

NO. A09-1221

State of Minnesota
In Supreme Court

Mona Savig and Robert Savig,

Plaintiffs,

vs.

First National Bank of Omaha
and Messerli & Kramer, P.A.,

Defendants.

**BRIEF OF AMICUS CURIAE
GURSTEL, STALOCH AND CHARGO, P.A.**

GURSTEL STALOCH & CHARGO, P.A.

Heidi L. Staloch (#271445)

Michael Johnson (#31044X)

Bridget A. Sullivan (#265974)

6681 Country Club Drive

Golden Valley, MN 55427

(763) 267-2600

*Attorneys for Amicus Curiae
Gurstel, Staloch & Chargo, P.A.*

(Additional Counsel listed on following page)

BARRY & SLADE, LLC
Nicholas P. Slade (#0270787)
2021 East Hennepin Avenue
Suite 195
Minneapolis, MN 55413
(612) 379-8800

Attorneys for Plaintiffs

FAEGRE & BENSON LLP
Charles F. Webber (#215247)
Aaron D. Van Oort (#315539)
Nathaniel J. Zylstra (#0314328)
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7000

*Attorneys for Amicus Curiae National
Association of Retail Collection Attorneys
and Capital One Bank (USA), N.A.*

MINNESOTA BANKERS
ASSOCIATION
Teresa E. Rice (#0270209)
9521 West 78th Street
Eden Prairie, MN 55344
(952) 857-2613

*Attorneys for Amicus Curiae
Minnesota Bankers Association*

MASLON EDELMAN BORMAN &
BRAND, LLP
David F. Herr (#444441)
Haley N. Schaffer (#0313099)
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140
(612) 672-8200

MESSERLI & KRAMER, P.A.
Derrick N. Weber (#241623)
Truman W. Schabilion (#388018)
3033 Campus Drive, Suite 250
Plymouth, MN 55441
(763) 548-7942

Attorneys for Defendants

MINNESOTA CREDIT UNION
NETWORK
Simone Suri (#324899)
555 Wabasha Street North, Suite 200
Saint Paul, MN 55102
(651) 288-5170

*Attorneys for Amicus Curiae
Minnesota Credit Union Network*

BASSFORD REMELE, P.A.
Charles E. Lundberg (#6502X)
Michael A. Klutho (#186302)
33 South Sixth Street, Suite 3800
Minneapolis, MN 55402
(612) 333-3000

*Attorneys for Amicus Curiae
ACA International*

Table of Contents

Interest of Amicus Curiae Gurstel, Staloch & Chargo, P.A.	1
Overview	2
Argument.....	4
I. Existing Garnishment Procedure is the Most Efficient and Fair Way to Protect the Funds of the Non-Debtors’ Funds in a Joint Account.....	4
A. The History of Garnishment Exemptions and Burdens	4
B. Existing Garnishment Exemption Procedure.....	4
C. Existing Garnishment Procedures Work Well for Joint Accounts and Should Be Kept.....	7
II. The Alternative is Costly, Lengthy, and Would Diminish or Destroy the Right to Garnish Funds in a Joint Account.....	10
A. Discovery Would be Ineffective and Wasteful	13
B. FDCPA and Tort Liability Would Increase Dramatically.	13
Conclusion.....	19

Table of Authorities

Minnesota Cases

Enright v. Lehmann, 735 N.W.2d 326, 333 n. 5 (Minn. 2007)..... 12

Statutes

General Laws, Ch. 31 H.F. 334.....	8
General Laws, Ch, 335, Sec. 13, (1976).....	6
General Laws Ch. 335, Sec. 20 (1976)	6
General Laws, Ch. 335, H.F. 1326, Sec. 7, Subd. 11 (1976).....	5
General Laws, Ch. 335, H.F. 1326, Sec. 7, Subd. 14 (1976).....	6
General Laws, Ch. 350, H.F.No. 330. (1933).....	5
General Laws, Ch. 375, H.F. No. 489 (1913).....	5
General Laws, Ch. 568, subd. 11, H.F. 154 (1961)	5
General Laws, S.F. No. 26, Ch. 263, Subd. 1	5
Minn. R. Civ. Proc. Rule 54.04.....	16
Minn. R. Civ. Proc. 69.....	8
Minn. Stat. Sec. 549.09	16
Minn. Stat. Sec. 550.011	8
Minn. Stat. Sec. 550.143, Subd. 3.....	5

Minn. Stat. 550.37 Subd. 20.....	7, 10
Minn. Stat. Sec. 571.83	11
U.S.C. Sec. 1692k(c) (2006)	18

Federal and Other State Cases

<i>Beller v. Blatt, Blatt Hasenmiller Leibsker & Moore LLC</i> , 480 F3d 470, 475 (7 th Cir. 2007).....	15
<i>Finberg v. Sullivan</i> , 634 F.2d 50, 57 (3 rd Cir. 1980).....	12, 15
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 335 (1976).....	13
<i>Mitchell v. W.T. Grant Co.</i> , 416 U.S. 600 (1974).....	12
<i>Picht v. John R. Hawks, Ltd.</i> , 236 F.3d 446, 451 (8th Cir. 2001).....	18
<i>RepublicBank Dallas v. Nat’l Bank of Daingerfield</i> , 705 S.W.2d 310, 312 (Tex. Ct. App. 1986)	12

Other Authorities

<i>Joint Bank Account as Subject to Attachment, Garnishment, or Execution by Creditor of One Joint Depositor</i> , 86 A.L.R.5 th 527, Sec. 2[a] (2007).....	12
---	----

INTEREST OF AMICUS CURIAE GURSTEL, STALOCH & CHARGO, P.A.

Gurstel, Staloch & Chargo, P.A. is a leading creditors' rights law firm in Minnesota, Arizona, Iowa and Nebraska.¹ Due to its experience with garnishment processes in multiple jurisdictions, its participation in national forums of the collections industry, and its work drafting garnishment laws that are practical and endorsed by debtors' public interest lawyers, this amicus is uniquely situated to offer this Court a broad perspective on the importance of resolving the dispute over which party has the burden of proof to show ownership interests in joint bank accounts for garnishment proceedings.

This amicus has both a public and a private interest in the issues raised on this certified question. The firm, its clients, county sheriffs, financial institutions, and the courts will be seriously affected by the resolution of the legal questions in this case. Gurstel Staloch and Chargo, P.A. and one of its clients are named in one of the federal

¹ No part of this brief was authored by counsel for a party. No person or entity, other than Gurstel, Staloch & Chargo, P.A., made any monetary contribution to the preparation or submission of this brief.

actions that followed on the heels of the *Enright* decision and the federal cases interpreting it. This reflects the reality that the firm and its clients are currently exposed to direct liability every time the firm initiates garnishment proceedings in Minnesota. This amicus is concerned that without resolution of the certified questions, it and its clients will be exposed to increased liability, increased legal fees, and the possible abandonment of garnishment of joint accounts as a tool for collecting debts for which a creditor has obtained a judgment.

OVERVIEW

This brief relies upon the well-reasoned July 6, 2009 Order and Memorandum of Judge Ericksen in this matter for its statement of facts and argument. This brief is submitted to provide the Court with an understanding of existing garnishment law and procedures—which satisfy the requirements of due process for joint accounts—and to outline the real world consequences of adopting alternate legal standards and evidentiary burdens. This brief assumes that the correct answers to the certified questions should result in a process that is efficient, speedy

and fair to all parties. Additionally, this brief is based upon following premises:

1. Judgment creditors have long had the right to garnish the accounts of judgment debtors, including joint accounts.
2. Judgment debtors have long held the right and opportunity to identify and provide proof of the sources of funds in its accounts which are exempt from garnishment.
3. Minnesota has always placed the burden of proving the right to an exemption of certain funds on the debtor, even funds in joint accounts.
4. Existing procedures and evidentiary burdens for garnishment of joint accounts provide the non-debtors' funds with sufficient protection.

Accordingly, this brief concludes that the certified question “Whether the burden of establishing net contributions in a post-judgment garnishment proceeding falls on the judgment creditor or on joint account holder?” should be answered as follows:

As with all exempt funds, a judgment debtor who holds a joint account and who claims that certain funds in that joint account do not belong to him, the following rules apply:

1. *the debtor is initially, but rebuttably, presumed to own all the funds in the joint account;*

2. *the debtor has the burden to identify and provide proof of the sources of those funds in the joint account which are not his;*
3. *when a debtor identifies and provides proof that certain funds in the joint account are not his, a creditor may challenge the debtor's contention in court; and*
4. *to prevail, the creditor must prove by clear and convincing evidence that the funds the debtor claims are not his are in fact owned by him.*

ARGUMENT

I. EXISTING GARNISHMENT PROCEDURE IS THE MOST EFFICIENT AND FAIR WAY TO PROTECT THE NON-DEBTORS' FUNDS IN A JOINT ACCOUNT.

A. THE HISTORY OF GARNISHMENT EXEMPTIONS AND BURDENS

Minnesota's garnishment statute has changed very little in the last century. Between 1905 and 1976, only minimal changes were made. For example, in 1913 the first exemption of certain funds available for garnishment was created. This was a \$35 exemption for wages earned

by the debtor 30 days prior to the garnishment.² In 1939, this exemption was increased by an additional \$5 for each dependent child up to a total exemption of \$50.³ In 1938, the Legislature included the spouse of the judgment debtor as a dependent.⁴ In 1961, funds which were received from insurance payments on any exempt property were exempted from garnishment as were the proceeds of any life insurance policy on the life of a deceased husband or father.⁵ In 1976 amendments created an exemption for wages, salary, or income based upon need such as AFDC payments, general assistance.⁶

In 1938, Minnesota's garnishment statute first required that a debtor must provide proof of an exemption. In order to take the \$5 exemption for dependents, the debtor was required to provide proof of dependents by affidavit or testimony.⁷ Prior to that, the statute had allowed a \$5 per dependent exemption but was silent on the matter of

² See General Laws, Ch. 375, H.F. No. 489 (1913).

³ See General Laws, Ch. 350, H.F.No. 330. (1933).

⁴ See General Laws, S.F. No. 26, Ch. 263, Subd. 1.

⁵ See General Laws, Ch. 568, subd. 11, H.F. 154 (1961).

⁶ See General Laws, Ch. 335, H.F. 1326, Sec. 7, Subd. 11 (1976).

⁷ See supra at n. 2.

proof. When each exemption was added, the evidentiary burden remained on the debtor. Thus, for example, it was, and still is, the debtor's burden to prove that funds in an account were the proceeds of a life insurance policy on a husband or father.⁸ The 1976 amendments expressly stated that "The burden of establishing that funds are exempt rests upon the debtor" in the section creating the exemption for funds from government benefits based upon need.⁹ The 1976 amendments restated this burden for exempt disposable earnings.¹⁰

In fact, the 1976 Reform Act contained a section imposing *on the debtor* the burden of establishing that wages deposited into a *joint account* are exempt:

The exemption of funds from creditors' claims...shall not be affected by the subsequent deposit of said funds in a bank, *whether in a single or joint account*, so long as said funds can be traceable to their exempt source....*The burden of establishing that funds are exempt rests upon the debtor.*¹¹

Notably, this section addressed the fact that debtors may place exempt wages in a *joint account* and it is *the debtor's burden* to establish

⁸ See General Laws, Ch. 335, H.F. 1326, Sec. 7, Subd. 14 (1976).

⁹ *Id.*

¹⁰ See General Laws, Ch. 335, Sec. 13, (1976).

¹¹ See General Laws Ch. 335, Sec. 20 (1976).

that the funds in that joint account are exempt. Since 1976, this burden has been left on the debtor.¹²

B. EXISTING GARNISHMENT EXEMPTION PROCEDURE

In 1976, the “Garnishment Reform Act” created the fundamental structure of the garnishment law and procedures used today. The Garnishment Reform Act did not change placing the burden of proof on debtors to prove entitlement to particular exemptions. Most significantly the 1976 Garnishment Reform Act modernized the law by incorporating standard elements of due process: notice, opportunity to object, and a right to a hearing. The Garnishment Reform Act did the following:

1. created notice requirements for both wage and bank garnishments;
2. required creditors to use a statutory notice form which included a section informing the debtor of exemptions he may claim and directing him to provide proof of the exemptions claimed; and
3. provided a procedure for debtors or creditors to object and to request a court hearing.

¹² See Minn. Stat. 550.37 Subd. 20.

Today, the bank garnishment process is substantially the same as that created in the 1976. Exemptions have been added and the statutory form adjusted. So today, after a judgment is entered, the following occurs:

1. After the judgment is docketed for 30 days and the judgment remains unsatisfied, the creditor may request the court to order the debtor to complete a Financial Disclosure Form, which provides the creditor with information about the nature, amount, and locations of all assets and earnings.¹³
2. The creditor may obtain discovery from the debtor.¹⁴
3. The creditor sends a garnishment summons to the bank with two copies of the statutory Notice and Exemption Form.¹⁵
4. The bank holds the amount due in the summons, but not more than 110% of the remaining judgment, or less than that if that is all that is available in the account.¹⁶
5. The bank serves the debtor with the Notice by first class mail within 2 business days.¹⁷

¹³ See Minn. Stat. Sec. 550.011. A copy of the Financial Disclosure Form is attached as Appendix 1.

¹⁴ See Minn. R. Civ. Proc. 69.

¹⁵ A copy of the Exemption Notice is attached as Appendix 2.

¹⁶ See General Laws, Ch. 31 H.F. 334, now Minn. Stat. Sec. 550.143, Subd. 3.

¹⁷ A copy of the Notice is attached as Appendix 3.

6. The Notice explains the process to the debtor, his obligations and contains the statutory Exemption Notice.¹⁸
7. The Notice notifies and explains the following to the debtor:
 - a. His money has been frozen and states the amount frozen;
 - b. Some of his money may be protected by exemptions;
 - c. If he completes the exemption form, he may be able to get his money back; if he does nothing, it will be given to the creditor;
 - d. If the creditor does not object to the debtor's claimed exemptions, the bank will unfreeze the money;
 - e. If the creditor objects, the bank will hold the money until a court decides whether it is exempt or not; and
 - f. The debtor may want to talk to a lawyer and if he is low-income, should call Legal Aid.
8. The debtor must mail the exemption form to the bank and the creditor within 6 days.
9. The creditor has 6 days to object and request a hearing and must use the statutory form required for both and serve them on the debtor.
10. The court must hold a hearing within 7 business days of the filing of the request for hearing and issue a decision within 3 days of the hearing.

The total time for a contested exemption claim to run its course is short. It is even shorter if the debtor acts immediately rather than waits until the 6th day. For example, a debtor who claims an exemption can

¹⁸ *Id.*

have his frozen funds released in as little as 5 days if he acts immediately by claiming exemption and providing proof, and the creditor also acts immediately by directing the bank to release the funds. If the debtor acts immediately and the creditor objects on the 6th day, the debtor may have his funds released shortly thereafter. The reason for the short time limits is obvious: to return exempt funds to the debtor as quickly as possible.

C. EXISTING GARNISHMENT PROCEDURES WORK WELL FOR JOINT ACCOUNTS AND SHOULD BE KEPT.

Joint accounts have always been subject to garnishments and it is clear¹⁹ that the garnishment statutes allow for such garnishments and contemplate them.²⁰ Existing garnishment procedures for exemptions work just as well for joint accounts and comport with the requirements of due process. As stated above, Minnesota's garnishment procedure is designed to quickly resolve disputes while still providing the debtor 6 days to object and a right to a court hearing. In addition, the non-debtor

¹⁹ See Minn. Stat. 550.37, Subd. 20 (exempt funds placed in a joint account only remain exempt if they can be traced to their exempt source).

²⁰ See Defendant's Brief at 7-9.

holder of a joint account which has been garnished has the right to intervene in any court action and challenge the seizure of his funds.²¹ In such case, the non-debtor may be deprived of his funds only temporarily—for as little as 3 days if the non-debtor communicates his net contributions to the creditor.

In 1980, when reviewing a due process challenge to Pennsylvania's garnishment procedures, the U.S. Court of Appeals for the Third Circuit, in a scholarly opinion, reviewed U.S. Supreme Court decisions concerning prejudgment attachment of a debtor's funds. The Third Circuit concluded that the Supreme Court established the following controlling principles: 1) notice and opportunity to be heard before a prejudgment attachment are not absolutely necessary; 2) the available procedures must afford the debtor adequate protection against erroneous or arbitrary seizures; 3) the procedural protection is adequate if it minimizes the harm that a wrongful seizure might cause by

²¹ See e.g., Minn. Stat. Sec. 571.83 and Respondent's Brief at 7-9.

providing for notice and a hearing immediately, and the risk of wrongful seizures is minimized by other procedures.²²

The Third Circuit further concluded that the interests at stake in garnishing exempt funds are the same implicated in pre-judgment attachment of funds.²³ This amicus submits that the interests at stake in garnishment of a joint account are the same if not substantially the same as those with exempt funds and pre-judgment attachments. All three interests involve funds which may ultimately be determined not belong to the creditor, but yet are temporarily withheld from the debtor or third-party by the garnishee. The reason the debtor's interests and the non-debtors' interests are the same is that they share legal title to the account.²⁴ Joint account holders are hardly strangers to the debtors. The

²² See *Finberg v. Sullivan*, 634 F.2d 50, 57 (3rd Cir. 1980) (citing *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974)).

²³ *Id.*

²⁴ See *Joint Bank Account as Subject to Attachment, Garnishment, or Execution by Creditor of One Joint Depositor*, 86 A.L.R.5th 527, Sec. 2[a] (2007) (contrasting legal title to the account, held by all account-holders, with "beneficial" or "equitable" ownership of the funds deposited in the account); *Enright v. Lehmann*, 735 N.W.2d 326, 333 n. 5 (Minn. 2007) (citing *RepublicBank Dallas v. Nat'l Bank of Daingerfield*, 705 S.W.2d 310, 312 (Tex. Ct. App. 1986)).

court may take judicial notice of the fact that most joint account holders are married, as are the Savigs, or a similar relationship.

Accordingly, given this, Supreme Court precedent, and existence of the requirement of notice and opportunity to be heard in court, the right of the non-debtor to intervene, and other procedural protections, Minnesota's garnishment process is a proper constitutional accommodation of the interests of creditor and the non-debtor joint account holder.

II. THE ALTERNATIVE IS COSTLY, LENGTHY, AND WOULD DIMINISH OR DESTROY THE RIGHT TO GARNISH FUNDS IN A JOINT ACCOUNT.

A. DISCOVERY WOULD BE INEFFECTIVE AND WASTEFUL

A key inquiry in determining the adequacy of due process procedures is to consider the probable value, if any, of additional or substitute procedural safeguards" and the "fiscal and administrative burdens that the additional or substitute procedural requirement would entail."²⁵ Alternate procedures for Minnesota's existing garnishment

²⁵ See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

procedure for protecting non-debtor's funds in joint accounts have no probable value and would cost much more for the parties and the courts.

There are three simple reasons why shifting the burden of proof, specifically, the burden of showing that the funds are not the non-debtors, which would require the creditor to serve pre-garnishment discovery would be useless. First, cash is a liquid asset, the nature of which is ephemeral and ever-changing: the glacial pace of traditional discovery will never provide a creditor with accurate information about sources of funds in a joint account. At least 30 days plus mailing days will pass between the time discovery is served and answered (and if a motion to compel is required, several months may pass before the creditor will receive information about the joint account), it only takes seconds to electronically transfer funds in and out of an account. For this reason and because a creditor cannot control when the garnishment occurs—the bank controls this—even the most diligent creditor who has pursued all avenues of discovery will not know, at the moment the joint account is garnished, the net contributions in the account. The current procedure results in the creditor obtaining information about joint

accounts in as little as 2 days; and the right of the non-debtor joint account holder to intervene immediately and participate in the process adds to its efficiency and expeditiousness.

Second, debtors have little or no reason to respond to discovery or to be truthful in their responses. If a debtor does not respond to discovery, garnishment may be delayed for months while creditors pursue motions to compel. If the debtor does not respond to written discovery, the creditor will have to resort to taking depositions. But without debtors' documents, depositions are useless. And without written responses to discovery, the creditor will never learn the identity of the non-debtor third party. More than one court has noted that debtors tend to be less than truthful when being asked about their assets by a creditor.²⁶ Thus the inadequacy of formal discovery and the debtor's likely lack of candor make shifting the burden to the creditor a bad option.

²⁶ See *Beller v. Blatt, Blatt Hasenmiller Leibsker & Moore LLC*, 480 F.3d 470, 475 (7th Cir. 2007); *Finberg* 634 F.2d at 57.

Third, discovery disputes are costly for all parties, including the debtor who is liable for the costs of collection and for courts which would have to provide a forum for resolving garnishment discovery disputes. Creditors are entitled to interest on their judgment²⁷ as well as the costs of collection²⁸—formal discovery will lengthen the time that interest accrues as well as increase costs—all of which will add to the debtor’s judgment. Formal discovery procedures will increase the legal fees of creditors and for debtors who retain attorneys for formal motion and discovery practice.

Finally, this Court does not need to be reminded of the current economic crisis facing Minnesota courts. Simply put, Minnesota’s judges and court staff do not have the resources to resolve disputes between debtors, creditors and non-debtor joint account holders. Nor should they be required to do so. A garnishment dispute can only occur after the issue of the debtor liability has *already had its day in court*.

²⁷ See Minn. Stat. Sec. 549.09.

²⁸ See Minn. R. Civ. Proc. Rule 54.04.

Minnesota's court system should not be further burdened by additional litigation over satisfaction of a judgment.

B. FDCPA AND TORT LIABILITY WOULD INCREASE DRAMATICALLY

Even if a creditor undertook the cost and effort to serve discovery on the debtor and to compel responses, the creditor would still be faced with a dilemma. That dilemma is whether to forego garnishment because of the uncertainty of the information gained in discovery or to go forward with bank garnishment and risk tort and Fair Debt Collection Practices Act ("FDCPA") liability. This is not an exaggeration. Already, debtors' attorneys in Minnesota that advertise on the internet are (incorrectly) informing their potential clients that creditors cannot garnish joint accounts and if they do, the creditor has violated the FDCPA.²⁹ There are currently at least (##) actions in federal court alleging a violation of the FDCPA based upon a creditor issuing a garnishment summons to a bank where the bank froze funds in a joint

²⁹ See, e.g. <http://caveatemptorblog.com/minnesotans-may-sue-if-a-debt-collector-levies-funds-in-a-joint-account> (August 19, 2009); <http://toddmurraylaw.com/garnishment-in-minnesota/> (August 13, 2009).

account which the debtor alleges does not belong to him. Thus if the Respondent's prevail, any time a creditor serves a bank with a garnishment summons and a bank freezes funds in a joint account, the creditor is subject to liability under the FDCPA if the debtor alleges those funds do not belong to him.

The possibility of an FDCPA lawsuit is a powerful deterrent to creditors taking *any* action to garnish a debtor's bank account because of the possibility that a garnishment summons may reach a joint account. As the Court knows, the FDCPA is a fee shifting statute and one that provides for strict liability.³⁰ Thus even if a creditor scrupulously takes all steps to identify any of the debtor's accounts that are joint accounts and the amounts of such accounts owned by the non-debtor, the creditor may still violate the FDCPA by garnishing the account. This is because it is simply impossible for the creditor to know on the day of the garnishment if the non-debtor has put money into the account. "Good faith" does not provide a creditor with immunity from FDCPA actions.³¹

³⁰ See *Picht v. John R. Hawks, Ltd.*, 236 F.3d 446, 451 (8th Cir. 2001).

³¹ See U.S.C. Sec. 1692k(c) (2006).

Thus the diligent creditor who has pursued formal discovery from the debtor and obtained the most accurate information about the debtor's accounts who garnishes an account on the day that a nondebtor has put money in the account, is liable for a \$1000 statutory penalty and the debtor's attorney's fees. This can hardly be the intended legislative result, or the result contemplated by this court in *Enright*.

CONCLUSION

This amicus supports the position that the judgment debtor has the initial burden of offering proof that funds in a joint account do not belong to him. If the judgment debtor proves that the funds in the joint account belong to the non-debtor account holder, the burden shifts to the creditor to prove by clear and convincing evidence that the non-debtor account holder intended to confer ownership of his funds to the debtor. Second, if the account holder does not meet his burden of proof or simply fails to provide any proof, the creditor can choose to garnish the entire joint account. For the reasons stated above, the alternative to this process, supported by the Respondents, will render garnishment of joint bank accounts an illusory instrument for collection of judgments given

the risks of tort and FDCPA. This conflicts with Minnesota's recognition that a person has the right to collect money that a court has determined they are owed through garnishment—a right that has existed for over 100 years. For the reasons set forth in this brief, amicus urges this court to answer Judge Ericksen's certified questions as set forth above.

Respectfully submitted,

Dated: Aug. 19, 2009

GURSTEL STALOCH & CHARGO, P.A.

By: Bridget A. Sullivan

Heidi L. Staloch (#271445)

Michael Johnson (#31044X)

Bridget A. Sullivan (#265974)

GURSTEL STALOCH &
CHARGO, P.A.

6681 Country Club Drive

Golden Valley, MN 55427

(763) 267-7000