



Georgia Supreme Court Rules Non-Lawyers May Not Answer Garnishments

Insights

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Over the years, Georgia employers have become accustomed to processing and responding to garnishments on their own. While legal counsel might be called upon to handle the more unique issues that inevitably arise in a garnishment proceeding, employers more commonly resort to their human resources or payroll departments to handle routine garnishments.

But last week the Georgia Supreme Court adopted what had until now been only an informal State Bar advisory opinion stating that a non-lawyer, such as a payroll clerk or human resources employee, who answers a Georgia garnishment is engaged in the unlicensed practice of law. *In re: UPL Advisory Opinion No. 2010-1.*

The Supreme Court's decision effectively requires all Georgia businesses without an in-house legal department to hire outside counsel to review and respond to garnishment actions.

The State Bar Advisory Opinion

While the Court's decision will not be welcome news to most Georgia employers, it was not entirely unexpected. Indeed, in June 2010, the Standing Committee on the Unauthorized Practice of Law considered whether a non-attorney employee of a business could execute and file an answer in a garnishment action. The Committee opined that although *citizens* have a constitutional right to self representation, *businesses* are required to be represented by a licensed attorney in legal proceedings, including garnishment actions. Thus, the Committee concluded that businesses must use a licensed attorney when answering a garnishment summons or risk engaging in the unauthorized practice of law.

Still, the Committee's opinion was non-binding. As such, many employers continued to process their own garnishments without using legal counsel.

The Supreme Court's Decision

After months of argument, including an opposition brief filed by the Georgia Chamber of Commerce, the Georgia Supreme Court adopted the Committee's findings and held that businesses are required to use an attorney when answering a garnishment summons.

In doing so, the Court empathized with the burden its decision will likely place on Georgia employers. Indeed, in a concurring opinion, Justice Nahmias suggested that businesses concerned

employers. Indeed, in a concurring opinion, Justice Nahmias suggested that businesses concerned with the effect of the Court's decision could petition the General Assembly to pass a statute specifically permitting non-lawyer employees to file garnishment answers.

What Employers Should Do

While Justice Nahmias' opinion may give employers some hope of a more favorable resolution in the future, the fact remains that, under the current law, employers *must* utilize a licensed attorney to process and respond to a summons of garnishment. Employers who fail to do so risk engaging in the unauthorized practice of law and may find themselves facing a default judgment.

Fisher Phillips will be presenting an upcoming webinar providing additional information on the Supreme Court's decision and giving practical advice for how to process and respond to garnishments going forward. Please look for webinar updates on our website. You may also contact any attorney in our Atlanta office: (404) 231-1400.

This Legal Alert provides an overview of a specific state Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.