



FLORIDA COURT RULES COMMISSIONS ARE WAGES  
FOR PURPOSES OF STATE GARNISHMENT STATUTE

Craig R. Lewis, Esq.\*

Florida's Fourth District Court of Appeals recently ruled in [Baker v. Storfer, --- So.3d ----, 2011 WL 222324 \(Fla. 4th DCA 2011\)](#) that commissions are 'wages,' for purposes of [Section 77.0305, Florida Statutes](#), and are therefore subject to a continuing Writ of Garnishment. Baker obtained a judgment against Storfer and attempted to collect the judgment by applying to the court for a Continuing Writ of Garnishment under Section 77.0305, which provides:

*"Notwithstanding any other provision of this chapter, if salary or wages are to be garnished to satisfy a judgment, the court shall issue a continuing writ of garnishment to the judgment debtor's employer which provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due until the judgment is satisfied or until otherwise provided by court order."*

The statute is useful to creditors because it requires the garnishee (the Defendant/debtor's employer) to make payments to the Plaintiff/creditor from each future paycheck (up to the maximum allowed by the Federal wage garnishment restrictions found in [15 U.S.C. § 1673](#)), upon the service of a single Writ. The continuing Writ remains in effect until the judgment is paid in full, as opposed to an individual Writ of Garnishment under [Section 77.04, Florida Statutes](#), which only requires that:

*"the garnishee...serve an answer to it on plaintiff within 20 days after service stating whether he or she is indebted to defendant **at the time of the answer**, or was indebted **at the time of service of the writ**, plus sufficient time not to exceed 1 business day for the garnishee to act expeditiously on the writ, or **at any time between such times.**"*

Note the difference: the individual Writ only references amounts due at the time the answer is filed or before; the continuing Writ references amounts due in the future as well. The question in this case was whether the debtor's commissions constituted wages for the purposes of the garnishment statute. If so, Section 77.0305 would require the employer to make future commission payments to the creditor. If not, the employer would only be required to pay to the creditor what was due at the time of the answer for prior commissions. The trial court found that the commissions did not constitute wages, and therefore the garnishment action would not reach future commissions. The appeals court disagreed. It held that while discretionary distributions from closely held corporations, draws, expense reimbursements, and capital account disbursements do not constitute wages, commissions do. The court employed a plain meaning argument, finding that commissions are paid for labor or services and are therefore wages.

On the one hand, this is a victory for creditors. Had the court found that the debtor's commissions were not wages, Section 77.0305 would not have applied, and the creditor would have been forced to serve individual Writs of Garnishment in advance of each and every commission payment due to the debtor. This would be extremely costly, and crafty debtors could likely alter the timing of the commission payments and thereby avoid losing their commissions. On the other hand, since the debtor's commission payments are wages, they are subject to the head of household exemption found in [Section 222.11, Florida Statutes](#). See [Refco, Inc. v. Sarimiento, 487 So. 2d 75 \(Fla. 3d DCA 1986\)](#). The Baker court did not discuss whether the debtor in that case was head of household; if so, the creditor would recover nothing in the garnishment, despite the court's ruling.

---

\* © 2010 by Jorge M. Abril, P.A. Reprinted from the [Florida Collection Law Blog](#).