



Justice... Professionalism... Service... Since 1886

### 1.0 Law & Legal CLE Credit – A/V Approval #1064043

Recording Date – January 5, 2018

Recording Availability – February 9, 2018

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue - Suite 700 Seattle, WA	<b>Friday, January 5, 2018</b>	12:10 PM to 1:30 PM	Family Law Collection Issues and Remedies

#### AGENDA

**12:10 PM** Introduction

**12:20 PM** Presentation: ‘Family Law Collection Issues and Remedies’, by Matthew D. Green, Green & Norwood PLLC

- Entry of Enforceable Judgments and Orders: Compliance with judgment summary requirements (RCW 4.64.030), creating liens on real property, enforcement duration
- Judgment Enforcement Mechanisms: Office of Support Enforcement; Owelty Liens; Writs of Garnishment RCW 6.27; Writs of Execution RCW 6.17 and Supplemental Examinations RCW 6.32
- Other Considerations re Enforcement and Entry of Judgments: Fair Debt Collection Practices Act 15 USC 1692; Impact of Bankruptcy Filings; Attorney Liens

**1:30 PM** Adjourn

#### SPEAKER BIOGRAPHY

**Matthew D. Green, Green & Norwood PLLC** - Matthew Green is a founding member of Green & Norwood PLLC. Previously, Matt was a Member at Williams Kastner where he practiced for over 27 years. An experienced litigator, Matt represents businesses and individuals in all facets of collections, including prejudgment and post judgment remedies. He extensively represents real property owners and property managers in landlord-tenant disputes, evictions and collections. He is a frequent speaker at continuing legal education seminars on debtor-creditor rights and remedies, and has been retained as an expert witness in litigation involving collection issues. Matt was named to Super Lawyers by *Super Lawyers* magazine for 2001 - 2003, 2011 - 2015.

## **HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?**

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- ❖ Go to the "mywsba" website at [www.mywsba.org/](http://www.mywsba.org/).
- ❖ Log in.
- ❖ Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- ❖ Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

### **Adding a Recorded Course**

Select Recorded Course from the Add New Activity screen.

This will prompt you to search for the activity in case the activity has already been accredited in the MCLE system.

You can search by Activity ID or by specific Activity Details. For the Activity Details search, you can use keywords for the title, sponsor name and date.

After entering your search criteria and selecting Search at the bottom of the screen, a list of possible activities will be provided.

You can select the correct one by clicking the Activity ID. This will take you to the specific activity. Entered the date(s) on which you began and ending viewing this recorded activity.

Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, "The activity has been added to your roster."

# COLLECTIONS 101 WITH FAMILY LAW EMPHASIS

*Presented by Matthew D. Green*

Green & Norwood PLLC

[matt@gnlawseattle.com](mailto:matt@gnlawseattle.com) 206.588-1669

Family Law January 2018 Section Meeting – King County Bar Association

## Intro

Collections and judgment enforcement is about both seizure and liquidation of a debtor's assets to satisfy a legal obligation, but also about providing motivation and incentive for a debtor to change his/her attitude toward the legal obligation. Utilizing the various collection remedies/tools can effectively create leverage to seek resolution. When collecting debts arising out of Family Law obligations, a creditor possesses certain remedies that are otherwise not available to other non-Family Law creditors. We will touch on both Family Law specific, and standard civil enforcement mechanisms available in this presentation.

## Orders v. Judgments

Keep in mind that an Order is not the same as a Judgment!!! (Though there are certain Administrative Orders that can be issued to enforce a Family Law Order without the requirement that the Family Law first be converted into a Judgment.)

- RCW 4.64.030 prohibits the Clerk of the Court from issuing orders to enforce a Judgment unless the Judgment contains a Judgment Summary:
  - Name of creditor;
  - Name of debtor;
  - Principal amount of award;
  - Calculation of pre-judgment interest, if allowed;
  - Computation of legal fees and costs, if allowed;
  - Name of creditor's attorney; and
  - I also include specifying the rate of post-judgment interest.
- If the Judgment also involves any right, title or interest in real property, then the Judgment Summary must also state the abbreviated legal description and tax ID#. RCW 4.46.030(2)(b).
- A Judgment is initially enforceable for 10 years following its date of entry. Within 90 days of expiration of the initial 10 year period, the creditor can file a petition to renew the Judgment for a second 10 year period. Thus a creditor has a total of 20 years to enforce under WA law. RCW 4.56.190 and RCW 6.17.020.
  - o Family Law Exception:
    - A Judgment based on unpaid Child Support continues for 10 years after the youngest child named in the Judgment turns age 18. RCW 4.56.210(2).
- A Judgment from Superior Court becomes an automatic lien upon its entry on debtor's real property that is situated in the County in which the Judgment was entered. RCW 4.56.190.
  - o If debtor claims the real property as his/her "homestead" then creditor also needs to record a certified copy of the Judgment with the County Auditor. RCW 6.13.090.

- Best practice says to record the Judgment anytime a debtor owns *any* real property, regardless of whether debtor believes it may be ‘homestead’
  - If debtor’s real property is situated in a different County than that in which the Judgment was entered, then Creditor needs to cause an Abstract of the Judgment to be filed in the Superior Court of that other County (and record a certified copy with the Auditor per above).
- Entry of a Judgment does not create a lien on debtor’s personal property assets unless creditor causes an order (Writ of Garnishment or Writ of Execution) to be issued to levy upon said personal property assets.)
  - Family Law Exception
    - An unpaid Child Support Order automatically becomes a lien (secured creditor priority status) on both real and personal property of the debtor upon filing notice with County Auditor where the property is situated. RCW 26.18.055.
- Upon entry of a Judgment, there is a 10-day automatic stay that goes into effect before the Clerk of the Court can issue any orders to enforce the Judgment. CR 62. However, taking steps to perfect the Judgment lien – i.e. to record the Judgment with the County Auditor – during the 10-day period is not deemed to be a violation of the stay. *See Smith v. Simonarson et al*, 56 Wn App 513 (1990).

### **Owelty Liens**

Unique to Family Law is the legal remedy known as Owelty Liens, which is based on case law and not statute. When a Court awards the "family home" to one party in a dissolution and awards the other party a compensating sum, the equalization is done under the doctrine of Owelty. An Owelty Lien is created upon entry of the Decree of Dissolution. Because an Owelty Lien is an equitable lien on real property, like a vendor's lien, the homestead exemption is not applicable. *See Adams v. Rowe*, 39 Wn 2d 446 (1951); and also *Hartley v. Liberty Park Ass.*, 54 Wn App 434, *review denied*, 113 Wn 2d 1013 (1989).

### **General Collection Remedies**

#### Writ of Execution – RCW 6.17

- Under this Writ the Sheriff makes contact with the debtor and demands payment of the Judgment. If debtor is unable to make payment sufficient to satisfy the Judgment, or is unwilling/unable to otherwise resolve the Judgment, then the Writ directs the Sheriff to seize Debtor’s personal property assets. The personal property is then held for about 45 days before being sold at a public sale, where the proceeds go to partially pay down the Judgment.
- Sheriff has “Break and Enter Authority” when enforcing.

#### Debtor Exam/Supplemental Proceedings – RCW 6.32

- Upon creditor representing to the Court that a Judgment is outstanding that exceeds \$25, the Court can issue an order that requires the debtor to appear in court on a date and time certain to answer creditor’s questions as to what assets does the debtor possess and where are said assets. Third parties who possess information on debtor’s assets can also be ordered to appear for examination.

#### Replevin – RCW 7.64

- If creditor possesses a special interest in an asset that the debtor controls and the debtor refuse to surrender, then creditor could seek entry of an Order of Replevin, which would direct the Sheriff to locate, seize and place creditor in possession of said asset.

#### Writ of Garnishment – RCW 6.27

- A Writ of Garnishment is a court order to a third party – “Garnishee” – who is in possession of debtor’s personal property assets and the Writ directs the Garnishee to not turn over to the debtor said assets.
- Garnishments can be either a moment in time remedy or a 60-Day Wage on Earnings if directed to a debtor’s employer.
- The clerk of the Court in which the Judgment was entered issues a Writ upon an application that states when the Judgment was entered; what payments, if any have been received to date; the amount due; a belief that the Garnishee has possession or control of debtor’s assets; and whether the Garnishee is the debtor’s employer or not.
- The Garnishee upon receipt is required to freeze (garnish) debtor’s assets and provide its answer within 20 days (for a Wage Garnishment the garnishee will furnish both a 1st answer and 2nd answer).
- Following receipt of Garnishee’s answer, creditor then must wait 20 days (corresponds to 20-day period to controvert) before being able to have the court issue a judgment on the Garnishee’s answer, which will then direct the Garnishee to disburse to the Court the monies garnished, which in turn will result in creditor receiving a check from the Court.
  - o Family Law Exception
    - If the Writ is based on a Child Support Order, then the Writ caption must state that the “Garnishment is Based on a Judgment for Child Support”. RCW 6.27.100.
- With respect to a 60-Day Wage Garnishment, a creditor is entitled to garnish 25% of a debtor’s net disposable earnings.
  - o Family Law Exception
    - If the Writ is based on Child Support debt, then the creditor can garnish 50% of debtor’s net disposable earnings. RCW 6.27.150.

Additional Family Law Exceptions – In lieu of causing any of the above-remedies to be issued, a creditor enforcing a family law debt has other judicial and administrative options, that a non-family law creditor does not possess, as found under RCW 26.18; RCW 26.23; and RCW 74.20A, including:

(1) If a debtor fails to comply with a Child Support or Maintenance Order, a creditor can seek both entry of a Judgment and/or a Finding of Contempt and a Bench Warrant thru an Order to Show Cause. RCW 26.18.050. If the debtor alleges that he/she lacks the means to comply with the Child Support Order or Maintenance Order, the burden of proof is on the debtor to show that he/she has "exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself/herself able to comply with the Court's Order".

(2) If a debtor fails to timely pay Child Support or Maintenance, a creditor can file a motion for entry of a Mandatory Wage Assignment Order (provided the Court's prior Order expressly states and

allows for immediate income withholding and/or debtor is more than 15 days late in a monthly payment). RCW 26.18.070. See RCW 26.18.090 and RCW 26.18.100 for required language to be included in Wage Assignment Order. Wage Assignment Order permits withholding up to 50% of debtor's net disposable earnings. If employer receives 2 or more Wage Assignment Orders from different creditors, and debtor does not make enough to fully satisfy both Orders, then employer to apportion debtor's earnings equally (either party can file a motion to seek an order to reapportion). Unlike a Writ of Garnishment on Earnings, a Wage Assignment Order continues in effect until debt owed has been paid or court order.

(3) If a debtor fails to pay Child Support or Maintenance obligations, a creditor may request the Court issue an order that requires the debtor to post a bond or other security in an amount to cover what would otherwise be owed for a 2-year period. RCW 26.18.150.

(4) In any action to enforce Child Support Orders or Maintenance Orders, the Court is authorized to award creditor his/her legal fees and costs incurred. RCW 26.18.160.

(5) In addition to Child Support and Maintenance, if debtor is required to provide Medical Support, then the creditor (or DSHS) can utilize the remedies set forth in RCW 26.18 (Wage Assignment Order). RCW 26.18.170.

(6) A creditor can file an application (or unless as otherwise expressly stated in Court Order/Decree) with the Office of Support Enforcement ("OSE") and request the Agency's assistance in collecting from a debtor his/her Child Support debts and/or Medical Support debts. RCW 26.23.045 and 050. The OSE can then issue a Notice of Payroll Deduction to debtor's employer. Notice of Payroll Deduction can capture 50% of debtor's net disposable earnings. RCW 26.23.060. Notice of Payroll Deduction takes priority over any voluntary wage assignment, garnishment, attachment or other legal process. RCW 26.23.060(4). As with a Wage Assignment Order, a Notice of Payroll Deduction remains in effect until debt is paid or court order.

(7) DSHS can also step in/subrogate and enforce certain Family Law obligations – Child Support and Medical Support. RCW 74.20A. DSHS can also revoke licenses (a debtor's driver's license) as part of enforcement remedies. RCW 74.20A.320. DSHS can place liens on real and personal property assets. RCW 74.20A.060. DSHS can issue Orders to Withhold and Deliver Property to third parties. RCW 74.20A.080.

### **Fair Debt Collection Practices Act ("FDCPA") – 15 UCS 1692**

This Federal statute governs the collection of "consumer" debts by debt collectors. A consumer debt is defined as a debt incurred primarily for "personal, family or household purposes". The FDCPA restricts what can be said to third parties about the debt owed, as well as what the creditor can convey/represent to the debtor.

### **Bankruptcy Impact**

If a debtor elects to file for bankruptcy ("BK"), all of debtor's creditors are immediately "stayed" from pursuing any further legal action against the debtor without first obtaining BK Court approval.

If creditor possessed a judgment lien on debtor's real property, the filing of BK may or may not have any effect on creditor's judgment lien on that real property, and after the BK case closes the creditor can still

proceed forward *in rem* to force a sale of the real property even though creditor is possibly barred from taking legal action on the underlying claim.

However, a creditor's judgment lien may be avoided upon filing of a motion when it (a) impairs debtor's homestead exemption of \$125,000 (11 U.S.C. § 522(f)); (b) was entered during the preference period (11 U.S.C. § 547); And/or (c) was not perfected i.e. certified copy not recorded (11 U.S.C. § 544).

A debtor cannot discharge debt owed under a Child Support Order or Maintenance Order. 11 U.S.C. § 523.