

STATE OF COLORADO

Department of Law

COLLECTION AGENCY BOARD

110 16th Street, 10th Floor
Denver, Colorado 80202
Telephone: (303) 620-4601
FAX (303) 620-4130



Laura E. Udis
Executive Director
Jack L. Kinkel
Deputy Administrator

July 22, 1992

RE: Insufficient Funds Law, §13-21-109, C.R.S. (1991 Supp.)

Dear

Laura Udis referred to me your July 10, 1992, letter requesting an opinion regarding section 13-21-109, C.R.S. (1991 Supp.). You specifically asked whether that statute entitles attorneys to receive costs of collection (twenty percent or a minimum of \$20) in connection with collection of an insufficient funds check. This is an informal opinion only and does not constitute an advisory opinion of the Collection Agency Board as contemplated by section 12-14-113(5), C.R.S. (1991).**1

1**Prior to now, our office has not taken an enforcement position on this issue. We regret any communication from our staff which may have confused this matter.

Also, please be aware that our office has no jurisdiction, in and of itself, to interpret section 13-21-109. We are addressing this issue solely because a violation of section 13-21-109 also constitutes violations of the Colorado Fair Debt Collection Practices Act. See, e.g., §12-14-108(1)(i), C.R.S. (1991) (failure to comply with the section 13-21-109 constitutes an unfair practice); §12-14-128(1)(c), C.R.S. (1991) (unlawful act to recover or attempt to recover treble damages without complying with section 13-21-109). It is possible that a court interpreting section 13-21-109 could reach a contrary conclusion with regard to the issue you have raised. In addition, you may also wish to contact the Supreme Court Disciplinary Counsel for an opinion, as our office is required to refer all complaints

I agree with you that the language regarding collection costs in section 13-21-109 is clear. Subsection (1)(b)(II) permits collection of twenty percent (20%) of the face amount of an insufficient funds check as a costs of collection only if the check has been assigned to a "person licensed as a collection agency pursuant to article 14 of title 12." Where, as here, the language of a statute is clear and unambiguous, it may be reasonably presumed that the General Assembly meant what the statute clearly says. Woodsmall v. Regional Transport. Dist., 800 P.2d 63, 67 (Colo. 1990). Consequently, only those attorneys who are actually licensed by the Collection Agency Board pursuant to article 14 of title 12 are entitled to receive collection costs pursuant to section 13-21-109.

You indicated that some attorneys have taken a contrary position. They argue that attorneys are persons "licensed as a collection agency pursuant to article 14 of title 12" because the Colorado Fair Debt Collection Practices Act ("CFDCPA") recognizes that attorneys are licensed by the Colorado Supreme Court and exempts them from the licensing requirements of the CFDCPA. That argument is not persuasive.

The current version of section 13-21-109 was enacted in 1989.**2 At that time attorneys were completely exempt from the CFDCPA when collecting debts for clients. See Section 12-14-103(2)(b)(VI), C.R.S. (1985) (repealed and re-enacted) (CFDCPA exempted from the definition of a collection agency, "Any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client."). Attorneys did not become subject to the substantive provisions of the CFDCPA until 1990, when the

involving attorneys to that entity.

2**Prior to the amendment of section 13-21-109 in 1989, all persons pursuing treble damages pursuant to section 13-21-109 were allowed to receive costs of collection. See Section 13-21-109, C.R.S. (1987) (repealed and re-enacted) (holder of insufficient funds check is entitled to receive treble the amount of the check, but not less than \$100, interest and costs of collection, including but not limited to reasonable attorneys fees; in a civil action the prevailing party may recover court costs and reasonable attorney fees).

legislature enacted section 12-14-102(2), C.R.S. (1991).**3 Consequently, the legislature could not have possibly considered attorneys to be "persons licensed as a collection agency pursuant to article 14 of title 12" when it re-enacted section 13- 21-109.

In summary, only persons licensed by the Collection Agency Board are entitled to receive costs of collection pursuant to section 13-21-109. If certain attorneys believe they are entitled to additional compensation, they should seek a legislative amendment to section 13-21-109.

Thank you for bringing this matter to our attention. If you are aware of specific attorneys who are collecting or attempting to collect costs of collection in connection with insufficient funds checks, we would appreciate your providing their names and addresses to our office. Alternatively, we request that you mail to those attorneys a copy of this opinion.

Please feel free to contact me if you have any additional questions.

Sincerely,

Alesia M. McCloud-Chan
Assistant Attorney General
Consumer Credit Unit

AMM

3**That section states in part:

. . . Attorneys-at-law shall not be required to be licensed as collection agencies or registered as debt collectors or solicitors to perform acts for which attorneys are licensed by the supreme court of this state. . . .

Section 12-14-102 (2).