

PBPA Podcast Transcript
Episode 34 – What to Do If Your Nonprofit Receives
A Summons to Garnish Employee Wages
(25:46 minutes)



Sireesha ([00:01](#)):

So your nonprofit has received notice from a government agency or a court order to garnish an employee's wages. Now what? Nonprofit employers may not always be clear on their responsibilities when they receive a garnishment order. In this episode of the PBPA Podcast, Elijah Davis with Stanton Law outlines why a nonprofit should immediately respond to garnishment papers, shares tips for the conversation with the garnished employee and guidance to make those garnishment papers less daunting.

Sireesha ([00:43](#)):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at [pbpatl.org](#). Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha ([01:54](#)):

Elijah Davis is an employment attorney with Stanton Law here in Atlanta. His practice covers several areas in the unemployment law realm, including workers' compensation, federal tax code, the FLSA, and our topic for today, wage garnishments. Elijah has lots of great experience, and with that scary, I mean cautionary tales to share. Elijah, thanks so much for being here with us today.

Elijah ([02:23](#)):

Thank you so much for having me.

Sireesha ([02:25](#)):

So, let's start off generally by defining what is garnishment.

Elijah ([02:31](#)):

So, I like to think of garnishment as a process, not a single point in time. Essentially what it is, is when a creditor is owed money by someone, for the purposes of our conversation today, let's say it's the employee of a nonprofit organization, that creditor, if they have an underlying judgment, can go to court and ask to have a third party. So, in, again, for the purposes of our conversation today, the employer, have that third party withhold some type of thing of value or property from the employee for the purposes of satisfying the debt. That, that is a lot of legal words that basically means someone can ask the court to make the employer withhold wages from the employee.

Sireesha (03:28):

Okay. So if this is related to a debt of the employee's, why should a nonprofit employer care about that?

Elijah (03:40):

Well, that's a fair question. So if the underlying debt has already been deemed valid by a court, so remember this, this is not the first time in court for the creditor. They generally already have a court order from the same or different court. Uh, but under Georgia's laws, the employer is a third party just like anyone else, just like a bank or just like someone that has a piece of valuable property that belongs to the person that owes the funds. So, it can be complicated when you look at all the different people that are involved, but when you simplify it, the fact that the employer is the employer and the debt has absolutely nothing to do with that employment relationship does not change the fact that the wages that the employee earns is a thing of value. And, so that's why the employer has to be concerned.

Elijah (04:41):

We'll talk about in just a little bit some other very serious reasons, that the employer should be concerned, namely a default judgment. You know, I mentioned a default judgment. If you completely ignore this, the court can tell the employer that they actually owe the full amount of the underlying debt. So I just, last week I had a situation with one of my clients where we had to show up in court in another state, for a garnishment for an employee that actually did not even work for that client that employer anymore. They did not realize the severity of responding cause they had nothing to withhold and to hand over to the court. But because they did not respond, the court basically said that they had to come in for what we call a show cause hearing and tell the court why they should not be responsible for paying the full amount, which was just under \$20,000.

Sireesha (05:45):

Oh, wow. Okay. So what's the first thing a nonprofit should do when it's served with garnishment papers?

Elijah (05:55):

So the, the very first thing they should do, if they're a Pro Bono Partnership client is probably reach out to you and see if they can get matched up with an attorney to help them. If they're not, someone that qualifies for services, through you, they should still probably reach out to an attorney unless they have some experience in responding to these.

Sireesha (06:17):

After the nonprofit reaches out to an attorney, what might be expected of them in responding to the garnishment papers.

Elijah (06:26):

Generally in Georgia, for a continuing garnishment, which is what most of our conversation today is gonna focus on, uh, they are gonna have to file an answer or a legal document with the court approximately every 45 days. The very first time that they have to respond, they need to wait at least 30 days, but not more than 45. So that basically creates a, a 15 day window, you know, two weeks in a day, in which they are supposed to file the answer. They are also going to need, during the time after they get served, they're gonna have to start withholding wages immediately. They can't decide that because

they don't file the answer for, you know, a month and a half, that they're not gonna start withholding wages until then. So after they receive the summons, they have to start withholding as part of withholding. Every 45 days approximately, they need to file an answer with the court. They're also going to have to, uh, deal with the process of, of notifying their employee. So we talk about the legal requirements that they may have, although we're not giving any advice for a particular situation right now. But we also need to consider just the general employment concerns about approaching this topic with someone that may be a stellar employee and for whom you do not want to withhold wages from. It is more than just filling out a paper and sending it to the court. You have to navigate quite a few different, uh, concerns in doing this.

Sireesha ([08:11](#)):

Yeah. I'm gonna follow up with a question about kind of how to notify your employee, but you mentioned continuing garnishments and in our conversations prior to recording, you had told me about some recent changes in Georgia law regarding continuing garnishments. Um, can you speak to that a little bit and why is that relevant to an employer?

Elijah ([08:36](#)):

Yes, and I'm, I may nerd out just a little bit with the numbers. So if this is not what interests people, they can probably skip about 15 seconds ahead, <laugh>. Uh, so prior to January 1st of 2021, a continuing garnishment in Georgia was limited to 179 days, which is basically six months. After January 1st, 2021, that number was extended up to 1095 days, which is exactly three years. So what that means for employers now is that all these creditors that had potential judgments against employees that may have not gone after them prior to January 1st, just because of logistical challenges and the judicial process, they now have more incentive because they've gone from six months to three years as a possible timeframe to collect. Uh, which not only makes it easier to collect, but it also means that you may be able to get larger collections.

Elijah ([09:49](#)):

So, you know, if you had a \$50,000 garnishment, but you were only gonna get \$300 a pay period for six months, there would be less incentive in, pursuing that prior to 2021 in Georgia than there would be now, because now you could, yes, maybe you only collect the \$300, but you're gonna do it for, you know, almost six times the amount that you had previously been able to do it. You know, in three years someone is potentially gonna pay off the amount due or get tired of having their wages garnished and try to work it out some other way. Uh, but these creditors or, or creditors in general in Georgia, I think now have more incentive to go after the employee. And unfortunately, that does mean that more and more employers are, are gonna start seeing this, I think over the next few years at least.

Sireesha ([10:48](#)):

Okay. So that's something for nonprofit employers to keep in mind too, that they might unfortunately see an uptick in garnishment papers that they receive. And so once the nonprofit receives those garnishment papers, um, you had talked about the notification that they should provide to their employees. That conversation, what would that look like? Do you have any tips for employers as they enter that conversation with their employee?

Elijah ([11:18](#)):

So it, you know, it, it may vary depending on the particular situation. And, and certainly if an attorney is involved, you know, we would want to, to have them be involved in kinda helping the employer with having that conversation. Uh, but in general, assuming that there is a good working relationship with the employee, I find it helpful for the employer to let the employee know that this has nothing to do with their you know, performance at work. That this is not anything that they are doing to punish the employee, that they are only doing it because they are required by law to do so. And that if they do not withhold that there are consequences for the employer. Um, so by kind of setting the stage that, uh, this is not performance based, we would have to do this no matter what. And even if it is the star employee of the organization, you know, the, the law is blind, right? So everyone has to be treated the same in that situation.

Elijah ([12:32](#)):

And, and that can be difficult for an employer. And it can also be difficult for an employee because, uh, the employee is, even though they're being told that it, it is not performance based, the employer is having to be the face of the process. Uh, so, even for understanding employees, there are situations in in which, uh, because the employer is, you know, delivering the bad news, let's say, that it is easy for, for at least a small period of time to, you know, blame them or to want to, to try and work it out and, and, and try to see if they can withhold a smaller amount or do something differently. And, and there's just not much leeway for the employer in these situations.

Elijah ([13:17](#)):

As part of notifying the employee, you also want to provide them a copy of all the paperwork that you've received. So that's gonna be a copy of something called a "summons of garnishment". Uh, it would also be, uh. And this should be included in what the employer receives as part of the garnishment, but there's generally something called a "Notice to defendant of right Against garnishment of money, including wages and other property and defendant's claim form". So again, a lot of legal words that basically says, "Employee here are different things that you can do to reduce the amount that's being garnished and all of your rights related to this garnishment". So, when you put all of that together, I just kind of call it a garnishment packet. Uh, but I would have a copy of all of that available to the employee.

Elijah ([14:23](#)):

Uh, and if possible, and, and this is kind of one of those, uh, you may not be able to do it at the time you talk to the employee, but if you do have time to figure it out, especially for employees that receive about the same amount every pay period, it may be helpful to tell the employee what amount you expect to have to garnish from each paycheck. Uh, they're gonna see it eventually when they get the paycheck. Uh, and so if it's an amount that is going to be more impactful to the employee, then they can also kind of determine how they wanna respond as far as their ability to file documents with the court.

Sireesha ([15:04](#)):

That would be a challenging conversation to have, but necessary. Um, what if the employer's in a situation where they decide, you know, maybe they would rather terminate the employee rather than have that conversation and deal with the garnishment work. Is that an option?

Elijah ([15:25](#)):

So I'm gonna give you a typical lawyer answer with "it depends". The initial answer is no, it is not an option. So with garnishments, employers are gonna have to deal with both state and federal laws. This is one of the reasons why, even though it seems kind of like a small issue for employers, they may very well want to talk to an attorney. So under federal law, the employer would not be in a good position if they terminated their employee for having one, you know, singular garnishment. Uh, and that situation, I believe that, just about any attorney would advise the employer that they're running a file of federal law. Where it becomes a bit, more of a conversation to have is when there are multiple garnishments. And, and this is where I would absolutely ask the employer to have a very open and serious conversation with their legal counsel.

Elijah ([16:38](#)):

So, if you have an employee who has multiple garnishments and you are a small organization in which it is just administratively impossible for you to, to keep up with that, then, you know, you may want to make a decision based on that. Uh, but I would say as a starting point for one single garnishment, you would never want to terminate an employee for that. Having said all of that, you know, a garnishment is not a shield from being terminated for an otherwise valid reason. So if you have a, an employee that has been stellar and they have a garnishment and you know, they just stop showing up to work and stop doing their work, and you don't hear from 'em and they abandon their job, well, you know, that may be a valid reason to terminate the employee. But that is more related to job abandonment, in this hypothetical example, than it is because of the actual garnishment.

Sireesha ([17:48](#)):

Okay, I see. Let's talk about another practical concern here. A lot of the nonprofits who might be listening today are, you know, small organizations, small employers, they might have never had to deal with this in the past. If they're trying to be proactive, is there anything they can do to help them be ready if and when this occurs?

Elijah ([18:11](#)):

So I, I think there is always something that anybody can do in any situation to prepare, even if just marginally. So yes, I do think there are things that the employer can do. Some of it is gonna be, you know, how much time do you have to invest in it? But, but one thing that I think just about every employer should do is go to the, the local courts website in their counties. So, for example, in Atlanta, you may go to the Fulton County Superior Courts website, or the Fulton County Magistrate Courts website, and they will generally have a forms section where the court has drafted forms that can be filled out by the employer with or without the use of an attorney. And if the employer has time to go in and look at those forms and see what is gonna be required of an answer.

Elijah ([19:07](#)):

So when I say "an answer", that's the document we talked about, uh, earlier on in the conversation. That has to be filed every 45 days in, in that form. It is not as simple as saying, we've withheld, you know, a thousand dollars in wages. You actually have to state how many, how much wages the employee had, what you know, was, kind of exempted from the calculation, and then what percentage of wages were withheld. And you have to do all of the math, which is again, something I love. Uh, but you have to make sure that the numbers, you know, make sense so that when the court reviews what is received and what is withheld, that it all is tracking and that the numbers match up. So after you review those forms, reach

out if there is an attorney that represents the organization. Reach out to the attorney and see if you can have a brief discussion.

Elijah ([20:07](#)):

If you do have any questions, when you get a garnishment from the court, you know, before it's 43 days have passed and, and you're you know, you have two days to file, take that time to talk to someone that has worked on a garnishment with the organization before, or an attorney that has worked on the garnishment for the organization before. Uh, another general thing is just familiarizing yourself with the laws, uh, to the extent that you can. So, student loan garnishments are a different percentage than general judgements, which are a different percentage than, uh, child support, judgements, for example. Uh, so those not only is that different percentages on what you can withhold, but if you have multiple garnishment, you may have to withhold different amounts or send different amounts to different courts. And so kind of exploring all of these, pitfalls and hoops that you have to jump through when you're not in a time crunch will make it much less stressful when you get that garnishment. And if you never get it than it was an exercise in, you know, learning something new. And if you do get it one day, then you are prepared to at least know, you know, I need to start withholding right away, or, I need to make sure that we received the, uh, notice to defendant of rights against garnishment. And you recognize what those things are, and it, it just makes it so much less stressful, and I think you just feel more empowered in dealing with it.

Sireesha ([21:55](#)):

To wrap up, Elijah, I'm gonna ask you to cover, I think, what is one of the most important elements that you covered today. Remind us again, what can happen to a nonprofit employer if they decide to ignore or delay, or if they fail to respond to that garnishment paperwork?

Elijah ([22:19](#)):

So if we take nothing away from this entire discussion other than this, it is that they can have a default judgment entered against them. And earlier I gave you an example of one that was, you know, just under 20,000. I have another client that is a, it is not a garnishment, but you know, these default judgment, you can deal with them up to any amount. So, you know, if you have a default judgment for 50 or 70 or \$80,000 and the nonprofit is not responding to the garnishment, that could be a judicial situation that the nonprofit is not prepared to deal with. And quite frankly, for a lot of smaller nonprofits, that may very well be an entire year's operating budget to provide those services to the community. So, you know, an answer needs to be filed if an employer is representing themselves.

Elijah ([23:22](#)):

The court may give some leniency if there is a small error in the answer. But it is not good to ignore filing an answer just because you are worried that it may not be filled out entirely correctly if the, if the correct amount of wages are being garnished and submitted to the court. Uh, the, I believe that most courts, that I have dealt with would work with the employer to make sure that the forms are corrected. But, but where the court will have a little less patience with employers, even nonprofits, are gonna be in situations where, you know, the entire process is just ignored. So be as timely as possible, make sure that you are withholding the correct amounts, because if you're only withholding 20% instead of 25%, you know, there may still be some exposure and liability for the employer. Uh, and of course, if there are any questions on any part of the process, you know, reach out to Pro Bono Partnership [of Atlanta]

or talk to an attorney that that represents the organization to make sure that everything is filed correctly.

Sireesha ([24:45](#)):

All right. And there have it, listeners! Your "what to expect if your nonprofit receives garnishment papers 101". So much great insight and guidance. Elijah, we really appreciate you sharing your time and expertise with us today.

Elijah ([25:01](#)):

Thank you so much.

Sireesha ([25:04](#)):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.