

## Survey of Family Law Cases 2004-2013

### 2007 Family Law Survey

## FAMILY ATTORNEY FEES

“Waiver is the intentional relinquishment of a known right.” The court found that Wife did not waive her attorney fees request by not filing a post-permanent orders hearing motion pursuant to C.R.C.P. 121 §1-22, nor by the withdrawal filed by Wife’s attorney.

Attorney fees based upon a contractual or statutory fee-shifting provision are treated as costs; therefore the court does not have to address them until litigation is complete. Thus appeals are permitted prior to determination of attorney fees pursuant to a contractual or fee-shifting provision.

Attorney fees pursuant to a petition for dissolution of marriage are intertwined with other issues, such as maintenance and disposition of property, such that if a property division is reversed, the court must reconsider maintenance and apportionment of attorney fees.

In sum, attorney fees pursuant to C.R.S. §14-10-119 are “an integral and substantive part of equitably disposing of the parties’ assets and liabilities” within a dissolution of marriage and permanent orders are not final orders until the court has addressed attorney fees relative to the financial income, assets, and liabilities of each party. Wife may raise the issue before the trial court.

People of the State of Colorado appeal the trial court’s decision that an attorney’s lien on a personal injury settlement had priority over a child support judgment in People In the Interest of J.W., a Child, Upon the Petition of D.D. and Concerning P.W. and Frankl and Tasker, P.C., No. 06CA2117, 2007 WL 3197114 (Colo. App. 2007).

The court issued an Entry of Judgment for child support arrearages against Father. Subsequently, the People filed a writ of garnishment, serving both Father and his Counsel. Father’s Counsel had just obtained a personal injury settlement for Father. Counsel dispersed a portion of the personal injury settlement to the Child Support Enforcement Services, but withheld the remainder of the settlement to cover attorney fees and costs, and a medical lien. People then filed a Motion for Entry of Default against Counsel for removing funds from the personal injury settlement funds to cover attorney fees and costs. The trial court determined the law firm had a statutory charging lien and therefore was entitled to disperse a portion of the settlement funds to cover its attorney fees prior to disbursing the garnished funds to the People.

An attorney’s lien begins to accrue when the attorney’s services commence and will attach automatically to any monies owing to the client that the attorney obtains. The court found that a judgment creditor cannot garnish money that the judgment debtor himself cannot recover from the garnishee. In this case Father only had an interest in the *net* personal injury settlement proceeds, after the attorney fees were deducted. Finally, if there should be priority given to child support arrearages, the General Assembly, and not the courts, must be the body to determine so.