

## **GARNISHMENT QUESTIONS**

- The Garnishment Chapter of the Code was completely rewritten and re-rationalized. While there have been many changes, the Legislature resisted making changes beyond those required by *Strickland*.
- The effective date of the statute is May 12, 2016.

### **Garnishment Time Periods**

OCGA §18-4-4(c)(1)- (4)

- A continuing garnishment, shall include the next 179 days;
- Garnishments, other than a continuing garnishment or continuing garnishment for support, served on a financial institution, shall include the next 5 days;
- A continuing garnishment for support, shall remain for so long as the defendant is employed by the garnishee and shall not terminate until the original arrearage is retired; and
- All other garnishments, shall include the next 29 days.
- All occurrences of “15 days” to perform some act in the Code have been changed to 20 days.
- OCGA § 18-4-16 – Plaintiff has 20 days to traverse Garnishee’s answer after service
- OCGA § 18-4-13 (b)(3) – even if no service, Plaintiff has 20 days from actual notice of Garnishee’s answer to traverse
- OCGA § 18-4-20 – property may be distributed if no traverse is filed within 20 days after Garnishee’s answer

### **Forms**

- Forms are specified for all filings.
- All forms have been updated and are found in OCGA §18-4-70 through 18-4-89.
- The forms are mandatory. OCGA §18-4-70(a).
- The format may be adjusted as long as all of the required information is provided. OCGA §18-4-70(a).
- When a plaintiff uses the incorrect form for a summons of garnishment of any type, the garnishment shall not be valid and the garnishee shall be relieved of all liability. OCGA §18-4-7(d).

### **Garnishment on a Financial Institution**

- Affidavit of Garnishment. OCGA §18-4-71.
- Summons of Garnishment. OCGA §18-4-76.
- Attachment for Summons. OCGA §18-4-77.
- Notice to Defendant of Right Against Garnishment of Money, Including Wage, and Other Property. OCGA §18-4-82.
- Defendant's Claim Form. OCGA §18-4-82.
- Plaintiff must include exemption information and claim form in the service package on the Defendant. OCGA § 18-4-8 (a).

### **Continuing Garnishment**

- Affidavit of Garnishment. OCGA §18-4-72.
- Summons of Garnishment. OCGA §18-4-78.
- Attachment for Summons. OCGA §18-4-79.
- Notice to Defendant of Right Against Garnishment of Money, Including Wage, and Other Property. OCGA §18-4-82.
- Defendant's Claim Form. OCGA §18-4-82.
- Plaintiff must include exemption information and claim form in the service package on the Defendant. OCGA § 18-4-8 (a).

### **Continuing Garnishment for Support**

- Affidavit of Garnishment. OCGA §18-4-73.
- Summons of Garnishment. OCGA §18-4-80.
- Attachment for Summons. OCGA §18-4-81.
- Copy of the Judgment
- Notice to Defendant of Right Against Garnishment of Money, Including Wage, and Other Property. OCGA §18-4-82.
- Defendant's Claim Form. OCGA §18-4-82.
- Plaintiff must include exemption information and claim form in the service package on the Defendant. OCGA § 18-4-8 (a).

### **Garnishment**

- Affidavit of Garnishment. OCGA §18-4-71.
- Summons of Garnishment. OCGA §18-4-74.
- Attachment for Summons. OCGA §18-4-75.
- Notice to Defendant of Right Against Garnishment of Money, Including Wage, and Other Property. OCGA §18-4-82.
- Defendant's Claim Form. OCGA §18-4-82.
- Plaintiff must include exemption information and claim form in the service package on the Defendant. OCGA § 18-4-8 (a).

### **Garnishment for Support**

- Affidavit of Garnishment. OCGA §18-4-71.
- Summons of Garnishment. OCGA §18-4-74.
- Attachment for Summons. OCGA §18-4-75.
- Copy of the Judgment
- Notice to Defendant of Right Against Garnishment of Money, Including Wage, and Other Property. OCGA §18-4-82.
- Defendant's Claim Form. OCGA §18-4-82.
- Plaintiff must include exemption information and claim form in the service package on the Defendant. OCGA § 18-4-8 (a).

### **Forms and Service**

- Plaintiff shall serve Garnishee a copy of the Affidavit, Summons of Garnishment, Notice to Defendant of Right Against Garnishment of Money Including Wages, and Other Property, and Defendant's Claim as provided in OCGA §9-11-4 or your constable. OCGA §18-4-8(a).
- Plaintiff shall send defendant a copy of the Affidavit, Summons of Garnishment, Notice to Defendant of Right Against Garnishment of Money..., and Defendant's Claim not more than 3 days after service of summons on the garnishee by one of three ways: mail, personally, or affidavit and mail. OCGA §18-4-8(b).
- While the clerk is responsible for processing service to the garnishee, the Plaintiff is responsible for perfecting service on the Defendant and filing the proof of service. OCGA §18-4-8

- The only time the clerk is involved is when the Plaintiff files an affidavit under OCGA § 18-4-8 (b) (1) (C) and serves Defendant by regular mail at last known served address.
- Claim forms and information must be attached both to the Plaintiff's service package and a Financial Institution's service copy of the answer sent to the Defendant. OCGA § 18-4-13 (d).

### **Answers by Garnishee**

- Garnishee Answer Form. OCGA §18-4-84
- Financial Institution Garnishee Answer Form. OCGA §18-4-85
- Continuing Garnishee Answer Form. OCGA §18-4-86

### **Garnishee Answer**

- Garnishee's Answer shall be filed with the Court issuing the summons not sooner than 30 days and not later than 45 days after service. OCGA 18-4-10(b).
- When Garnishee is a Financial Institution and the garnishment is not a continuing garnishment or continuing garnishment for support, the garnishee shall file the answer not sooner than five and not later than 15 days after date of service. OCGA 18-4-10(c).

### **Garnishee**

- All garnishee answers must be served upon plaintiff and defendant. OCGA §18-4-13.
- If garnishee fails to serve plaintiff, plaintiff shall have 20 days from time plaintiff receives actual notice to traverse the garnishee's answers. OCGA §18-4-13(c).
- Garnishee shall provide Defendant with Notice to Defendant of right Against Garnishment of Money..., and Defendant's Claim form that is received from plaintiff by regular mail. OCGA §18-4-13(d).

### **Claim by Defendant**

- Defendant's Claim Form. OCGA §18-4-82.
- Defendant can file a claim at any time before a judgment is entered or before money or property is distributed.
- Defendant shall serve copy of the Claim on Plaintiff and Garnishee.
- **\*\*\*CLERK SHALL** transmit copy of defendant's claim to plaintiff and garnishee.
- Defendant shall serve copy of claim upon any third party that defendant claims is superior to the judgment in the garnishment.
- The traverse and claim by a Defendant are consolidated into a single claim that both asserts a higher right to the funds and that the Plaintiff's affidavit is insufficient or untrue. OCGA § 18-4-15.

- Defendant is now allowed to assert that a Third Party has a higher right to the funds than the Plaintiff. OCGA § 18-4-15(a). Defendant must serve a copy of the Claim on the third-party.

### **Orders**

- Order for Hearing Form. OCGA §18-4-83.
- \*\*\* COURT SHALL HAVE HEARING NOT MORE THAN 10 DAYS AFTER DEFENDANT'S CLAIM FILED.\*\*\*

### **Traverse**

- Plaintiff's Traverse Form. OCGA 18-4-87.
- Plaintiff may file traverse within 20 days of being served with garnishee's answer. OCGA §18-4-16.
- Order for Hearing Form. OCGA §18-4-83.

### **Third Party Claim**

- Third Party Claim Form. OCGA§18-4-88.
- Third Party claim can be filed at any time before judgment entered or money or property distributed. OCGA §18-4-17.
- Third Party claim shall be served upon plaintiff, defendant, and garnishee.

### **Release of Garnishment**

- Release of Garnishment Form. OCGA §18-4-89.

### **NEW DUTIES OF CLERK**

- Clerk shall post and update exemptions as promulgated by the Attorney General and shall provide such list to individuals upon request. OCGA §18-4-6(c).
- Clerk cannot distribute proceeds/property nor shall any judgment be rendered until:
  - 10 days have elapsed from date of plaintiff's compliance of service; AND
  - if garnishee was filed:
    - Twenty days have elapsed from filing of answer without a claim from defendant or third party and no traverse filed by plaintiff; or
    - All traverses have been adjudicated and claims been adjudicated.
- Clerk must transmit a copy of defendant's claim to plaintiff and garnishee. OCGA §18-4-15(b).
- Clerk must approve the affidavit by plaintiff that defendant resides outside state, can't be found, etc. OCGA §18-4-8(b)(1)(C).

- Clerk shall schedule a hearing on defendant's claim within 10 days of filing of defendant's claim. OCGA §18-4-15(d). This includes weekends.

### **Default**

- After 45 days and no answer, Garnishee is in default. OCGA § 18-4-21.
- The default may be opened as a matter of right within 15 days upon payment of costs. If it is not opened, a default judgment may be taken against Garnishee. . OCGA § 18-4-21.

### **Default Financial Institutions**

- After 15 days and no answer, Garnishee is in default. OCGA § 18-4-21.
- The default may be opened as a matter of right within 15 days upon payment of costs. If it is not opened, a default judgment may be taken against Garnishee. . OCGA § 18-4-21.

### **Exception to Default**

- A garnishee may be relieved from liability for failure to file a garnishee answer if the plaintiff failed to provide the information required by paragraph (2) of subsection (b) of Code Section 18-4-7 that would reasonably enable the garnishee to respond properly to the summons of garnishment and a good faith effort to locate the requested property was made by the garnishee based on the information provided by the plaintiff... OCGA § 18-4-23 (a).

### **Calculating Amounts Subject to Garnishment**

- The maximum part of disposable earnings for any work week subject to garnishment shall not exceed the lesser of:
  - 25% of the defendant's disposable earnings for that week; or
  - The amount by which the defendant's disposable earnings for that week exceed \$217.
  - OCGA §18-4-5(a)(1).
- The continuing garnishment minimum wage is capped at \$217.
- It will not rise even if the minimum wage rises. OCGA §18-4-5(a)(2).
- This does appear to contradict with Title III of the Federal Consumer Credit Protection Act which provides an exemption as a percentage of the federal minimum wage, 25%. Federal law would preempt.