

Nebraska Ethics Advisory Opinion for Lawyers
No. 73-8

IT IS NOT ETHICAL FOR AN ATTORNEY FOR A JUDGMENT CREDITOR TO DEMAND FROM AN UNREPRESENTED JUDGMENT DEBTOR WHOSE WAGES THE JUDGMENT CREDITOR HAS GARNISHEED A SUM IN EXCESS OF THE AMOUNT THE JUDGMENT CREDITOR CAN TAKE IN THE GARNISHMENT PROCESS, IN EXCHANGE FOR AN IMMEDIATE RELEASE OF THE GARNISHMENT ORDER.

CODE PROVISIONS INTERPRETED:

DR 7-104(A): "During the course of his representation of a client a lawyer shall not:

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client."

DR 7-102(A): "In his representation of a client, a lawyer shall not:

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law."

The inquirer requests an opinion as to whether it is ethical for an attorney for a judgment creditor to demand from an unrepresented judgment debtor whose wages the judgment creditor has garnisheed a sum in excess of the amount the judgment creditor can take in the garnishment process in exchange for an immediate release of the garnishment order.

While it is not improper for an attorney to communicate with an unrepresented debtor who does not desire

counsel, the question assumes that the debtor is unaware of the statutory exemptions which may be claimed. In that context, the cited provisions of the Code clearly prohibit the attorney from agreeing with the debtor to release the garnishment in return for payment of an amount of wages in excess of that which could be obtained if the exemptions were applied.

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