carolina International, Inc., 711 P.2d 708 (Colo. App. 1985); Pierce v. Erzen, 672 P.2d 1023 (Colo. App. 1983).

These cases have not addressed the specific issue whether an appeal may be taken from the denial of a summary judgment motion which addresses only a point of law. However, in my view, there are sound reasons for consistent application of the rule in Manuel.

First and foremost, the rule is clear, long-standing, and the litigants should know how to proceed. Specifically, to preserve [\*\*29] the issue, it is simply necessary for the party denied summary judgment to move for a directed verdict at trial. See Technical Computer Services, Inc. v. Buckley, 844 P.2d 1249 (Colo. App. 1992).

Second, application of the rule in this manner coincides with the interpretation of the federal rules as well. Thus, in Whalen v. Unit Rig, Inc., 974 F.2d 1248, 1251 (10th Cir. 1992) (fn. 4), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1417, 122 L. Ed. 2d 787 (1993), the court recently declined to review the denial of a motion for summary judgment and observed:

We have found no [federal] case in which an appellate court overturned a jury verdict based on erroneous denial of summary judgment.

In my view, the adverse consequence of the exception created by the majority here will be that the party who does not prevail in either the motion for summary judgment or at trial will seek to cast the summary judgment ruling as a "point of law" on appeal. Indeed, in this context, each issue addressed on any appeal may be characterized as a question of law because this court may not adopt its own findings of fact. [\*\*30] See Page v. Clark, 197 Colo. 306, 592 P.2d 792 (1979). Thus, a body of case law will then have to be developed distinguishing between rulings that may be appealed as points of law and those that may not.

Such a result will undermine the very concept which prompted the Manuel rule in the [\*\*37] first place, namely, the injustice of "depriving a party of a jury verdict after the evidence was fully presented, on the basis . . . of whether the pleadings and affidavits at the time of the summary judgment motion demonstrated the need for a trial." Locricchio v. Legal Services Corp., 833 F.2d 1352, 1359 (9th Cir. 1987).

Hence, I would affirm the judgment of the trial court in all respects.

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