



Legal Alert: Georgia Employers Must Use Attorney to Answer Garnishment Summons

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Executive Summary: On September 12, 2011, the Georgia Supreme Court adopted an informal State Bar of Georgia opinion stating that any non-lawyer who answers a garnishment in Georgia is engaged in the unauthorized practice of law. Accordingly, as of September 12, all companies responding to a summons of garnishment in the state of Georgia must file their answer through a licensed Georgia attorney.

The Supreme Court's Opinion

The Court's decision was not entirely unexpected. In June 2010, the Standing Committee on the Unauthorized Practice of Law issued Advisory Opinion No. 2010-1, in which the Committee addressed the question of whether a non-attorney employee of a garnishee can file an answer to a garnishment summons without engaging in the unlicensed practice of law. The Committee decided that employers can only answer garnishment summons through a licensed Georgia attorney. The Committee premised its decision on the fact that corporations and limited liability companies have no right to self-representation, and must therefore be represented by a licensed attorney in any legal proceeding. The Committee reasoned that because a garnishment action is like any other legal proceeding, the non-attorney employees of a business cannot lawfully answer a garnishment summons.

Although the Committee's decision caused an immediate stir in the Georgia business community, most companies were not immediately impacted. Indeed, the Committee's advisory opinion was non-binding and therefore did not have the force of law. Accordingly, most employers continued to use non-attorney employees to process and file garnishment answers.

Moreover, many Georgia employers hoped that the Georgia Supreme Court would ultimately reject the Committee's decision. Indeed, the Georgia Chamber of Commerce submitted a well-argued amicus brief in opposition to the advisory opinion.

However, despite the protests of the Georgia business community, the Georgia Supreme Court approved Advisory Opinion No. 2010-1 in a brief, two-sentence opinion. Justice David Nahmias also wrote a concurring opinion in which he suggested that the court understood that its decision would have a negative impact on employers dealing with routine garnishment proceedings. Nonetheless, Justice Nahmias conceded that the Court had no power to alleviate these negative effects, and instead

suggested that Georgia businesses and business associations should seek a remedy from the Judicial Counsel or the General Assembly.

Employers' Bottom-Line

While Justice Nahmias' concurring opinion leaves some hope that the General Assembly will take action to alleviate the effects of the Supreme Court's decision, it will nonetheless take several months for the legislature to address this issue. In the meantime, all Georgia employers must follow the Supreme Court's decision.

Consequently, as of September 12, 2011, all Georgia employers must use a licensed Georgia attorney when responding to a summons of garnishment. If a company does not have in-house counsel, then it must engage outside counsel to review and prepare any legal document filed in the course of a garnishment proceeding. Failure to abide by the Supreme Court's decision will result in serious consequences to the employer. Any non-lawyer employee who answers a garnishment on behalf of a company will effectively be engaging in the unauthorized practice of law, which is a criminal offense in the state of Georgia. In addition, a court may issue a default judgment against a company if its answer was not filed by a licensed Georgia attorney. Finally, it is important to note that the Supreme Court's decision applies only to garnishments filed in state or superior court. Accordingly, Georgia employers can still use full-time officers or employees to represent their interests in garnishment proceedings filed in magistrate or small claims court.

If you have any questions about how to respond to a garnishment summons given the recent changes to this area of law, please contact the authors of this Alert, Cullen Stafford, cstafford@fordharrison.com, or Jeff Mokotoff, jmokotoff@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.