

# MINNESOTA LAWYER



## How To: Client won't pay? Consider garnishment

By: Nancy Crotti    November 13, 2014    0

I once knew of a lawyer who screamed at deadbeat clients over the phone, demanding to be paid. I'm not sure how fruitful that endeavor was, but there are other ways to go about it.

Garnishing wages is one method. A creditor who wants to garnish the wages of a debtor must use a writ of execution, obtain a court order, or negotiate written consent from the debtor, according to attorney John Halpern of Halpern Law Firm in Minneapolis.

Fourteen days after obtaining the judgment, the creditor can send the debtor a notice of intent to garnish wages.

"If you know where they work, I would get my judgment and be garnishing wages right away, because you're going to have that stream of income, and they may call you and work it out," said Heidi Staloch, a senior associate with Manty & Associates in Minneapolis. The firm does creditors' remedies and bankruptcy law, representing debtors and creditors.

Most of the attorneys who call Staloch for debt collection help work in family law, in which legal bills tend to get larger toward the end of a case. Others represent startup companies that never get started, and owe legal bills they cannot pay, she said.

A small percentage of debtors will contact the creditor immediately to discuss a payment plan or cite an exemption from garnishment, said Jillian Walker, an associate at the Plymouth office of Messerli & Kramer. She does Wisconsin and Minnesota general collection work, representing banks, credit card companies and auto financing companies whose borrowers have stopped paying their bills.

Not as many as one would imagine agree to pay because they fear that their employer will learn they are not paying their bills, Walker added.

If no call is forthcoming, the client's employer will be asked to withhold up to 25 percent of the client's disposable wages. That's the money left after all mandatory government deductions, but before voluntary contributions to 401(k)s and flexible health care spending accounts, according to Walker.

Minnesota statute 571.72 explains wage garnishment, and includes the appropriate forms for creditors to file. A garnishment with an employer is good for 70 days, after which the creditor must file a new garnishment, Staloch noted.

If you don't know where the nonpaying client works, but you do know where they bank, you can file for a bank garnishment, according to Staloch. A bank garnishment is similar to a wage garnishment, in that you have to obtain a court judgment against the debtor first.

"If they paid you some of their bill, maybe you have a copy of a check," Staloch said. She suggested keeping copies of clients' checks on file for this purpose.

If you don't know where they work or do their banking, you can do a demand for disclosure, she added. As officers of the court, attorneys need not ask a court to issue a demand for disclosure, she said, but they should consider whether such an action is necessary, depending upon the amount owed.

The demand for disclosure asks the debtor to reveal where he or she works, among other information. If the debtor fails to complete the form and submit it within 30 days, the creditor can bring a motion for contempt and ask the

court for a warrant for the debtor's arrest.

"All they have to do is fill out a form and they aren't going to be in jail," Staloch said. "Before I do that, I usually send several letters."

Demand for disclosure should never be a first step, said Staloch, who believes such filings further smear the reputation of debt collectors. She only resorts to demand for disclosure about once a year.

"I wouldn't do that just to be a thorn in somebody's side," she said. "My job is to liquidate my client's judgment."

Everything changes if the debtor files for bankruptcy protection, according to bankruptcy attorney G. Martin Johnson of Burnsville. Not only does a bankruptcy filing void a garnishment of wages, but the filing itself gives the debtor what is known as a preference period.

If a debtor has paid on an account — voluntarily or involuntarily — within 90 days prior to a bankruptcy filing, the debtor can get that money back or the money will go to the bankruptcy trustee, Johnson said.

Before resorting to any court-related collection action, attorneys should consider why their clients haven't paid their bills, Staloch said. It may be because the client was unsatisfied with the attorney's work, but often, the client simply doesn't have the money, she said.

Staloch has been doing collection work for 20 years, and believes honey is sweeter than vinegar in these cases.

"Don't be a jerk," she said. "After you get a judgment ... continue to call and try to work it out, and to be nice."

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