

## Georgia Supreme Court Rules Corporations Must Use an Attorney to Answer Garnishments

By Dion Y. Kohler

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Georgia's garnishment law places unique responsibilities on employers. They must serve and file an answer to the summons of garnishment at 30-day intervals throughout the life of a continuing garnishment, in addition to withholding and remitting a portion of the employee's disposable earnings. Failure to file and serve these answers at any point can result in a default judgment and the employer becoming liable for the employee's debt.

Traditionally, Georgia employers have used their own payroll or human resources staff to complete, serve, and file these answers, avoiding the expense of using an attorney. However, a decision by the Georgia Supreme Court has held that doing so represents the unauthorized practice of law. Now, an attorney licensed or admitted in Georgia must handle these tasks.

### Advisory Opinion

The decision, *In re: ULP Advisory Opinion No. 2010-1*, adopts the view of an informal advisory opinion of the Georgia Bar Standing Committee on the Unlicensed Practice of Law. The Committee reasoned that a garnishment action is a legal proceeding and that businesses, unlike individuals, lack the constitutional right to represent themselves in legal proceedings. Therefore, the Committee found businesses were not exempt from the requirement of using a licensed attorney in garnishment proceedings.

### Effect of the Supreme Court's Ruling

Employers will need to engage an attorney who holds a Georgia license or who is admitted by the court to appear in the particular proceeding both to process and answer garnishments filed in Georgia. The Court's decision is particularly significant because of the penalties for noncompliance, including entry of a default judgment in the garnishment action and criminal sanctions for the corporate representative who files the answer.

The Supreme Court was not unmindful of the administrative and financial burden its ruling places on Georgia employers. But, in the Court's view, any resolution of this falls within the purview of the state legislature.

### Unanswered Questions

The Supreme Court's decision leaves several questions unanswered. For example, can an in-house attorney, who is licensed in a state other than Georgia complete and file the answer? Also, under traditional Georgia practice, garnishment actions involving claims of less than \$15,000 often are filed in magistrate court. Pursuant to Uniform Magistrate Court Rule 31, "any full-time officer or employee of a corporation, sole proprietorship, partnership, or unincorporated association may be designated by such entity as agent for purposes of representing it in civil actions in magistrate court." The Supreme Court's decision does not address whether that forum is included under its ruling. Presumably, therefore, corporations and other business entities may continue to represent themselves in garnishment proceedings in magistrate court under Uniform Magistrate Court Rule 31.

### How Employers Should Respond

In compliance with the Supreme Court's decision, employers in Georgia must use a Georgia licensed attorney (or an attorney who holds a license in another state, but has obtained admission by the court to appear in the proceeding) to answer or otherwise respond to garnishment actions.

Jackson Lewis regularly assists employers with processing and answering garnishments and has practical and cost-efficient solutions for addressing the new requirement of attorney involvement created by the Supreme Court's ruling.

### Meet the Author



Dion Y. Kohler

Principal  
Atlanta  
404-586-1843  
Email

### Practices

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