

2002

Linda Haymond and Melanie A. Lloyd, for  
themselves and for others similarly situated;  
Plaintiffs/Appellants, vs. Bonneville Billing and  
Collections, Inc., A Utah Corporation; Ted K.  
Godfrey; David Toller; and John Does 1 through  
10; Defendants/Appellees : Brief of Appellant

Utah Supreme Court

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**IN THE UTAH SUPREME COURT**

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LINDA HAYMOND AND MELANIE  
A. LLOYD, for themselves and for all  
others similarly situated;

Plaintiffs/Appellants,

vs.

BONNEVILLE BILLING &  
COLLECTIONS, INC., A Utah  
Corporation; TED K. GODFREY;  
DAVID TOLLER; AND JOHN DOES 1  
through 10;

Defendants/Appellees.

Appeal No. 20020531

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**BRIEF OF APPELLANTS**

---

**APPEAL FROM AN ORDER OF THE THIRD JUDICIAL DISTRICT COURT,  
SALT LAKE COUNTY, THE HONORABLE J. DENNIS FREDERICK**

---

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**COMPLETE LIST OF ALL PARTIES IN DISTRICT COURT**

All parties in the district court are listed on the caption of this case.

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## **JURISDICTIONAL STATEMENT**

Jurisdiction in this Court is proper under Utah Code Ann. § 78-2-2(3) and Utah Constitution, Article VIII, Section 3.

## **ISSUES PRESENTED**

The issues presented for review are:

1. Does Ms. Haymond and Ms. Lloyd have standing to challenge the attempted collection and collection of monies by Bonneville Billing and Collections (“Bonneville”) and its attorney for "attorney’s fees", portions of which were not attorney’s fees that Bonneville was obligated to pay to its attorney, because, pursuant to a prior contract between Bonneville and its attorney, the money collected for the attorney’s fees was split and a significant portion of the money was paid to Bonneville?

2. Does Ms. Haymond have standing to challenge the attempted collection and collection of monies by Bonneville and its attorney for triple damages pursuant to Utah Code Ann. §§ 7-15-1(6)(a)(iii) and (7)(b)(vi) where Bonneville did not have authorization by the original merchant who received her check to collect the triple damages, the original merchant did not know that Bonneville was attempting to collect the triple damages, and it was the practice of Bonneville and its attorney to keep the triple damages for themselves, not paying the triple damages to the original merchant?

Both of these standing issues were defended by Ms. Haymond and Ms. Lloyd at the trial court. Memorandums in Opposition to Motions of Bonneville and Godfrey to Dismiss,

R. 322 & 364. This Court should review the standing issues for correctness without deference to the decision of the trial court. Kearns-Tribune Co. v. Wilkinson, 946 P.2d 372, 373 (Utah 1997); and American Interstate Mortgage Corp. v. Edwards, 41 P.3d 1142, 1146 (Utah App. 2002).

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS WHOSE INTERPRETATION IS DETERMINATIVE OF THE APPEAL OR OF CENTRAL IMPORTANCE TO THE APPEAL.**

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The following constitutional provisions, statutes, ordinances, rules and regulations are determinative of this appeal or are of central importance to the appeal:

1. Utah Constitution, Art. I, § 7;
2. Utah Constitution, Art. I, § 11;
3. Utah Code Ann. § 7-15-1 (pre and post 1999 versions); and
4. Rules 4-505 and 4-505.01, Utah Rules of Judicial Administration.

**STATEMENT OF THE CASE**

**I. NATURE OF THE CASE.**

Ms. Haymond and Ms. Lloyd wrote separate checks to merchants that were dishonored. The checks were referred to Bonneville, a Utah collection agency specializing in check collection. Bonneville sent collection letters and then referred the checks to its primary attorney, Mr. Godfrey, to collect.

Bonneville has a practice that has spanned several decades of requiring its captive attorneys, such as Mr. Godfrey, to split all attorney's fees with its President, Mr. David

Toller, in return for the large volume of business that Bonneville refers to its attorneys. Until 1994, the splitting of attorney's fees was a direct 50/50 split, with Bonneville collecting the attorney's fees, keeping half and paying the other half to its attorneys. In 1994, the Utah State Bar investigated the close relations between collection agencies and their attorneys and advised the attorneys that it was unethical to split attorney's fees. The next year the Utah Judicial Council amended the rules that governed the award of attorney's fees in lawsuits. These amendments prohibited the splitting of attorney's fees with clients, such as collection agencies.

Bonneville and its attorneys were not dissuaded from continuing to split attorney's fees. Bonneville is a large collection agency, receiving 1,500 checks each day, and the amount of attorney's fees that were being split approached \$1.0 million per year. Bonneville and its attorneys simply initiated a scheme by which the attorneys would be charged approximately \$500,000.00 per year for the use of Bonneville's collection computer system. This system, known as the CUBS system, was used by Bonneville to keep track of its millions of checks and other bad debts that it was collecting. The CUBS system was necessary for Bonneville to remain in business. Its attorney was hooked to the system so Bonneville's collectors could talk with the attorney through the system.

The information provided to the attorney in the computer system was information typically provided to attorneys by their clients for free in order to aid the attorneys in lawsuits on behalf of the clients. This information consisted of the name and address of

each defendant, the amount owed, the basis of the debt such as a bad check, and the contacts made with each debtor by Bonneville's collectors.

The CUBS system cost Bonneville only \$10,000 per year, but Bonneville was charging its counsel close to \$500,000.00 per year to be on the system.

Bonneville and its attorney attempted to collect \$150.00 to \$160.00 in attorney's fees from Ms. Haymond and Ms. Lloyd. Ms. Lloyd was sued, did not hire an attorney to defend her, and ultimately paid the attorney's fees to Bonneville to obtain dismissal of the suit. These fees were split with Bonneville.

Bonneville and its attorney also attempted to collect \$150.00 in attorney's fees from Ms. Haymond. She initially tried to defend against Bonneville's collection suit as a pro se defendant. During the state collection suit against her, Ms. Haymond hired counsel. He moved to amend her pro se answer and filed a proposed answer asserting the bogus attorney's fee scheme as a defense, along with the illegal treble damages identified below. When he served Bonneville with written discovery designed to bring these schemes out into the open, Bonneville and its attorney ran, dismissing the state court collection suit over the objection of Ms. Haymond.

Since 1999, when the Utah bad check statute was amended, Bonneville and its attorneys have been engaged in another illegal scheme. The amendment allowed the collection of damages in the amount of three times the amount of the check. The original House bill that proposed the treble damages provided that the collection agency and

collection attorneys could keep the treble damages. The Utah Legislature changed the bill to its final form that was passed which clearly prohibited collection agencies and collection attorneys from keeping any of the treble damages. The statute also made any agreement between the merchants who received the checks and the collection agencies that allowed anyone other than the original merchant to keep the triple damages void as against public policy.

This change did not stop Bonneville and its attorneys. They simply did not tell the merchants who received the bounced checks that they could collect triple damages. The merchants, therefore, did not authorize the collection of the triple damages. Notwithstanding, Bonneville and its attorney consistently attempted to collect the treble damages from the check writers, without authorization from the merchants to do so, and kept the money for themselves. Ms. Haymond was caught in this scheme when Bonneville and its attorney attempted to collect the treble damages in collection letters and in the state court collection lawsuit against her without the knowledge and authorization of the merchant who received the check. Again, she did not pay the triple damages because Bonneville and its attorney ran and hid when she hired an attorney to defend her and he asserted the illegal treble damage scheme as a defense in that suit.

The present action was brought against Bonneville and its attorney by Ms. Lloyd and Ms. Haymond seeking damages for the illegal attorney's fees that Ms. Lloyd paid and the expenses and other damages of Ms. Lloyd and Ms. Haymond incurred in defending against

Bonneville's attempts to collect the illegal triple damages and bogus attorney's fees. They also sought to represent all other check writers that were exposed to the same illegal practices.

## **II. STATEMENT OF FACTS.**

### **A. General.**

1. The defendant, Bonneville, is a collection agency, collecting on 1,500 checks assigned to it each day. Complaint, para. 35, R. 6.

2. The defendant, Ted K. Godfrey, is the primary attorney used to collect dishonored checks and other debts referred to Bonneville. Complaint, para. 5, R. 2.

3. The defendant, David Toller, is the president and primary shareholder, if not the sole shareholder, of Bonneville. Complaint, para. 6, R. 2.

### **B. Linda Haymond.**

4. On February 24, 2001, the plaintiff Linda Haymond, wrote a check to the Flower Patch for \$7.42. Complaint, para. 9, R. 3.

5. The check was dishonored because of insufficient funds and was referred to Bonneville and then to Mr. Godfrey for collection. Complaint, para. 9 - 11, R. 3.

6. On April 13, 2001, Mr. Godfrey sent to Ms. Haymond the notice attached to the Complaint as Exhibit "B". Complaint, para. 13, R. 3.

7. On June 13, 2001, Ms. Haymond was served with the bad check collection summons and complaint prepared by Mr. Godfrey on behalf of Bonneville, which

summons and complaint are attached to the Complaint as Exhibit “C”. Complaint, para. 14, R. 3.

8. On June 27, 2001, Ms. Haymond sent a cashier’s check for \$28.00 to the merchant who received her check, The Flower Patch. The cashier’s check is attached to the Complaint as Exhibit “D” thereto. Complaint, para. 15, R. 3.

9. Ms. Haymond initially attempted to defend herself in the collection lawsuit brought against her by Mr. Godfrey and Bonneville. She, thereafter, retained Mr. Lester Perry to defend her. Complaint, para. 16 & 17, R. 3.

10. When Mr. Perry was hired, he moved the court in Bonneville’s collection lawsuit against Ms. Haymond to allow her to amend her pro se answer and he filed a proposed answer asserting the defenses that: 1) Bonneville was seeking to collect attorney’s fees that were not real attorney’s fees but were monies systemically paid through the attorney to Bonneville’s president, Mr. Toller, as a collection fee not allowed by Utah’s bad check statute, Utah Code Ann. § 7-15-1 and Rule 4-505.01 of the Rules of Judicial Administration; and 2) Bonneville was claiming treble damages under the new Utah bad check statute that were expressly prohibited from being collected by the statute because the merchant who received Ms. Haymond’s check had not authorized the collection of the treble damages and did not know that Bonneville was attempting to collect the treble damages and Bonneville and its attorney were keeping the triple damages. Complaint, para. 18 & 19, R. 3 & 4.

11. Mr. Perry sent several letters to Bonneville’s attorney, Mr. Godfrey,

requesting documents that were necessary to establish Ms. Haymond's defenses. When responses were not forthcoming, interrogatories, requests for admission and requests for production, designed to obtain the information, were sent to Mr. Godfrey. Complaint, para. 20 - 23, R. 4 & 5.

12. Rather than answer the discovery which would have revealed much of the fee splitting scheme and the illegal triple damage scheme, Bonneville and Mr. Godfrey moved to dismiss the collection action against Ms. Haymond. The Court refused to allow Ms. Haymond to amend her pro se answer and dismissed the complaint, over Ms. Haymond's objection. Complaint, para. 24 - 26, R. 5.

**C. Melanie Lloyd.**

13. On April 16, 1999, Ms. Lloyd wrote a check to Conoco, Inc. which was dishonored. Complaint, para. 27 & 28, R. 6.

14. Bonneville sent Ms. Lloyd the notices that are attached to the Complaint as Exhibits "K" and "L" thereto. Complaint, para. 29 & 30, R. 6.

15. On June 13, 1999, Mr. Godfrey, on behalf of his client Bonneville, caused a bad check summons and complaint to be served on Ms. Lloyd in a suit for the check, damages, costs and attorney's fees. Copies of the summons and complaint are attached to the Complaint as Exhibit "M" thereto. Complaint, para. 31, R. 6.

16. On June 14, 1999, Ms. Lloyd paid Mr. Godfrey \$40.20 by cashiers check, a copy of which is attached to the Complaint as Exhibit "N" thereto. Mr. Godfrey demanded another \$160.00 in attorney's fees before the collection suit would be



dismissed. On June 25, 2001, Ms. Lloyd paid \$160.00 by cashiers check to Mr. Godfrey, a copy of which is attached to the Complaint as Exhibit “O” thereto. Complaint, para. 32 - 34, R. 6.

17. The attorney’s fees were split with Bonneville pursuant to the practice described below. Complaint, para. 45, R. 8.

**D. Splitting of Attorney’s Fees.**

18. The last information provided by Bonneville on its operations indicated that it was assigned 1,500 dishonored checks per day to collect from Utah residents. Complaint at para. 35, R. 6.<sup>1</sup>

19. Before 1994, all attorney’s fees sought or awarded in lawsuits were split equally between Bonneville and its attorneys. In 1994, the Utah State Bar issued recommendations to all collection attorneys reminding them that it was a breach of ethics to split attorney’s fees with their clients.<sup>2</sup> Shortly thereafter, Bonneville’s attorneys began retaining 100% of the attorney’s fees collected but began paying Bonneville an

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<sup>1</sup> Syme depo. at 40, R. 394. (Evidentiary support for allegations within a complaint is not necessary for this Court to treat the allegations as true, since the trial court’s dismissal is based upon two motions to dismiss. However, counsel for Ms. Haymond and Ms. Lloyd has fought the attorney fee splitting issue against Bonneville and its attorneys in prior cases. In order to assure the trial court that Ms. Haymond and Ms. Lloyd had evidentiary support for their allegations regarding the attorney’s fee splitting practice, they attached to their memorandum in opposition to the Bonneville motion to dismiss, deposition testimony and responses to interrogatories obtained in these prior cases. Since, this evidence was presented to the trial court, it will be referred to in this brief.)

<sup>2</sup> Rich depo. at 22-26 & 33, R. 396 - 398; Kaufman depo. at 37- 40 & 43, R. 403 - 405; Hansen depo. at 50-52 & 59, R. 417 - 419; Jensen depo. at 20, 23, 31 & 35, R. 428 - 431.

amount equivalent to approximately 50% of the attorney's fees for rent, maintenance of a group health plan for prior Bonneville employees who had been switched over to the attorney's payroll after the State Bar recommendations and who could not qualify for new health insurance, and for use of Bonneville's computer system.<sup>3</sup> The vast majority of the attorney's fees split with Bonneville were paid by the attorneys under the guise of being fees to be hooked into Bonneville's computerized collection system that lists the names, addresses and telephone numbers of the debtors, the amount owed, and the collection actions taken by Bonneville's collectors. Complaint at 36 - 38, R. 6 & 7.

20. When, prior to the State Bar's recommendations, Bonneville was directly splitting the attorney's fees 50/50 with its attorneys, the attorneys were not charged for being hooked into Bonneville's computer system. Complaint at 39, R. 7.

21. The last time the plaintiffs had information on Bonneville, the information indicated that Bonneville collected upwards of \$924,000.00 per year from thousands of Utah consumers for attorney's fees and approximately half of which, \$465,000.00, was passed through to Bonneville's President, Mr. Toller. Complaint at 40, R. 7.<sup>4</sup>

22. The computer system, however, costs Bonneville about \$10,000.00 per year. Complaint at 41, R. 7.<sup>5</sup>

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<sup>3</sup> Rich depo. 40-48, R. 399 - 401; Toller depo. at 11-25, R. 407 - 410; Hansen, Pickering depo. at 67-76, R. 424 - 426.

<sup>4</sup> Response to Pickering interrogatories, attached to plaintiffs' opposition memorandum as Exhibit "A", R. 386.

<sup>5</sup> Toller depo. at 30 & 31, R. 411 - 412.

23. Bonneville needed the computer system to operate its business, regardless of the fact that its attorneys were hooked to the system. The system kept track of the hundreds of thousands of collection accounts and dishonored checks assigned to Bonneville. Bonneville would go out of business if it had to collect its accounts and dishonored checks without the computer system. Complaint at 42, R. 7.<sup>6</sup>

24. The information on the computer system that is provided to Bonneville's attorneys, and for which the attorneys are charged, is information that a client normally provides to its attorney without charge in an effort to aid the attorney in the prosecution of lawsuits on behalf of the client. Such information, includes the name, address and telephone number of the debtor, the amount owed, the basis of the debt such as a bad check, and the attempts made by Bonneville to collect the amount owed. Complaint at 43, R. 8.<sup>7</sup>

25. Ms. Lloyd paid at least \$150.00 in attorney's fees that were split with Bonneville's President. Ms. Haymond did not pay attorney's fees to Bonneville because she hired an attorney who answered the collection complaint of Bonneville and defended her from the claim for attorney's fees. Many of the class members paid the attorney fees

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<sup>6</sup> Toller depo. at 11-18, 20-24, 31-33 & 36-39, R. 407 - 414; Rich depo. at 44-46, R. 400; Godfrey depo. at 25; Hansen depo. at 36 & 37, R. 416; and Hansen Pickering depo. at 16, 33 & 36, R. 421 - 423.

<sup>7</sup> See standard report from Bonneville's computer system attached to the plaintiffs' memorandum in opposition as Exhibit "B", R. 387 - 389. This report was produced by Bonneville in a prior case against Bonneville. The reports are similar for each of the plaintiffs herein. However, prosecution of the present case has not proceeded to the point that would require Bonneville to produce these reports on the plaintiffs.

that were split with Bonneville or its President. Complaint at 45, R. 8.

**E. Collection of Damages Reserved for the Merchant and Prohibited to Mr. Godfrey and Bonneville.**

26. In 1999, the Utah bad check statute, Utah Code Ann. § 7-15-1, was completely rewritten. In this rewriting, the Utah State Legislature added the right of a holder of a dishonored check to: 1) offer a covenant not to sue the writer of the check and collect damages equal to the greater of \$50.00 or triple the amount of the check; and 2) after suit, collect damages equal to the greater of \$100 or triple the amount of the check. The statute, however, prohibits a third party check collector, such as Bonneville or its attorneys, from collecting these damages for itself. These damages can only be collected by the merchant to whom the check was originally written. The statute provides that any contract between the merchant and a third party check collector that allows the third party collector to retain the damages, or any portion thereof, is void. Complaint, para. 46, R. 8 & 9.

27. Bonneville and its attorney were not authorized to collect the treble damages by the merchant to whom Ms. Haymond wrote her check. Notwithstanding this fact, Bonneville and Mr. Godfrey attempted to collect such damages with the intent of keeping these damages for themselves. Ms. Haymond did not pay these damages because she hired an attorney who answered Bonneville's collection lawsuit and protected her from the attempts of Bonneville and Mr. Godfrey to collect the treble damages. Complaint, para. 47, R. 9.

28. Bonneville and its attorneys routinely attempt to collect these statutory damages from the class members, and have collected such damages from the class members, not for the merchants that have the sole right to the damages, but for the sole benefit and profit of Bonneville. Complaint, para. 48, R.9.

### **III. Course of Proceedings in Trial Court.**

This case was dismissed before discovery was commenced by the trial court based on two separate motions to dismiss. The basis of the motions was lack of standing of the plaintiffs to bring this action.

### **SUMMARY OF ARGUMENT**

Utah's bad check statute, Utah Code Ann. § 7-15-1, allows the collection of real attorney's fees. It does not allow a collection agency to collect fees or costs, other than the \$20.00 defined as a "service fee" in the bad check statute in effect when Ms. Lloyd wrote her check and the \$20.00 "service charge" and \$20.00 "cost of collection" allowed in the statute in effect when Ms. Haymond wrote her check. The splitting of attorney's fees between Bonneville and its attorney was nothing more than an end run around this limitation to allow Bonneville to collect more money than allowed by the statute.

Rules 4-505 and 4-505.01 of the Utah Rules of Judicial Administration govern the award of attorney's fees in Utah state court lawsuits. These rules expressly prohibit the splitting of attorney's fees with clients, such as collection agencies.

Bonneville and its attorney are committing a fraud on the courts of this state and on

the defendants that they sue by seeking to collect attorney's fees that they know before the fees are sought will be split with the collection agency, Bonneville. The defendants' attempt to hid the split by charging the attorney to be hooked into Bonneville's computer system is nothing more than a thinly veiled attempt to disguise the fraud.

The attempt to collect treble damages under the new bad check statute that are not authorized to be collected by the merchant who received the bounced check are collected without the merchant's knowledge and are kept by Bonneville. This practice is also illegal. Utah Code Ann. § 7-15-1 clearly prohibits any attempt to collect such damages where the merchant does not know that the treble damages are being collected and does not receive the damages.

Ms. Haymond and Ms. Lloyd both suffered the distinct, particularized injury necessary to give them personal stakes in the outcome of this lawsuit that is known as "standing." They were both exposed to these fraudulent schemes. Ms. Lloyd paid the illegal attorney's fees. Bonneville and its attorney were pushing their state court collection lawsuit against Ms. Haymond seeking to obtain a judgment for the illegal attorney's fees and treble damages until she hired an attorney who appeared in Bonneville's state court collection action and asserted these illegal practices as a defense. Bonneville then dismissed the state court action over the objection of Ms. Haymond. Ms. Haymond was exposed to the cost, hassle, and aggravation of defending against this action. Ms. Lloyd and Ms. Haymond also have standing to represent the tens of thousands of Utah check writers who have been

exposed to the same practices.

To deny Ms. Lloyd the right to seek the return on her money that she paid for the bogus attorney's fees and to deny Ms. Haymond the right to seek her damages for having to incur the aggravation, hassle and cost and expense of defending against Bonneville's attempt to collect the illegal triple damages and imaginary attorney's fees would be a denial of these two plaintiffs' right to due process under Article I, Section 7 of the Utah Constitution. Likewise, such denial would close the courtroom doors to them contrary to Article I, Section 11 of the Utah Constitution.

### **ARGUMENT**

**I. The Court should consider the dismissal of this case as if the facts in the complaint are admitted and all reasonable inferences are viewed in a light most favorable to Ms. Lloyd and Ms. Haymond.**

The trial court's dismissal of this case was based upon two motions to dismiss by the defendants. In reviewing the dismissal, this Court should consider the facts alleged within the complaint of Ms. Haymond and Ms. Lloyd as true and all inferences that can be drawn from these admitted facts should be viewed in a light most favorable to them. Whipple v. American Fork Irrigation Co., 910 P.2d 1218, 1219 (Utah 1996).

**II. The splitting of monies collected as "attorney's fees" violates Utah law.**

**A. The attorney fee splitting practice violated the Utah dishonored check statute, Utah Code Ann. § 7-15-1.**

Under the 1998 version of Utah's bad check statute, Utah Code Ann. § 7-15-1(3), that was in effect at the time Ms. Lloyd wrote her check, a holder of a bad check could recover

only the face amount of the check, a \$20.00 service charge, interest and “all costs of collection, including all court costs and attorney’s fees.” Under the 1999 version of the statute, Utah Code Ann. § 7-15-1(7), that was in effect at the time Ms. Haymond wrote her check, a holder of the check could collect the \$20.00 service charge of Section 7-15-1(2)(b), the \$20.00 “costs of collection” of Section 7-15-1(4), interest, court costs, reasonable attorney’s fees, and damages in the amount of the greater of \$100.00 or triple the amount of the check. Each version of the statute also contains a suggested notice that should be sent to the check writer. The notice in each statute states that only the **actual** costs incurred in the collection of the particular check can be collected and, consistent with the latter statute, its notice limits the actual costs of collection to \$20.00.<sup>8</sup>

Neither statute allowed Bonneville to have an agreement with its attorneys to split

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<sup>8</sup> In the earlier statute that governed Ms. Lloyd’s check, “costs of collection” were also defined to include reasonable compensation for time expended in the collection of the check “if the collection is pursued personally by the holder and not through an agent.” Utah Code Ann. § 7-15-1(4) (Emphasis added).

Utah Code Ann. § 7-15-1(4) was passed by the Utah State Legislature in 1988. It started out as Senate Bill No. 2 and provided for punitive damages of double the face amount of the check. The purpose of the bill was to reimburse merchants who had to expend their time, money, and effort in collecting dishonored checks. 47th Legislature, Day 4, January 14, 1988, 10:00 a.m. session, Audio Disk No. 6, at Section 18, Utah State Senate Audio Disks. Senator Barton, in his introduction of the bill, stated that the purpose of the bill was to “reimburse the merchant, . . . and that the bill was not for those who would hire an attorney.”

On January 19, 1988, the Utah State Senate audio disk for the 10:00 a.m. session sets forth the presentation and debate of an amended Senate Bill No. 2. This time, the amended Senate Bill was sponsored by Senator Carling, with Senator Barton’s support. *Id.* The amended Senate Bill No. 2 contained the language set forth within the present sub-paragraph 4, “If the collection is pursued personally by the holder and not through an agent.” (Emphasis added.)



the attorney's fees, thus circumventing the statute's limitation of a collection agency collecting only **actual** collection costs incurred in collecting the particular check (also limited to \$20.00, at most, in the latter statute). Neither statute allowed Bonneville to disguise its \$500,000.00 portion of the split attorney's fees as payment from its attorneys to be hooked into a computer system when the system cost Bonneville only \$10,000.00 per year, the computer system was absolutely necessary for Bonneville to conduct its business, and the information provided to the attorneys over the computer system was information typically provided to attorneys for free to aid them in maintaining actions on behalf of their clients.<sup>9</sup>

**B. The attorney fee splitting practice violated the Utah court rules governing the award of attorney's fees.**

Bonneville and its attorneys also violated the court rules that govern attorney's fees. Attorney's fees are sought and awarded under Rules 4-505 and 4-505.01 of the Utah Rules of Judicial Administration. Rule 4-505 establishes a uniform format for the award of attorney's fees pursuant to affidavits. Rule 4-505.01 addresses attorney's fees in default judgments with a principal amount of \$5,000.00 or less where affidavits are not submitted. Id. The fact that an affidavit, attesting to the validity of the attorney's fees, is not required by Rule 4-505.01 does not give the attorney the right to collect money for bogus attorney's fees that are split with his collection agency client pursuant to a contract

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<sup>9</sup> The information on the computer system consisted of the name and address of the defendant, how much was owed, the basis of the debt such as a bad check or open account, and the contacts made by Bonneville's collectors with the debtor.

that existed between them before the attorney's fees were awarded. The fact that such an affidavit is not required does not give the attorney the right to collect attorney's fees that are actually disguised collection fees that the attorney passes on to his collection agency client as an end run around the strict collection cost limitations of \$20.00 in Utah's bad check statute.

The purpose of Rule 4-505 and Rule 4-505.01 is to "prevent abuse of attorney fee awards." N.A.R., Inc. v. Walker, 37 P.3d 1068, 1069 (Utah 2001) and N.A.R., Inc. v. Farr, 997 P.2d 343, 345 (Ut. Ct. of App. 2000). Both rules presuppose that the money that is being awarded is for attorney's fees. The title of each Rule includes the term "attorney fees." The words "attorney fees" are used 15-20 times within their bodies. They do not mention the award of collection agency fees or the reimbursement of the internal costs of a collection agency for its computer system.

Of particular concern is the fact that Bonneville and its attorneys have flaunted the recent amendments to Rule 4-505 and Rule 4-505.01. In 1994, the Utah State Bar became aware of the "end run" being committed by the collection agencies and their collection attorneys in bad check cases and other consumer debt cases and issued recommendations to its members that attorney's fees were not to be split with collection agencies. In 1995, the Utah Judicial Council amended Rules 4-505 and 4-505.01 to make it clear that the attorney's fees awarded under these rules could not be split or shared with the attorney's clients, such as collection agencies. Rule 4-505(3) requires that the attorney affirmatively state in his affidavit that he is not splitting the attorney's

fees with his client, such as a collection agency, in violation of Rule of Professional Conduct 5.4. Rule 4-505.01(9) states that “[n]o attorneys fees awarded pursuant to this rule, nor portion thereof, may be shared in violation of Rule of Professional Conduct 5.4.”<sup>10</sup>

**III. The attempted collection and the collection of triple damages by Bonneville and its attorney that were collected without the knowledge of the original merchants who received the checks and were kept by Bonneville and its attorney violated**

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<sup>10</sup> Rule 5.4 prohibits the splitting of attorneys fees unless it is with another attorney to complete a case or unless it is with the attorney’s employees as part of a profit sharing plan. The plaintiffs do not base their complaint on Rule 5.4. Rather their claims are founded on violation of Utah Code Ann. § 7-15-1, common law claims, and Rules 4-505 and 4-505.01 of the Judicial Code. Rules 4-505 and 4-505.01, however, incorporate the standards within Rule 5.4 as a measuring stick for fee splitting.

Mr. Godfrey has clearly violated other ethical rules governing the conduct of attorneys. The plaintiffs do not assert their claims under these rules. They, however, maintain that these rules are some evidence of the standard of conduct that is required of attorneys in their common law causes of action.

Rule 1.5 of the Utah Rules of Professional Conduct states that “[a] lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.” The portion of the “attorney’s fees passed through to Bonneville are “an illegal fee. It violates Utah Code Ann. § 7-15-1 and Rules 4-505 and 4-505.01.

In 1990, the Utah State Bar issued an ethics opinion to all of its members. This opinion is known as Opinion No. 100. A copy of this Opinion is attached to plaintiffs’ opposition memorandum as Exhibit “C”, R. 390. The opinion concluded that:

If a collection agency recovers attorneys’ fees from a debtor which exceed the actual cost of legal services for a particular matter, the agency profits from the services of the attorney. Such an arrangement violates Rule 5.4 of the Rules of Professional Conduct, which prohibits lawyers from sharing fees for legal services with non-lawyers. (Emphasis added.)

See also Nelson v. Smith, 154 P.2d 634, 640 & 41 (Utah 1944), for the same conclusion.

**Utah Code Ann. § 7-15-1.**

Bonneville and its attorney attempted to collect triple damages pursuant to Utah Code Ann. § 7-15-1 in their collection letters and in their collection suits, including those used against Ms. Haymond. When Ms. Haymond represented herself in Bonneville's collection lawsuit, both Bonneville and its attorney made every effort to obtain a judgment for the triple damages. When Ms. Haymond hired an attorney to represent her in the suit, asserted splitting of attorney's fees and illegal treble damages as defenses in a proposed answer that would have replaced her pro se answer, Bonneville and its attorney took off running and moved to dismiss the collection suit over the objection of Ms. Haymond. Bonneville also tried to collect or collected the triple damages for its own use and benefit from the class members, as defined in the description of the class.

Utah Code Ann. § 7-15-1(6)(b) and (7)(e) make it clear that Bonneville and its attorney had no legal right to collect triple damages from Utah check writers unless the original merchants who received the checks authorized Bonneville to collect the triple damages and the damages were to be paid to the merchants and not kept by the collection agency or its attorney. Section 7-15-1 states in a number of places that:

1. "all amounts charged or collected under Subsection (6)(a)(iii) [triple damages] shall be paid to and be the property of the original payee of the check." Utah Code Ann. § 7-15-1(6)(b).

2. "a person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii) [triple damages]." Utah Code Ann. § 7-15-

1(6)(b).

3. “[t]he original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii) [triple damages].” Utah Code Ann. § 7-15-1(6)(b).

4. “all amounts charged or collected under Subsection (7)(b)(iv) [triple damages] shall be paid to and be the property of the original payee of the check.” Utah Code Ann. § 7-15-1(7)(e).

5. “a person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(iv) [triple damages].” Utah Code Ann. § 7-15-1(7)(e).

6. “[t]he original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(iv) [triple damages].” Utah Code Ann. § 7-15-1(7)(e).

Bonneville was never hired by the merchant who received Ms. Haymond’s check to collect the triple damages from Ms. Haymond. The merchant had no idea that Bonneville was collecting the triple damages. Bonneville and its attorney were attempting to collect the triple damages for themselves and were prohibited by statute from doing so. Even if the merchant and Bonneville were both consciously involved in a scheme to collect the triple damages and split them, the Code prohibits such schemes.

**IV. Both Ms. Haymond and Ms. Lloyd have standing to assert a claim for the attempted collection and the collection of attorneys fees that were not attorneys fees but were an illegal collection fee paid to a collection agency.**

Bonneville argued and the trial court agreed that Ms. Haymond and Ms. Lloyd were not injured by the fact that Bonneville and its attorney attempted to collect and collected money for what they represented to the plaintiffs and to the courts were attorneys fees when in fact the money was not for attorney's fees but were illegal payments to the collection agency. Bonneville reasoned and the trial court agreed that Rule 4-505.01 allowed Bonneville to collect \$150.00 for attorney's fees regardless of whether the money was actually for attorneys fees.

As set forth above, Rule 4-505.01 and Utah Code Ann. § 7-15-1 do not allow Bonneville to collect monies for its internal costs of operation as disguised attorney's fees. Indeed, the Judicial Council recognized that this type of illegal practice was going on between collection attorneys and collection agencies when it amended Rule 4-505 and Rule 4-505.01 in 1995 to prohibit this practice.

The Hawaii Court of Appeals was faced with the trial court's dismissal of a similar action against two collection agencies for splitting attorney's fees with their counsel. Fuller v. Pacific Medical Collections, Inc., 891 P.2d 300 (Hawaii App. 1995). The trial court concluded that the debtor did not have standing to challenge the collection of attorney's fees because the debtor had no right to object about how the attorney used the fees after they were awarded. The Court of Appeals disagreed, stating:

“[In the trial court's view], if a collection agency collects attorney fees from a debtor and does not pay to its attorney the attorney fees it collects, the debtor has not been damaged. We disagree. In our view, money collected from a debtor as an “attorney's fee” is not an “attorney's fee” when the collection agency did not pay the “attorney's fee” to the attorney.

...

“If the collection agencies collected attorney fees knowing that, pursuant to contract with their attorney, they would pay their attorney less attorney fees than they collected, the collection agencies have in fact collected under the “attorney’s fee” label something other than ‘an attorney’s fee or commission.’ Obtaining a judgment for and collecting that “attorney’s fee” under those circumstances is a serious fraud upon the court and a violation of HRS Chapter 443B, and affords Plaintiffs a cause of action against the collection agencies for the Plaintiffs’ resulting damages.”

Id. at 316.

This Hawaii case highlights the deficiency in Bonneville’s argument and the trial court’s decision. Bonneville and its attorney had a prior contract to collect monies disguised as attorney’s fees and then pay half of the money to Bonneville. This payment to Bonneville was almost \$500,000.00 per year. They tried to camouflaged the payment by calling it a payment by the attorney to be hooked into Bonneville’s collection computer system. The attorney was not free to spend the fees as he deemed fit. He was obligated to spend the money by paying Bonneville \$500,000.00 per year for a computer system that cost Bonneville only \$10,000.00 per year. The attorney was obligated to pay for a computer system that Bonneville had to have for its business and only provided the attorney information that clients typically give to their attorneys to aid them in prosecution of lawsuits on the client’s behalf, such as the name and address of the defendant, the amount owed, the nature of the debt such as a dishonored check and the collection efforts made by the client. Bonneville and its attorney simply conspired to circumvent the protections of Rules 4-505 and 4-505.01 and Section 7-15-1 and collect

bogus attorney's fees to which they had no legal right.

The primary case on standing in Utah is Jenkins v. Swan, 675 P.2d 1145 (Utah 1983). Almost all recent standing cases cite it as authority. In this case, the Court pointed out that the traditional test for standing was “[p]laintiff must be able to show that he has suffered some distinct and palpable injury that gives him a personal stake in the outcome of the legal dispute.” Id. at 1148. Ms. Haymond, Ms. Lloyd and the putative class members meet this test. Ms. Lloyd paid \$150.00 to \$160.00 in attorney's fees that were split with Bonneville under the prior agreement with its attorney to pay Bonneville approximately one-half of the attorney's fees. Ms. Haymond had to hire an attorney to defend her in Bonneville's collection action and keep Bonneville and its attorney from collecting the bogus attorney's fees. The class members, by definition, paid the illegal fees. Each one of these plaintiffs suffered the distinct and palpable injury of paying the disguised fees or hiring attorneys to protect them from having to pay the fees that gives them a personal stake in the outcome of this lawsuit.<sup>11</sup>

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<sup>11</sup>The Jenkins case was a taxpayer's suit against school teachers and school districts seeking a declaratory judgment that teachers could not be members of the Utah legislature. Id. at 1147. Mr. Jenkins sought relief on behalf of Utah citizens in general. The Utah Supreme Court determined that Mr. Jenkins' status as a taxpayer and citizen did nothing to distinguish him from any other member of the public. Id. at 1151. Thus, he suffered no particularized injury and did not have standing under the traditional standing test.

After making this determination, the Court continued with its standing analysis, stating that when a plaintiff did not have standing under the traditional test, the court would consider standing under one of two other tests: 1) whether the plaintiff has a greater interest in the outcome of the case than anyone else and if the issues were likely to be raised by someone else; and 2) whether the case involves issues of great public interest and societal impact. The Court ultimately determined that Mr. Jenkins did not meet either of these alternative tests of standing. The Court in the present case does not need to address these



The reason for the standing requirement is founded on the separation of powers principal that is basic to our form of government. Id. at 1149 - 1150. The Utah Supreme Court stated:

“Inherent in the tripartite allocation of governmental powers is the historical and pragmatic conviction that particular disputes are most amenable to resolution in particular forums. The requirement that a plaintiff have a personal stake in the outcome of a dispute is intended to confine the courts to a role consistent with the separation of powers, and to limit the jurisdiction of the courts to those disputes which are most efficiently and effectively resolved through out the judicial process.”

Id. at 1149.

The present case is based on a dispute between private individuals. At its heart is the collection of monies which the collection agency and its attorney had no right to under the laws of the state of Utah. The judicial branch of our government was set up to resolve such disputes. Ms. Lloyd and Ms. Haymond have suffered injuries that need to be redressed. They have standing to assert their claims in the courts of this state.

**V. Ms. Haymond has standing to assert a claim for the attempted collection and the collection of the illegal triple damages.**

Utah Code Ann. §§ 7-15-1(6)(b) and (7)(e) prohibit Bonneville and its attorney from collecting triple damages for themselves. They must collect the triple damages for the original merchant. The merchant who received Ms. Haymond’s check did not authorize Bonneville and Mr. Godfrey to collect the triple damages. In fact, Bonneville had not told the merchant that it could collect triple damages under Utah’s new bad

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other prongs of the standing test because the “traditional” test of a particularized, palpable injury has been met.

check statute. With respect to this merchant and other merchants across Utah, Bonneville had a practice of attempting to collect and collecting triple damages without the knowledge and authorization of the merchants and keeping the money for itself.

Bonneville and Mr. Godfrey sued Ms. Haymond for her dishonored check and made every effort to obtain a judgment for the triple damages while Ms. Haymond represented herself in the lawsuit. When Ms. Haymond hired an attorney to represent her in this suit who raised the defenses of illegal attorney's fees and illegal triple damages in a proposed answer amending her pro se answer, Bonneville and Mr. Godfrey ran and dismissed the collection suit over Ms. Haymond's objection. Ms. Haymond then brought this action seeking relief for these illegal collection actions of Bonneville and Mr. Godfrey.

Ms. Haymond suffered the same particularized, palpable injury that gave her the personal stake in her lawsuit that met the traditional standing test set forth in the Jenkins case presented above. Bonneville had no authority from the merchant to collect the triple damages. Notwithstanding, they attempted to do so. Ms. Haymond incurred expenses, lost time, aggravation and distress in defending against their illegal attempts. The prohibitions of Section 7-15-1 were designed to protect check writers, such as Ms. Haymond, from paying triple damages that would not be passed on to the merchant who received the check. She should not have been denied her right to petition the court to remedy these illegal collection practices made against her.

**VI. Ms. Lloyd and Ms. Haymond were denied their constitutional right to their day**

**in court.**

Every citizen of the state of Utah has his or her right to a day in court; the right and opportunity to litigate a claim, seek relief or defend their rights. Miller v. USAA Casualty Insurance Co., 44 P. 3d 663, 673 & 74 (Utah 2002).

Article I, Section 7 of the Utah Constitution provides that “[n]o person shall be deprived of life, liberty or property, without due process of law.” This Court has stated that:

“The terms ‘life,’ ‘liberty,’ and ‘property’” are constitutional terms and are to be taken in their broadest sense. They indicate the three great subdivisions of all civil right. The term ‘property,’ in this clause, embraces all valuable interest which a man may possess outside of himself; that is to say, outside of his life and liberty. It is not confined to mere tangible property but extends to every species of vested right.”

McGrew v. Industrial Commission, 84 P.2d 608, 610 (Utah 1938); as quoted in Miller v. USAA Casualty Insurance Co., 44 P. 3d at 674.

In Miller, the rights that the plaintiffs were asserting were extra-contractual claims for loss of use of a home, mental and emotional distress, physical illness and distress, frustration and embarrassment, infliction of emotional distress, bad faith settlement claims against an insurer, punitive damages and other general and consequential damages. Miller v. USAA Casualty Insurance Co., 44 P. 3d at 668. This Court determined that these claims were vested property rights just as tangible things were property and could not be taken from the plaintiffs in that case without due process of law. Id at 674.

The claim of Ms. Lloyd for the \$150.00 to \$160.00 in illegal and bogus attorney’s

fees that she paid and the claim of Ms. Haymond for her defense costs and expense, frustration, aggravation, embarrassment, and emotional distress caused by the wrongful attempts to collect the illegal treble damages and the illegal and imaginary attorney's fees are the same type of property rights that cannot be taken from them without due process of law. The trial court's dismissal of their case stripped them of these vested property rights and violated the due process clause of the Utah constitution.

The open courts provision of the Utah Constitution is Article I, Section 11, and provides that:

“All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.”

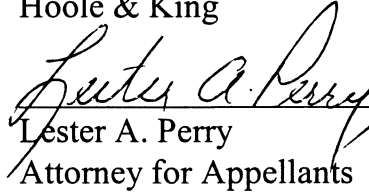
The trial court's dismissal of this case denied Ms. Lloyd and Ms. Haymond of their day in court for the “injuries done to them” by the illegal collection practices of Bonneville and Mr. Godfrey. The dismissal denied them of their right to present claims and defenses, and have their claims properly adjudicated on the merits according to the facts and the law. Miller v. USAA Casualty Insurance Co., 44 P. 3d at 674.

### **CONCLUSION**

The Court should reverse the decision of the trial court granting the two motions to dismiss of the defendants and remand this case for further proceedings.

Dated this 30th day of September, 2002.

Hoole & King

  
Lester A. Perry  
Attorney for Appellants

**CERTIFICATE OF SERVICE**

I certify that on the 5 day of October, 2002, two true and correct copies of the foregoing brief of the appellants were mailed, postage prepaid, to each of the following:

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## **ADDENDUM**

Pre 1999 Version

**7-14-4. Immunity from liability.**

No depository institution making any report or communication of information authorized by this chapter shall be liable to any person for disclosing such information to any recipient authorized to receive this information under this chapter, or for any error or omission in such report or communication.

**History:** C. 1953, 7-14-4, enacted by L. 1981, ch. 16, § 12.

**7-14-5. Reciprocal exchange of information authorized.**

One or more financial institutions may jointly agree with one or more other financial institutions for the reciprocal exchange of any information authorized to be reported by the provisions of this chapter. Such reciprocal exchange of information or the acts or refusals to act of one or more recipients because of such information shall not constitute a boycott or blacklist, or otherwise be a basis for liability to any person on the part of any participant in the reciprocal exchange of information authorized by this chapter.

**History:** C. 1953, 7-14-5, enacted by L. 1981, ch. 16, § 12.

## CHAPTER 15

### DISHONORED INSTRUMENTS

Section		Section	
7-15-1.	Civil liability of issuer — Notice of action — Collection costs.	7-15-3.	Liability of financial institution upon wrongful dishonor.
7-15-2.	Notice — Form.		

**7-15-1. Civil liability of issuer — Notice of action — Collection costs.**

(1) Any person who makes, draws, signs, or issues any check, draft, order, or other instrument upon any depository institution, whether as corporate agent or otherwise, for the purpose of obtaining from any person, firm, partnership, or corporation any money, merchandise, property, or other thing of value or paying for any service, wages, salary, or rent is liable to the holder of the check, draft, order, or other instrument if the check, draft, order, or other instrument is not honored upon presentment and is marked "refer to maker" or the account upon which the check, draft, order, or other instrument has been made or drawn does not exist, has been closed, or does not have sufficient funds or sufficient credit for payment in full of the check, draft, or other instrument.

(2) The holder of the check, draft, order, or other instrument which has been dishonored may give written or verbal notice of dishonor to the person making, drawing, signing, or issuing the check, draft, order, or other instrument and may impose a service charge that may not exceed \$15. Prior to filing an action based upon this section, the holder of a dishonored check, draft, order, or other instrument shall give the person making, drawing, signing, or issuing the dishonored check, draft, order, or other instrument written notice of intent to file civil action, allowing the person seven days from the date on which the

notice was mailed to tender payment in full, plus the service charge imposed for the dishonored check, draft, order, or other instrument.

(3) In a civil action, the person making, drawing, signing, or issuing the check, draft, order, or other instrument is liable to the holder for:

(a) the amount of the check, draft, order, or other instrument;

(b) interest; and

(c) all costs of collection, including all court costs and reasonable attorneys' fees.

(4) As used in this section, "costs of collection" includes reasonable compensation, as approved by the court, for time expended if the collection is pursued personally by the holder and not through an agent.

**History:** C. 1953, 7-15-1, enacted by L. 1981, ch. 16, § 13; 1986, ch. 29, § 1; 1988, ch. 52, § 1; 1988, ch. 128, § 1.

**Repeals and Reenactments.** — Laws 1981, ch. 16, § 1 repeals former §§ 7-15-1, 7-15-3 (L. 1969, ch. 240, §§ 1, 3; 1977, ch. 15, §§ 1, 3; 1979, ch. 92, §§ 1, 2), relating to

fraudulent checks. Laws 1981, ch. 16, § 13 enacts present §§ 7-15-1 and 7-15-2. Former § 7-15-2 was repealed by Laws 1979, ch. 92, § 3.

**Cross-References.** — Criminal penalties for issuing bad check, § 76-6-505.

#### NOTES TO DECISIONS

##### ANALYSIS

Insufficient funds.

— Knowledge of holder.

Cited.

**Insufficient funds.**

— **Knowledge of holder.**

There was no fraudulent issuance of a check, and plaintiff was not entitled to attorney fees in an action on the check, where the check was issued to pay on a past due account, plaintiff accepted it with knowledge that there were insufficient funds to cover it and agreed to hold it for two weeks before presenting it to the bank. *Howells, Inc. v. Nelson*, 565 P.2d 1147 (Utah 1977).

This section requires that the signator of a bad check personally receive benefits, services, or money transfer or, in the alternative, have

actual knowledge that the check is drawn on insufficient funds in order to be held liable. *Mountain States Tel. & Tel. Co. v. Payne*, 782 P.2d 464 (Utah 1989).

The trial court committed reversible error in construing this section as imposing strict liability on a corporate employee for signing corporate checks on behalf of her employer in payment for corporate obligations, where employee had no interest, beneficial or otherwise, in the checking account, the funds in the account, or in the corporation, had no knowledge or reason to believe that the checks in question were drawn on insufficient funds, and functioned merely as a scribe in executing checks for her employer. *Mountain States Tel. & Tel. Co. v. Payne*, 782 P.2d 464 (Utah 1989).

**Cited in** *Peterson Plumbing Supply v. Bernson*, 797 P.2d 473 (Utah Ct. App. 1990).

#### COLLATERAL REFERENCES

**Utah Law Review.** — Criminal and Civil Liability for Bad Checks in Utah, 1970 Utah L. Rev. 122.

Attorney's Fees in Utah, 1984 Utah L. Rev. 553.

**Am. Jur. 2d.** — 12 Am. Jur. 2d Bills and Notes § 1119.

**C.J.S.** — 10 C.J.S. Bills and Notes §§ 35, 380.

**A.L.R.** — Personal liability of officers or directors of corporation on corporate checks issued against insufficient funds, 47 A.L.R.3d 1250.

### 7-15-2. Notice — Form.

(1) "Notice" means notice given to the person making, drawing, or issuing the check, draft, order, or other instrument either in person or in writing. A



Post 1999 VERSION

## CHAPTER 15

### DISHONORED INSTRUMENTS

Section		Section	
7-15-1.	Definitions — Civil liability of issuer — Notice of action — Collection costs — Exemptions	7-15-2	Notice — Form
		7-15-3	Liability of financial institution upon wrongful dishonor

#### **7-15-1. Definitions — Civil liability of issuer — Notice of action — Collection costs — Exemptions.**

- (1) As used in this chapter:
  - (a) “Check” means a payment instrument on a depository institution including a:
    - (i) check;
    - (ii) draft;
    - (iii) order; or
    - (iv) other instrument.
  - (b) “Issuer” means a person who makes, draws, signs, or issues a check, whether as corporate agent or otherwise, for the purpose of:
    - (i) obtaining from any person any money, merchandise, property, or other thing of value; or
    - (ii) paying for any service, wages, salary, or rent.
  - (c) “Mailed” means the day that a notice is properly deposited in the United States mail.
- (2) (a) An issuer of a check is liable to the holder of the check if:
  - (i) the check:
    - (A) is not honored upon presentment; and
    - (B) is marked “refer to maker”;
  - (ii) the account upon which the check is made or drawn:
    - (A) does not exist;
    - (B) has been closed; or
    - (C) does not have sufficient funds or sufficient credit for payment in full of the check; or
  - (iii) (A) the check is issued in partial or complete fulfillment of a valid and legally binding obligation; and
  - (B) the issuer stops payment on the check with the intent to:
    - (I) fraudulently defeat a possessory lien; or
    - (II) otherwise defraud the holder of the check.
- (b) If an issuer of a check is liable under Subsection (2)(a), the issuer is liable for:
  - (i) the check amount; and
  - (ii) a service charge of \$20.
- (3) (a) The holder of a check that has been dishonored may:
  - (i) give written or oral notice of dishonor to the issuer of the check; and
  - (ii) waive all or part of the service charge imposed under Subsection (2)(b).
- (b) Notwithstanding Subsection (2)(b), a holder of a check that has been dishonored may not collect and the issuer is not liable for the service charge imposed under Subsection (2)(b) if:
  - (i) the holder redeposits the check; and
  - (ii) that check is honored.

(4) If the issuer does not pay the amount owed under Subsection (2)(b) within 15 calendar days from the day on which the notice required under Subsection (5) is mailed, the issuer is liable for:

- (a) the amount owed under Subsection (2)(b); and
- (b) collection costs not to exceed \$20.

(5) (a) A holder shall provide written notice to an issuer before:

- (i) charging collection costs under Subsection (4) in addition to the amount owed under Subsection (2)(b); or
- (ii) filing an action based upon this section.

(b) The written notice required under Subsection (5)(a) shall notify the issuer of the dishonored check that:

(i) if the amount owed under Subsection (2)(b) is not paid within 15 calendar days from the day on which the notice is mailed, the issuer is liable for:

- (A) the amount owed under Subsection (2)(b); and
- (B) collection costs under Subsection (4); and

(ii) the holder may file civil action if the issuer does not pay to the holder the amount owed under Subsection (4) within 30 calendar days from the day on which the notice is mailed.

(6) (a) If the issuer has not paid the holder the amounts owed under Subsection (4) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed, the holder may offer to not file civil action under this section if the issuer pays the holder:

- (i) the amount owed under Subsection (2)(b);
- (ii) the collection costs under Subsection (4);
- (iii) an amount that:

(A) is equal to the greater of:

- (I) \$50; or
- (II) triple the check amount; and

(B) does not exceed the check amount plus \$250; and

(iv) if the holder retains an attorney to recover on the dishonored check, reasonable attorney's fees not to exceed \$50.

(b) (i) Notwithstanding Subsection (6)(a), all amounts charged or collected under Subsection (6)(a)(iii) shall be paid to and be the property of the original payee of the check.

(ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (6)(a)(iii).

(iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (6)(a)(iii).

(7) (a) A civil action may not be filed under this section unless the issuer fails to pay the amounts owed:

- (i) under Subsection (4); and
- (ii) within 30 calendar days from the day on which the notice required by Subsection (5) is mailed.

(b) Subject to Subsection (7)(c) and (d), in a civil action the issuer of the check is liable to the holder for:

- (i) the amount owed under Subsection (2)(b);
- (ii) the collection costs under Subsection (4);
- (iii) interest;
- (iv) court costs;
- (v) reasonable attorneys' fees; and
- (vi) damages:
  - (A) equal to the greater of:

- (I) \$100; or
- (II) triple the check amount; and
- (B) not to exceed the check amount plus \$500.
- (c) If an issuer is held liable under Subsection (7)(b), notwithstanding Subsection (7)(b), a court may waive any amount owed under Subsections (7)(b)(iii) through (vi) upon a finding of good cause.
- (d) If a holder of a check violates this section by filing a civil action under this section before 31 calendar days from the day on which the notice required by Subsection (5) is mailed, an issuer may not be held liable for an amount in excess of the check amount.
- (e) (i) Notwithstanding Subsection (7)(b), all amounts charged or collected under Subsection (7)(b)(vi) shall be paid to and be the property of the original payee of the check.
- (ii) A person who is not the original payee may not retain any amounts charged or collected under Subsection (7)(b)(vi).
- (iii) The original payee of a check may not contract for a person to retain any amounts charged or collected under Subsection (7)(b)(vi).
- (8) This section may not be construed to prohibit the holder of the check from seeking relief under any other applicable statute or cause of action.
- (9) (a) Notwithstanding the other provisions of this section, a holder of a check is exempt from this section if:
  - (i) the holder:
    - (A) is a depository institution; or
    - (B) a person that receives a payment on behalf of a depository institution;
  - (ii) the check is a payment on a loan that originated at the depository institution that:
    - (A) is the holder; or
    - (B) on behalf of which the holder received the payment; and
  - (iii) the loan contract states a specific service charge for dishonor.
- (b) A holder exempt under Subsection (9)(a) may contract with an issuer for the collection of fees or charges for the dishonor of a check.

**History:** C. 1953, 7-15-1, enacted by L. 1981, ch. 16, § 13; 1986, ch. 29, § 1; 1988, ch. 52, § 1; 1988, ch. 128, § 1; 1997, ch. 245, § 1; 1999, ch. 100, § 1; 1999, ch. 171, § 1; 2001, ch. 9, § 3; 2002, ch. 170, § 1.

**Amendment Notes.** — The 1997 amendment, effective May 5, 1997, subdivided Subsections (1) and (2), adding the Subsection (3) designation; redesignated former Subsections (3) and (4) as (4) and (5); substituted “\$20” for “\$15” in Subsection (2)(a)(ii); added Subsection (2)(b); and made stylistic changes.

The 1999 amendment by ch. 100, effective May 3, 1999, rewrote the section.

The 1999 amendment by ch. 171, effective

May 3, 1999, added the last subsection, establishing exemptions.

The 2001 amendment, effective April 30, 2001, corrected the reference in Subsection (9)(b).

The 2002 amendment, effective May 6, 2002, in Subsection (7), added Subsections (b)(ii) and (d), substituted the present provisions for “the check amount” in Subsection (b)(i), deleted “all costs of collection, including all” before “court costs” in Subsection (b)(iv), substituted “any amount” for “all or part of the amounts” in Subsection (c), redesignated former Subsection (d) as (e), and updated internal references accordingly.

## NOTES TO DECISIONS

### ANALYSIS

Federal law.  
Cited.

### Federal law.

Until a civil action is filed, fees in excess of

the amount authorized by this section may not be charged; therefore, because excessive fees charged by an agency were neither expressly authorized by individuals who wrote bad checks nor permitted by this section, they violated the federal Fair Debt Collection Practices

Act. Ditty v. CheckRite, Ltd., Inc., 973 F. Supp. 1320 (D. Utah 1997).

Cited in Snow v. Jesse L. Riddle, P.C., 143 F.3d 1350 (10th Cir. 1998).

### 7-15-2. Notice — Form.

(1) (a) "Notice" means notice given to the issuer of a check either orally or in writing.

(b) Written notice may be given by United States mail that is:

- (i) first class; and
- (ii) postage prepaid.

(c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have been given when the notice is:

- (i) properly deposited in the United States mail;
- (ii) postage prepaid;
- (iii) certified or registered mail;
- (iv) return receipt requested; and
- (v) addressed to the signer at the signer's:
  - (A) address as it appears on the check; or
  - (B) last-known address.

(2) Written notice under Subsection 7-15-1(5) shall take substantially the following form:

Date: \_\_\_\_\_

To: \_\_\_\_\_

*You are hereby notified that the check(s) described below issued by you has (have) been returned to us unpaid:*

Check date: \_\_\_\_\_

Check number: \_\_\_\_\_

Originating institution: \_\_\_\_\_

Amount: \_\_\_\_\_

Reason for dishonor (marked on check): \_\_\_\_\_

In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check together with a service charge of \$20, which must be paid to the undersigned.

If you do not pay the check amount and the \$20 service charge within 15 calendar days from the day on which this notice was mailed, you are required to pay within 30 calendar days from the day on which this notice is mailed:

- (1) the check amount;
- (2) the \$20 service charge; and
- (3) collection costs not to exceed \$20.

If you do not pay the check amount, the \$20 service charge, and the collection costs within 30 calendar days from the day on which this notice is mailed, in accordance with Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be filed against you for:

- (1) the check amount;
- (2) *interest*;
- (3) court costs;
- (4) attorneys' fees;
- (5) actual costs of collection as provided by law; and
- (6) damages in an amount equal to the greater of \$100 or triple the check amount, except that damages recovered under this Subsection (6) may not exceed the check amount by more than \$500.

In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that any person who issues or passes a check for the payment of

COLLATERAL REFERENCES

**Utah Law Review.** — The Mootness Question in Habeas Corpus Proceedings Where Petitioner Is Released Prior to Final Adjudication, 1969 Utah L. Rev. 265.

Habeas Corpus and the In-Service Conscientious Objector, 1969 Utah L. Rev. 328.

Post-Conviction Procedure Act: Limitation on Habeas Corpus?, 1969 Utah L. Rev. 595.

**Am. Jur. 2d.** — 39 Am. Jur. 2d Habeas Corpus §§ 5 to 7.

**C.J.S.** — 16A C.J.S. Constitutional Law § 472 et seq.; 39 C.J.S. Habeas Corpus § 5.

**A.L.R.** — Anticipatory relief in federal courts against state criminal prosecutions growing out of civil rights activities, 8 A.L.R.3d 301.

**Key Numbers.** — Constitutional Law ⇐ 83(1), 121 to 123.

**Sec. 6. [Right to bear arms.]**

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

**History:** Const. 1896; L. 1984 (2nd S.S.), S.J.R. 3.

**Compiler's Notes.** — Laws 1983, Senate

Joint Resolution No. 2, proposing to amend this section, was repealed by Senate Joint Resolution No. 3, Laws 1984 (2nd S.S.), § 2.

NOTES TO DECISIONS

ANALYSIS

Prospective application.

Regulation of right to bear arms.

**Prospective application.**

The amendment to this provision by Laws 1984 (2nd S.S.), Senate Joint Resolution No. 3 is to be given prospective application only. State v. Wacek, 703 P.2d 296 (Utah 1985).

**Regulation of right to bear arms.**

This section gives sufficient authority for the legislature to forbid the possession of dangerous weapons by those who are not citizens, or who have been convicted of crimes, or who are addicted to drugs, or who are mentally incompetent. State v. Beorchia, 530 P.2d 813 (Utah 1974).

COLLATERAL REFERENCES

**Utah Law Review.** — The Individual Right to Bear Arms: An Illusory Public Pacifier?, 1986 Utah L. Rev. 751.

**Am. Jur. 2d.** — 79 Am. Jur. 2d Weapons and Firearms § 4.

**C.J.S.** — 16A C.J.S. Constitutional Law § 511; 94 C.J.S. Weapons § 2.

**A.L.R.** — Gun control laws, validity and construction of, 28 A.L.R.3d 845.

Validity of statute proscribing possession or carrying of knife, 47 A.L.R.4th 651.

**Key Numbers.** — Constitutional Law ⇐ 82; Weapons ⇐ 1, 3, 6 et seq.

**Sec. 7. [Due process of law.]**

No person shall be deprived of life, liberty or property, without due process of law.

**History:** Const. 1896.

**Cross-References.** — Eminent domain generally, § 78-34-1 et seq.

Utah State Constitution, 1986 Utah L. Rev. 319.

Recent Developments in Utah Law — Judicial Decisions — Criminal Law, 1988 Utah L. Rev. 177.

**Am. Jur. 2d.** — 47 Am. Jur. 2d Jury § 7 et seq.

**C.J.S.** — 50 C.J.S. Juries § 9 et seq.

**A.L.R.** — Driving while intoxicated or similar offense, right to trial by jury in criminal prosecution for, 16 A.L.R.3d 1373.

Right in equity suit to jury trial of counterclaim involving legal issue, 17 A.L.R.3d 1321.

Issues in garnishment as triable to court or to jury, 19 A.L.R.3d 1393.

Automobiles: validity and construction of legislation authorizing revocation or suspen-

sion of operator's license for "habitual," "persistent," or "frequent" violations of traffic regulations, 48 A.L.R.4th 367.

Jury trial waiver as binding on later state civil trial, 48 A.L.R.4th 747.

Paternity proceedings: right to jury trial, 51 A.L.R.4th 565.

Right to jury trial in action for retaliatory discharge from employment, 52 A.L.R.4th 1141.

Right to jury trial in state court divorce proceedings, 56 A.L.R.4th 955.

Jury trial rights in, and on appeal from, small claims court proceeding, 70 A.L.R.4th 1119.

**Key Numbers.** — Jury ⇐ 9 et seq.

## Sec. 11. [Courts open — Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

**History:** Const. 1896.

### NOTES TO DECISIONS

#### ANALYSIS

Action under Civil Rights Act of 1871.

Actions by court.

Actions by state.

Actions not created.

Arbitration Act.

Assignments.

Attorneys' duties.

Criminal law.

—Suspension of execution of death sentence.

Debt collection.

District court jurisdiction.

Election contest.

Forum non conveniens.

Injury or damage to property.

Intoxicating liquor.

Land Registration Act.

Limitations.

—Limitations of actions.

—Statutory limitation of review.

Occupational disease law.

Sovereign immunity.

Torts.

—Action by wife against husband.

—Loss of consortium.

Unlicensed law practice.

Waiver of rights.

Workmen's compensation law.

Cited.

#### Action under Civil Rights Act of 1871.

Jurisdiction over actions brought under the Civil Rights Act of 1871, 42 U.S.C. 1981 et seq., is vested originally in the federal courts, but the exercise of concurrent jurisdiction by state courts is not thereby prohibited; in view of the provisions of this section, therefore, it was error for trial court to dismiss for lack of jurisdiction otherwise proper action brought under 42 U.S.C. 1983. *Kish v. Wright*, 562 P.2d 625 (Utah 1977).

Trial court would not err in dismissing action brought under 42 U.S.C. 1983 on the ground of forum non conveniens in a proper case, but such dismissal should be without prejudice so that the plaintiff might move his suit to another forum without harm to his claim. *Kish v. Wright*, 562 P.2d 625 (Utah 1977).

#### Actions by court.

Court of equity has jurisdiction to open probate proceeding and to proceed against bond of administratrix where she has practiced extrinsic fraud on the court. *Weyant v. Utah Sav. & Trust Co.*, 54 Utah 181, 182 P. 189, 9 A.L.R. 1119 (1919).

#### Actions by state.

This section did not alter the law with respect to certain rights which are vested in the

**FILED DISTRICT COURT**  
Third Judicial District

JUN 18 2002

SALT LAKE COUNTY

By \_\_\_\_\_  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

---

LINDA HAYMOND and MELANIE A.	)	
LLOYD, for themselves and for all others	)	<b>ORDER OF DISMISSAL</b>
Similarly situated;	)	
	)	
Plaintiffs	)	
	)	
vs.	)	
	)	
BONNEVILLE BILLING &	)	
COLLECTIONS, INC., a Utah corporation;	)	
TED K. GODFREY, DAVID TOLLER;	)	Civil No.: 010911607
And JOHN DOES 1 THROUGH 10;	)	Judge J. Dennis Frederick
	)	
Defendants.	)	
	)	

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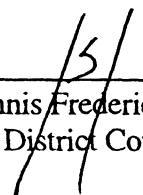
Defendant Ted K. Godfrey's Motion to Dismiss and Defendants Bonneville Billing & Collections, Inc.'s and David Toller's Motion to Dismiss or in the Alternative Motion For Summary Judgment came regularly for hearing on June 3, 2002 at 9:00 a.m. before the Honorable J. Dennis Frederick. Plaintiffs were represented by Lester A. Perry, Defendant Ted K. Godfrey was represented by Andrew M. Morse and Defendants Bonneville Billing &

Collections, Inc. and David Toller were represented by Rebecca L. Hill. The Court heard the arguments of counsel and considered the parties' memoranda and material on file, and good cause appearing therefor,

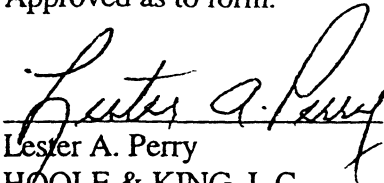
IT IS ORDERED ADJUDGED AND DECREED that Defendants' Motions to Dismiss are granted. The Court rules that Defendants' arguments as set forth in their Memoranda are well-taken as Plaintiffs have no standing or basis under Utah law for a right of action against Defendants as they allege in their Complaint. Plaintiffs' Complaint is dismissed with prejudice and on the merits. Parties to bear their own costs. This Order of Dismissal concerns Plaintiffs' entire action against Defendants and is final for purposes of appeal.

DATED this 18<sup>th</sup> day of June, 2002.

BY THE COURT:


  
\_\_\_\_\_  
J. Dennis Frederick  
Third District Court Judge

Approved as to form:

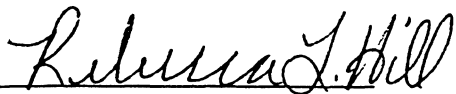
  
\_\_\_\_\_  
Lester A. Perry  
HOOLE & KING, L.C.  
Attorneys for Plaintiffs



Approved as to form:

  
\_\_\_\_\_  
Andrew M. Morse  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Defendant Ted K. Godfrey

Approved as to form:

  
\_\_\_\_\_  
Rebecca L. Hill  
CHRISTENSEN & JENSEN, P.C.  
Attorneys for Defendants Bonneville  
Billing & Collections, Inc. and David Toller

(4) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered upon the stipulation of counsel, the motion of counsel or upon the court's own initiative and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made.

(5) Except where otherwise ordered, all judgments and decrees shall contain, if known, the judgment debtor's address or last known address and social security number.

(6) All judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.

(7) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record.

(8) In all cases where judgment is rendered upon a written obligation to pay money and a judgment has previously been rendered upon the same written obligation, the plaintiff or plaintiff's counsel shall attach to the new complaint a copy of all previous judgments based upon the same written obligation.

(9) Nothing in this rule shall be construed to limit the power of any court upon a proper showing, to enforce a settlement agreement or any other agreement which has not been reduced to writing.

(Amended effective January 15, 1990; April 15, 1991; April 15, 1995; November 1, 1997.)

#### NOTES TO DECISIONS

##### Applicability.

Oral settlement agreements.

Service of default judgment.

Waiver of challenge.

Cited.

##### Applicability.

The addition of Subdivision (10) (now Subdivision (9)) indicates that this rule was never intended to preempt the power of the court to enforce settlement agreements that meet common law requirements. *Goodmansen v. Liberty Vending Sys.*, 866 P.2d 581 (Utah Ct. App. 1993).

##### Oral settlement agreements.

This rule does not preclude a trial court from enforcing an oral settlement agreement; thus, a settlement agreement was enforceable despite the fact that it had not been reduced to writing, signed by the parties, and entered on the minutes of the court. *John Deere Co. v. A&H*

*Equip., Inc.*, 876 P.2d 880 (Utah Ct. App. 1994).

##### Service of default judgment.

Plaintiffs' failure to mail a copy of the default judgment to defendants did not invalidate the default judgment when defendants received the notice of default in time to move to set aside the judgment. *Lincoln Benefit Life Ins. Co. v. D.T. Southern Properties*, 838 P.2d 672 (Utah Ct. App. 1992).

##### Waiver of challenge.

By its failure to object to particular wording in the court's final written order, defendant waived its right to challenge the order in that regard on appeal. *Evans v. State*, 963 P.2d 177 (Utah 1998).

Cited in *DeBry v. Fidelity Nat'l Title Int. Co.*, 828 P.2d 520 (Utah Ct. App. 1992); *Reeve v. Steinfeldt*, 915 P.2d 1073 (Utah Ct. App. 1996).

## Rule 4-505. Attorney fees affidavits.

### Intent:

To establish uniform criteria and a uniform format for affidavits in support of attorney fees.

### Applicability:

This rule shall govern the award of attorney fees in the trial courts.

### Statement of the Rule:

(1) Affidavits in support of an award of attorney fees must be filed with the court and set forth specifically the legal basis for the award, the nature of the work performed by the attorney, the number of hours spent to prosecute the claim to judgment, or the time spent in pursuing the matter to the stage for

which attorney fees are claimed, and affirm the reasonableness of the fees for comparable legal services.

(2) The affidavit must also separately state hours by persons other than attorneys, for time spent, work completed and hourly rate billed

(3) If the affidavit is in support of attorney fees for services rendered to a person or entity who has been assigned an interest in a claim for the purpose of collection or hired by the obligee to collect a debt, the affidavit shall also state that the attorney is not sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.

(4) If judgment is being taken by default for a principal sum which it is expected will require considerable additional work to collect, the following phrase may be included in the judgment after an award consistent with the time spent to the point of default judgment, to cover additional fees incurred in pursuit of collection:

“AND IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL BE AUGMENTED IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY’S FEES EXPENDED IN COLLECTING SAID JUDGMENT BY EXECUTION OR OTHERWISE AS SHALL BE ESTABLISHED BY AFFIDAVIT.”

(5) Attorney fees may be awarded pursuant to this rule or pursuant to Rule 4-505.1.

(Amended effective January 15, 1990; May 1, 1993; November 15, 1995.)

#### NOTES TO DECISIONS

Construction with other rules  
Information required  
Lack of prejudice  
Threshold requirement  
Cited

##### **Construction with other rules.**

The trial court’s decision denying plaintiff’s request for attorney fees was reversed and remanded for a determination of an award of reasonable attorney fees pursuant to Rule 4-505 where the record was unclear if the trial court used the fee schedule in Rule 4-505 01 merely as one of the factors in arriving at its decision that the attorney fees requested by plaintiff were not to be awarded, or whether the trial court believed that Rule 4-505 01 was the sole mechanism to award fees *N A R., Inc v Marcek*, 2000 UT App 300, 13 P3d 612

##### **Information required.**

The party seeking attorney fees is not required to specify the hourly rate billed by each attorney working on the case in order to comply fully with Subdivision (1) So long as the legal basis of the award, the nature of the work performed by the attorneys, the number of hours spent to prosecute the claim, and some affirmation that the fees charged are reasonable in light of comparable legal services are

included in the affidavit submitted by the party requesting the fees, there is no failure to comply with the rule *LMV Leasing, Inc v Conlin*, 805 P2d 189 (Utah Ct App 1991)

##### **Lack of prejudice.**

Since the purpose of the requirement that an affidavit in support of an award of attorney fees state the legal basis for the award is to inform the court and opposing counsel of the ground relied upon, where the court and both counsel were well aware of the basis for the proposed award of fees, there was no prejudice from a failure to set forth a legal basis in the affidavit. *Hall v. NACM Intermountain, Inc.*, 1999 UT 97, 988 P.2d 942

##### **Threshold requirement.**

A phone call, the calculation of a balance due, and the preparation of a writ of garnishment did not meet the threshold requirement of Subdivision (4) that a considerable amount of additional work must be done in order to award an augmentation of attorney’s fees *N A R., Inc. v Walker*, 2001 UT 98, 434 Utah Adv Rep 20, 37 P3d 1068

**Cited in** *Equitable Life & Cas Ins Co. v. Ross*, 849 P2d 1187 (Utah Ct App 1993); *Estate of Covington v Josephson*, 888 P 2d 675 (Utah Ct App 1994)

#### COLLATERAL REFERENCES

**Journal of Contemporary Law.** — The Recovery of Attorney Fees in Utah A Proce-

dural Primer for Practitioners, 23 J Contemp. L 379 (1997)

**Rule 4-505.01. Awards of attorney fees in civil default judgments with a principal amount of \$5,000 or less.**

**Intent:**

To provide for uniformity in awards of attorney fees in civil default judgments with a principal amount of \$5,000 or less.

To provide for notice of the amount of attorney fees that may be awarded in the event of default.

**Applicability:**

This rule shall govern awards of attorney fees in civil default judgments with a principal amount of \$5,000 or less in which the claimant elects to seek an award of attorney fees pursuant to this rule.

**Statement of the Rule:**

(1) When reasonable attorney fees are provided for by contract or statute and the claimant elects to seek an award of attorney fees pursuant to this rule, such fees shall be computed as follows:

Principal Amount of Judgment, Exclusive of Costs, Between:	Attorney Fees Allowed
\$ 0.00 \$ 700.00	\$150.00
700.01 900.00	175.00
900.01 1,000.00	200.00
1,000.01 1,500.00	250.00
1,500.01 2,000.00	325.00
2,000.01 2,500.00	400.00
2,500.01 3,000.00	475.00
3,000.01 3,500.00	550.00
3,500.01 4,000.00	625.00
4,000.01 4,500.00	700.00
4,500.01 5,000.00	775.00

(2) Reference to this rule and the amount of attorney fees allowed pursuant to paragraph (1) shall be stated with particularity in the body or prayer of the complaint.

(3) When a statute provides the basis for the award of attorney fees, reference to the statutory authority shall be included in the complaint.

(4) Clerks may enter civil default judgments which include attorney fees awarded pursuant to this rule.

(5) Attorney fees awarded pursuant to this rule may be augmented after judgment pursuant to Rule 4-505. When the court considers a motion for augmentation of attorney fees awarded pursuant to this rule, it shall consider the attorney time spent prior to the entry of judgment, the amount of attorney fees included in the judgment, and the statements contained in the affidavit supporting the motion for augmentation.

(6) Prior to entry of a judgment which grants attorney fees pursuant to this rule, any party may move the court to depart from the fees allowed by paragraph (1) of this rule. Such application shall be made pursuant to Rule 4-505.

(7) If a contract or other document provides for an award of attorney fees, an original or copy of the document shall be made a part of the file before attorney fees may be awarded pursuant to this rule.

(8) No affidavit for attorney fees need be filed in order to receive an award of attorney fees pursuant to this rule.

(9) No attorney fees awarded pursuant to this rule, nor portion thereof, may be shared in violation of Rule of Professional Conduct 5.4.

(Added effective March 31, 1992; amended effective November 15, 1995.)