

Duke Law Firm, P.C.—In the News

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Single-Member LLCs and the Charging Order

Under Colorado Revised Statutes, Section 7-80-703, Rights of creditor against a member, the judgment creditor has only the rights of an assignee of the membership interests of a limited liability company ("LLC"). The right of a creditor against a member of an LLC is known as the "charging order." As mentioned in our previous newsletter, the best states in which to form a LLC provide that the charging order is the exclusive remedy available. Unfortunately, Colorado does not provide this exclusivity.

In April 2003, Colorado was the first state to determine the validity of the charging order with respect to a single-member LLC. In the U.S. Bankruptcy Court for the District of Colorado, *In Re Ashley Albright*, the debtor argued that the bankruptcy trustee was acting merely for the debtor's creditors and thus was entitled only to a charging order against distributions made on account of that debtor's LLC member interests. The court held, "The charging order ... exists to protect **other** members of an LLC from having involuntarily to share governance responsibilities with someone they do not choose, or from having to accept a creditor of another member as a co-manager. A charging order protects the autonomy of the original members, and their ability to manage their own enterprise. In a single-member entity [LLC], there are no non-debtor members to protect. The charging order limitation serves no purpose in a single member limited liability company, because there are no other parties' interests affected."

This case provides yet another reason why the choice of law of your LLC is extremely important.

The very fact that you are the single-member of your LLC should not dissuade the court from holding that the charging order is the exclusive remedy. The court will issue such a holding, however, only if the proper state law is chosen.

In the Spotlight: Debby Holmes

Deborah P. Holmes, PP, PLS, has been a legal assistant with Duke Law Firm for over 26 years. Debby began her career as a legal secretary after graduating from the University of Montevello with a B.S. degree in Office Administration. She later received a Master's Degree in Music from Samford University. She is currently the President-Elect of BLSA, a local chapter of NALS, Inc. ... the association for legal professionals. Debby was named "Legal Secretary of the Year" in 1991. She became a Certified Professional Legal Secretary in 1980, and just this year received her designation as a Certified Professional Paralegal.



Debby's responsibilities include bookkeeping, receptionist, domestic estate and asset protection planning, and office management.

Debby is an Alabama native, born and raised in Phenix City, Alabama.

Debby has exhibited her outstanding musical talent as the organist of Trinity United Methodist Church, Homewood, Alabama, for the past 31 years.

Debby's loyalty and dedication to the firm are unsurpassed.

➤ Richard Duke was a guest speaker at the 2nd Annual Nevis Financial Services Industry Conference, August 26-27, 2004, Nevis, West Indies (birth place of Alexander Hamilton).

➤ Congratulations to Elsa Wilkin-Armbrister & Clive A. Armbrister on the Establishment of Cellisvae Trust & Corporate Services Limited, a company that provides:

-International business companies (IBCs);

-Limited liability companies (LLCs); and

-Trust and Trustee's services
Cellisvae Trust & Corporate Services Ltd. and Atlas Trust Company (Jersey) Limited (Ian Swindale) have forged a partnership in providing excellent trust and trustee services in Nevis.

➤ Also an excellent Nevis trustee and service provider: Meridian Trust Company Limited and Morning Star Holdings Limited:

<http://www.meridiannev.com/>

<http://www.morningstarnev.com/>

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