

## Companies Must Retain Counsel to Answer Garnishments in Georgia

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By [Thomas A. Cox, Jr.](#), and [Jeffery R. Saxby](#)

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On September 12, 2011, the Supreme Court of Georgia approved [UPL Advisory Opinion No. 2010-1](#) (“Advisory Opinion”), which was issued by the State Bar of Georgia’s Standing Committee on the Unlicensed Practice of Law (“Standing Committee”). As a result of [the Supreme Court’s thinly worded decision](#), *companies* must now use an attorney to answer certain garnishment actions in Georgia.<sup>1</sup> Proponents of the Supreme Court’s decision contend that requiring attorneys to answer garnishments means that fewer mistakes will be made. Opponents contend that requiring attorneys to file answers to garnishments will only drive up costs for businesses and create more work for attorneys.

The Supreme Court’s decision contained a concurring opinion by Justice David E. Nahmias that sets forth a step-by-step plan for the opponents of the decision to undo the new garnishment rule. Specifically, the concurring opinion suggests that opponents of the decision may seek relief through a possible rule change by the Judicial Council of the State Bar or seek relief from the General Assembly.

According to the Advisory Opinion, the Standing Committee’s support of the new garnishment rule is premised upon its view that, in courts of record, “the inescapable conclusion is that a garnishment action is a legal proceeding” requiring the involvement of an attorney. In Georgia, although individuals have a constitutional right to represent themselves in court, corporations do not.

At least for now, companies that are involved in garnishment proceedings in Georgia courts of record and are required to file an answer to garnishment actions must do so with the assistance of counsel.

### What Georgia Employers Should Do Now

- If you are an employer that is currently engaged in garnishment actions filed in a Georgia State Court, obtain counsel immediately.

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<sup>1</sup> In Georgia, garnishment proceedings are typically initiated in either State or Magistrate Court, depending upon the amount in controversy. The Advisory Opinion limits the attorney-filed answer requirement to garnishments filed in “courts of record.” Although Georgia State Courts are considered courts of record, Magistrate Courts are not considered courts of record. See *Bowen v. Ball*, 215 Ga. App. 640 (1994). Thus, a Magistrate Court garnishment that does not exceed the Magistrate Court’s jurisdictional limit (\$15,000) is arguably exempt from the attorney-filed answer requirement.

- If you are an employer that is currently engaged in garnishment actions filed in a Georgia Magistrate Court, pay close attention to any further developments regarding a company's continued ability to have a non-attorney represent the company in garnishment actions.
- If you are an employer that is not currently engaged in garnishment actions in Georgia, contact your employment counsel to confirm that they are able to assist in connection with any future garnishment action.

For more information about this Advisory, please contact:

**Thomas A. Cox, Jr.**

Atlanta  
404-869-5345  
tcox@ebglaw.com

**Jeffery R. Saxby**

Atlanta  
404-923-9079  
jsaxby@ebglaw.com

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