

THE ADVISORY COMMITTEE

APPOINTED BY  
THE NEBRASKA SUPREME COURT  
FOR THE  
NEBRASKA STATE BAR ASSOCIATION

1500 WOODMEN TOWER  
OMAHA, NEBRASKA 68102

OPINION NO. 89-1

Opinion No. 73-8 Superceded

AN ATTORNEY MAY ETHICALLY REQUIRE FROM A JUDGMENT DEBTOR WHOSE WAGES THE JUDGMENT CREDITOR HAS GARNISHED A SUM EQUIVALENT TO THE PROJECTED GARNISHMENT PROCEEDS DUE UNDER THE CONTINUING GARNISHMENT LIEN IN RETURN FOR AN IMMEDIATE RELEASE OF THE GARNISHMENT ORDER.

The question posed in Opinion No. 73-8 was:

"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 garnished 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."

The Committee there stated:

"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."

The resulting summary statement of the Committee was:

"It is not ethical for an attorney for a judgment creditor to demand from an unrepresented judgment debtor whose wages the judgment creditor has garnished a sum in excess of the amount the judgment creditor can taken in the garnishment process, in exchange for an immediate release of the garnishment order."

It has been brought to the attention of the Committee that the Nebraska garnishment laws have been amended to allow a continuing lien under certain circumstances. R.R.S. § 25-1056.

It is the opinion of the Committee that an attorney may ethically require from a judgment debtor whose wages the judgment creditor has garnished a sum equivalent to the projected garnishment proceeds due under the continuing garnishment lien in return for an immediate release of the garnishment order. Since there has been a substantive change in the law, this Opinion takes precedence over our Opinion 73-8.