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Client Bulletin #448

## Attorneys Must Sign Garnishment Answers, Georgia State Bar Says

By Joe Murray  
Atlanta Office

Garnishments against employees place a greater burden on payroll personnel, but are generally something that most employers have learned to manage. You do the calculations, make the withholding, and then send the money and the garnishment answer to the court. Yet companies with Georgia employees now have an additional hurdle when responding to garnishment actions – working with attorneys.

Every individual has the right to represent himself or herself in court. Yet corporations, limited liability companies, and the like are not individuals; they are artificial entities created under state law. Thus, while corporations act through individuals, no one individual can embody the corporation. As a result, corporations appearing in superior and state courts in Georgia must be represented by an attorney (although they may be represented in magistrate court by their non-attorney officers or managers). Although this requirement has existed for many years, it has generally not been applied in the context of garnishments.

That changed on September 12, 2011, **when the Supreme Court of Georgia adopted a state bar advisory opinion on the subject.** According to that opinion, a garnishment is a legal proceeding, just like any other lawsuit, and requires the filing of an answer to prevent the entry of a default judgment. As a result, a corporation's response to a garnishment issued in a Georgia superior or state court must be filed by an attorney who is licensed to practice in Georgia. According to the advisory opinion, a non-attorney who signs such an answer on behalf of a corporation or other non-individual business entity has engaged in the unauthorized practice of law.

The risk of ignoring this requirement is two-fold. First, the non-attorney who signs a garnishment answer on behalf of a corporation subjects himself or herself to criminal and civil penalties. Second, the court may strike an answer filed by a non-attorney and enter a default judgment against the company, which could render the company liable for the entire debt and not just the amount it would otherwise have withheld in garnishment.

The Georgia business community and others are hopeful that this requirement will be short-lived. In fact, when the Supreme Court adopted this opinion, Justice David Nahmias issued a concurring opinion noting the possibility of removing this requirement through legislation and said that Georgia businesses "should understand that

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today's decision leaves them free to seek such a remedy from . . . the General Assembly.” But until that happens, Georgia employers who are called on to answer garnishments in superior or state court must enlist the aid of inside or outside counsel licensed in Georgia.

For more information regarding Georgia garnishments, please contact **Joe Murray** or any attorney in our **Atlanta Office**, any attorney in our **Macon Office**, or the Constangy attorney of your choice.

***About Constangy, Brooks & Smith, LLP***

*Constangy, Brooks & Smith, LLP has counseled employers on labor and employment law matters, exclusively, since 1946. A “Go To” Law Firm in Corporate Counsel and Fortune Magazine, it represents Fortune 500 corporations and small companies across the country. Its attorneys are consistently rated as top lawyers in their practice areas by sources such as Chambers USA, Martindale-Hubbell, and Top One Hundred Labor Attorneys in the United States, and the firm is top-ranked by the U.S. News & World Report/Best Lawyers Best Law Firms survey. More than 130 lawyers partner with clients to provide cost-effective legal services and sound preventive advice to enhance the employer-employee relationship. Offices are located in Alabama, California, Florida, Georgia, Illinois, Massachusetts, Missouri, New Jersey, North Carolina, South Carolina, Tennessee, Texas, Virginia and Wisconsin. For more information, visit [www.constangy.com](http://www.constangy.com).*