

Garnishments

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To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

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- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
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Introduction

- Garnishments don't happen everyday but can severely impact any nonprofit organization.
- Major Areas:
 - ✓ Garnishment FAQ
 - ✓ When you, as an employer, are ordered to garnish an employee's wages
 - ✓ When your nonprofit wins a lawsuit and seeks to garnish the defendant's wages

What is a Garnishment?

- **Definition:** a court order for property or money held by a third party, but owned by another, to be delivered to a court for a debt owed. This usually results from a plaintiff winning a lawsuit against a debtor defendant.
- **Garnishee:** The third party holder, but not owner, of property or money. If the nonprofit is ordered to garnish an employee's wages, the nonprofit is the garnishee.

Hypotheticals

- We will go over several hypotheticals involving an individual named G, a non-profit organization called NP Inc., and another corporation called XYZ, Inc.

Hypothetical 1

- **NP Inc. is a Georgia non-profit corporation. One of its employees, G, recently defaulted on a \$10,000 loan from Fulton Bank who files a suit against G in the Magistrate Court of Fulton County. Fulton Bank wins the suit but G refuses to pay. Fulton Bank now seeks to garnish G's wages and asks the court to order NP Inc. to deliver some of G's earned undistributed wages to the court. NP Inc. is the garnishee.**

Two Forms of Garnishments

- **1. Regular garnishment:** the garnishee delivers the ordered property or money to the court **a single time**.
- **2. Continuing garnishment:** the garnishee delivers employee's wages to the court **multiple times over a period of time**, usually over a 180 day period.
 - ✓ Example: an employer sends in a portion of its employee's wages every 45 days over a 180 day period.
- This webcast will focus on garnishments of a person's wages.

Attorney Requirement

- While you do not need an attorney to file an Answer, you are required to have an attorney if you are required to respond to a dispute to the Answer.

Nonprofit as Garnishee

- **The next several slides will deal solely with nonprofits playing the role of a garnishee.**
- **Reminder: Garnishee is the person who is ordered to deliver property or money to a court that he/she/it is holding for another person.**

Summons of Garnishment

- The Summons of Garnishment is the beginning of the garnishment process for a garnishee.

- Summons of Garnishment form:
 - ✓ Regular garnishment or a continuing garnishment;
 - ✓ Plaintiff, defendant, and garnishee (employer nonprofit);
 - ✓ Property or money owed to plaintiff;
 - ✓ Which court ordered the garnishment; and
 - ✓ Deadline for garnishee to file an Answer.

Filing An Answer

- Once an employer receives a Summons of Garnishment, it is required to file an “Answer” within a specified period of time.

How To File An Answer

- Regular or Continuing garnishment;
 - ✓ The Summons will state either just “Garnishment” or “Continuing Garnishment” at the top.
- Calculate employee’s pay and how much to garnish from that employee’s income. **(We will go over this in the next few slides).**
- Submit the money/property when filing the Answer.
 - ✓ Call the Clerk of the court that ordered the garnishment to determine form of payment and how to turn in the money/property.
- **Deadline:** Answers must be filed no later than the deadline set by the Summons of Garnishment (usually not sooner than 30 days but not later than 45 days). **Do not miss this deadline!**

How To File An Answer Cont'd

➤ **Continuing Garnishments only:** garnishees must file additional Answers, just like before, with the money owed every set period. For example in Fulton County, you are required to re-file and submit money owed every 45 days for a 195 day period.

Garnishment of Wages

- Restrictions on amount:
 - 1. No more than 25% of the defendant's/employee's **disposable** income per week, OR
 - 2. The amount by which disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed (\$7.25 an hour and a 30 hour work week= \$217.50 a week), **whichever is less.**

Garnishment of Wages Cont'd

- Weekly earnings < \$217.50 = no garnishments possible.
- \$217.50 < Weekly earnings < \$290.00 = garnish all amounts above \$217.50.
- Weekly earnings \geq \$290.00 a week, garnish 25% of the **disposable** weekly earnings.
- **Alimony and Child Support exception:** If the garnishment is for alimony or child support Georgia law allows up to 50% of the defendant's disposable income to be garnished.

Hypothetical 2

- **Back at NP Inc. you look over G's recent wages. You find that G earns \$500 a week after taxes. Because G earns more than \$290.00 a week, Fulton Bank can garnish 25% of \$500 = \$125 a week.**
- **If G earned \$217.49 a week after taxes, Fulton Bank may not garnish any of G's wages.**

Service On Plaintiff and Defendant

- After filing the Answer mail a complete copy of the Answer to both of the plaintiff and defendant/employee.
- Ask the clerk or deputy clerk on how to file a **Certificate of Service** as proof that you mailed a copy of the Answer to both the plaintiff's and defendant's parties.

Penalty

- If the Garnishee does not **properly** file an Answer, then the plaintiff may receive a “judgment by default” against the Garnishee. **In this case the Garnishee will owe the entire amount that the defendant owes the plaintiff.**
- Example: If the nonprofit employer fails to file the Answer on time, the plaintiff may garnish the entire amount from nonprofit’s bank account.

Nonprofit As Plaintiff

- The following slides will now deal with issues when the nonprofit organization is the plaintiff and seeks to garnish money/property from a defendant.
- Reminder: continuing garnishments are only possible for garnishing wages.

Win Civil Suit (Lawsuit)

- First and foremost, if you wish to garnish someone's money/property, you must win a lawsuit against that person.
- In order to garnish someone's wages, you will need to determine if they are employed and, if so, who is their employer.

Hypothetical 3

- You are the Executive Director of NP Inc. You would like to apply for 5 new available grants and hire G to apply for them. After paying him for his services, you find out that G did not work on a single grant application. You bring a lawsuit in Fulton County Magistrate Court. G fails to Answer the complaint and the judge awards NP with damages. Even after the lawsuit is over, G refuses to pay the damages. NP now has an option to garnish G's wages.

How to File?

- 1. Obtain a certified copy of the original judgment from Clerk of the court where you won your lawsuit.
- 2. The defendant and garnishee (defendant's employer) need to be notified so find the address of both the defendant and garnishee.
- 3. Which County?: File garnishment papers with the county court where the garnishee/employer is located.
- 4. Magistrate or State Court?: If the amount in controversy is valued up to \$15,000, then file in Magistrate Court. Anything over that, file in State Court.
 - ✓ Note: not all counties have state court.
- 5. Call the clerk's office of that court to determine filing fees.

Finding the Garnishee

- A. Garnishee is an individual: File in the county where this person resides.
- B. Garnishee is a company:
 - ✓ Go to <http://www.sos.ga.gov/corporations/> and click on the “Corporations Search” button on the right hand side (it is blue). On the following web page type in the name of the corporation and click “Search.”
 - ✓ The following page will show the main address of the Corporation. Use this address to serve the garnishment papers to the registered agent.

Garnishment Affidavit

- Fill out and file the “Garnishment Affidavit” with the clerk or deputy clerk of that court. Sign the Affidavit in front of the clerk.
 - ✓ Each court website will have the forms.
- File the certified copy of the original judgment.
- **Hypothetical 4: G works at XYZ Inc. in Sandy Springs, GA located in Fulton County. Taking a certified copy of your original judgment, go to Fulton County Magistrate Court, because damages are < \$15,000, and file the Garnishment Affidavit with the clerk or deputy clerk at that court.**

Summons of Garnishment

- The clerk will issue a Summons of Garnishment.
- Note: Ask the clerk ahead of time if a Summons of Garnishment form will be provided or if you are to bring a blank form to them.
- **Continuing Garnishments:** Bring seven **(7) copies** of the Garnishee Answer form and deliver it to the clerk's office.

Notifying Garnishee and Defendant

- Must send the Summons of Garnishment to both the garnishee and the defendant.
- A. Service on garnishee:
 - ✓ 1. Pay the county sheriff a set fee to deliver the Summons to the garnishee.
- B. Service on the defendant:
 - ✓ 1. Direct Service by Sheriff: fees vary from county to county. Gwinnett County \$50.00.
 - ✓ 2. Process Servers: private companies that will serve the defendant. This is the most effective but also the most expensive.
 - ✓ 3. Mail Service: Personally mail it out no later than three (3) business days after Service of the Summons on the garnishee.
 - A. US Postal Service Registered or Certified Mail with return receipt requested; or
 - B. FedEx or UPS overnight delivery with signature required.
 - **Note: Defendants may refuse to sign the return receipt.**
 - ✓ If Mail Service: File the return receipt with the Court. If the particular court has a requirement of filing a “Certificate of Service” form, attach the return receipt with it as well.

Repeat as Necessary

- Since the garnishment period is only approximately 180 days, if the defendant still owes you money after the final payment is received, you will need to re-file another garnishment affidavit and begin the process all over again. This includes having to re-pay all of the fees.

Default Judgment

- Each court has its own deadline for the Garnishee to file an Answer but most courts give a deadline of no sooner than 30 days but no later than 45 days. If the Garnishee does not file the Answer within 60 days, you are allowed to take a “Default Judgment” and garnish directly from the garnishee/employer.

For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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