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## Peach State Pitfalls: Georgia Employers Must Now Use an Attorney to File Garnishment Answers

By Gavin Appleby and SoRelle Brown

The Georgia Supreme Court recently changed the law by requiring employers to file answers in garnishment matters through an attorney. Though Georgia corporations are required to be represented by an attorney in courts other than magistrate courts, this rule has not typically been followed in answering summons of wage garnishments. Georgia employers often respond to these routine filings through payroll or human resources personnel without reliance on legal counsel. The supreme court's decision means that employers continuing this practice risk having their answers rejected by the court or challenged by plaintiffs. Equally important, employers who now file in state or superior courts without attorneys will be engaged in the unauthorized practice of law. The ruling is effective immediately.

The Georgia Supreme Court's September 12, 2011, ruling in *In re: UPL Advisory Opinion No. 2010-1* confirms an opinion issued by the Georgia Bar in 2010. Individuals are guaranteed the right to represent themselves in court by the Georgia Constitution. This privilege does not extend to corporations, who must be represented in the courts by an attorney admitted to the Georgia State Bar. In June 2010, the Georgia State Bar issued an advisory opinion stating that "[a] nonlawyer who answers for a garnishee other than himself in a legal proceeding pending with a Georgia court of record is engaged in the unlicensed practice of law." *UPL Advisory Opinion 2010-1* (June 4, 2010).

The Georgia Supreme Court's decision to adopt the Georgia Bar opinion will not impact all Georgia garnishment matters. The ruling applies only to garnishment filings in Georgia courts of record. Magistrate courts, in which garnishment matters under \$15,000 are commonly heard, are not courts of record. In the event a plaintiff challenges an employer's filing of its own pleadings without the use of an attorney in a magistrate court, an employer can amend the filing to add an attorney. A 1999 decision by the Georgia Court of Appeals allows employers to modify pleadings—including a motion to modify a default judgment in a garnishment matter—by substituting in a licensed attorney. See *North Georgia Med. Ctr. v. Food Lion, Inc.*, 517 S.E.2d 799 (Ga. Ct. App. 1999). Employers now have to use an attorney for garnishments in state and superior courts, and where the amount in controversy may exceed the \$15,000 limit of magistrate court jurisdiction.

Employers with Georgia employees took note of the issue a few years ago, when some payroll providers determined they could be engaged in the unauthorized practice of law if they continued to answer garnishments on behalf of their clients. Those providers' concerns have now been

confirmed. However, many Georgia employers still file answers to summons of garnishment without the use of counsel, by instructing a payroll provider to garnish employee wages and submitting those payments with answers to the court. The supreme court's recent opinion is another obstacle to employers, who must now rely on counsel to ensure they are filing valid answers.

This ruling is particularly challenging because Georgia garnishment law shifts the burden of the debt at issue to the employer-garnishee if the answer is not timely filed. An employer who fails to answer a summons of garnishment—either because it misplaced the summons, the summons was addressed to the wrong company name, or the defendant/employee has left the company—risks being responsible for the full amount of the defendant's debt. Fortunately, promptly responding to summons of garnishments and consulting counsel can avoid some of the major pitfalls of this law.

- An employer who does not answer a summons of garnishment within 45 days of service risks entering into default on the defendant/debtor's debt. This means that the plaintiff can obtain a judgment requiring the company to pay the full value of the *employee's* debt. When receiving a summons of garnishment, ensure it is answered promptly by a lawyer, even if the defendant/debtor is not an employee of the company. Upon receipt of a notice of default judgment, contact qualified counsel immediately, as there is a short window of opportunity to limit the employer's liability for the debt.
- Summons of garnishment can be served on the local place of business where the defendant/debtor is employed. Summons may not always be sent to the corporate agent. Employers with multiple locations should ensure that personnel are trained not to accept service without proper authority. Some employers have found out only after they receive a judgment of default that the employee to be garnished was also the person who received service for the corporation.
- Garnishments are subject to various rules for maximum deduction and tax and voluntary deductions from an employee's compensation, depending on whether the garnishments are for debts, tax liability, or family support. When a summons is received, consult counsel to ensure that the payroll provider is being properly instructed on how to garnish wages.
- Orders of continuing garnishment are in effect for 179 days after service. During this time, the employer must file an answer every 30-45 days or risk entering into default. It is not sufficient to file an initial answer and then continue garnishing wages without filing subsequent answers. If an employee leaves the company or completes payment of the debt, the company may file a final answer suspending this ongoing obligation.
- The administrative burden of managing garnishment orders can be frustrating, but state and federal law protect employees from termination on the basis of a single debt. The employer can recover some of its costs, however, by deducting from the amount garnished the greater of \$25.00 or 10% of the amount garnished for the answer (up to \$50.00) from the amount paid to court.

The Georgia Supreme Court's ruling may be superseded by legislation or court rules in the future. A concurring opinion by Justice Nahmias recommended that corporations be allowed, by statute or court rule, to file routine garnishment answers. For now, however, Georgia employers should use an attorney to file answers of garnishment and should review their procedures for managing garnishments to ensure that they are not forced to pay their employees' personal debts.

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