



To: Craig E. Leen

From: Bridgette N. Thornton Richard, Deputy City Attorney for the City of Coral Gables;  
Yaneris Figueroa, Special Counsel to the City Attorney's Office

Approved: Craig Leen, City Attorney for the City of Coral Gables

A handwritten signature in black ink, appearing to be "CL", is written over the word "Gables" in the "Approved" line.

RE: Legal Opinion Regarding Florida's Garnishment Law In Relation To The City Of Coral Gables' Duties And Obligations

Date: August 13, 2013

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To clarify the City of Coral Gables' duties and responsibilities, under Florida law, when served with writs of garnishment, this memorandum shall provide an overview, explanation, and analysis of garnishment proceedings and the City's legal obligations thereunder. For purposes of this memo, the following definitions shall apply: the term "garnishee" means the entity garnishing wages or property; "plaintiff" means the individual or entity seeking to recover debts owed to it through the garnishment process; and "defendant" means the individual that owes the underlying debt to plaintiff.

#### **I. FLORIDA'S GARNISHMENT LAW: A COMPLICATED STATUTORY FRAMEWORK**

In Florida, garnishment is a method utilized to collect a monetary judgment. Chapter 77 of the Florida Statutes governs garnishment proceedings. It involves a multifaceted process. As an initial matter, to proceed with a garnishment action the plaintiff must sue to secure a debt purportedly owed by the defendant or secure a judgment against the defendant. Thus, there must be a separate predicate action involving the purported creditor and debtor to serve as the basis for a garnishment action. Florida Statutes § 77.01 of the Garnishment Statute summarizes this predicate action requirement and states in relevant part:

*Every person or entity who has sued to recover a debt or has recovered judgment in any court against any person or entity has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person or any debt not evidenced by a negotiable instrument that will become due absolutely through the passage of time only to the defendant by a third person,*

and any tangible or intangible personal property of defendant in the possession or control of a third person.

Fla. Stat. § 77.01 (emphasis added). Accordingly, a garnishment action may be instituted before or after the entry of a judgment in the predicate action. It should be noted, however, that a writ of garnishment cannot be issued for predicate actions sounding in tort until a judgment is entered against the defendant. Fla. Stat. § 77.02 ("Before judgment against a defendant no writ of garnishment shall issue in any action sounding in tort.").

This memorandum will discuss and analyze garnishment proceedings, instituted prior to or after the entry of a judgment in the underlying predicate debt action as well as outline the major contours of Florida's garnishment law from the perspective of the employer - in this case, the garnishee.

## **II. GARNISHMENT PROCEEDINGS AFTER ENTRY OF A JUDGMENT**

For a post-judgment garnishment, the total amount sought to be garnished must be contained in a judgment that exists *prior* to the issuance of the writ. *Pineiro v. American Exp. Card Services Co.*, 105 So. 3d 614, 616 (Fla. 4th DCA 2013) ("Reading sections 77.01, 77.03, and 77.0305 together, it is apparent that, for a post-judgment garnishment, the total amount sought to be garnished must be contained in a judgment that exists prior to the issuance of the writ."). Florida Statutes § 77.03 governs post judgment garnishment proceedings. Specifically, § 77.03 states, "[a]fter judgment has been obtained against defendant but before the writ of garnishment is issued, the plaintiff, the plaintiff's agent or attorney, shall file a motion (which shall not be verified or negative defendant's exemptions) stating the amount of the judgment. The motion may be filed and the writ issued either before or after the return of execution." Fla. Stat. § 77.03.

### **A. CONTINUING WRIT OF GARNISHMENT – GARNISHING SALARY AND WAGES**

Under Florida Statutes § 77.0305, a continuing writ of garnishment is available to garnish "salary or wages." Fla. Stat. § 77.0305. "The statute contemplates regular payment of salary or wages. The continuing writ to the debtor's employer 'provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due ....'" *Brock v. Westport Recovery Corp.*, 832 So. 2d 209, 212-13 (Fla. 4th DCA 2002) (quoting Fla. Stat. § 77.0305). More specifically, Section 77.305 states, "if salary or wages are to be garnished to *satisfy a judgment*, the court shall issue a continuing writ of garnishment to the judgment debtor's employer which provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due until the judgment is satisfied or until otherwise provided by court order." Fla. Stat. § 77.0305. Notably, as further discussed below, "(t)he garnishee is only liable for debts due by the garnishee to the defendant, and for tangible or intangible personal property of defendant which is in possession of the garnishee." *See Security Bank, N.A. v. Bel/South Adder. & Publ'g Corp.*, 679 So. 2d 795, 800 (Fla. 3d DCA 1996), *approved*, 698 So. 2d 254 (Fla. 1997).

Moreover, "[a] debtor's status as an employee of the state or its agencies or political subdivisions does not preclude a judgment creditor's right to garnish the debtor's wages," and, "the state, for itself and for its agencies and subdivisions, waives sovereign immunity for the express and limited purpose necessary to carry out [the dictates of Section 77.0305]." *Id.* Section 77.0305 further provides:

[T]he court shall allow the judgment debtor's employer to collect up to \$5 against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction from the judgment debtor's salary or wages and up to \$2 for each deduction thereafter. The funds collected by the state under this section must be deposited in the Department of Financial Services Administrative Trust Fund for purposes of carrying out this section.

*Id.* It should be noted, however, that in accordance with the Consumer Credit Protection Act, 15 U.S.C. § 1673(a), "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) 25 per centum of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less." 15 U.S.C. § 1673(a).<sup>1</sup>

In sum, based upon the above-discussed statutory provisions where a judgment has already been entered against a defendant and a continuing writ of garnishment is served upon the defendant's employer as a garnishee, the garnishee should fully comply with said writ by deducting the appropriate withholding amount and forwarding those funds to the plaintiff or transferring the funds in whatever manner directed by the continuing writ of garnishment. . If the continuing writ directs the garnishee to simply hold the funds until further court order, then the funds should be deducted from the defendants salary and/or wages and held until the garnishee receives further direction from the court. Indeed, many continuing writs have express language to that effect. Furthermore, as discussed above, the amount withheld from a defendant's wages, for garnishment purposes, must comply with the provisions of the Consumer Credit Protection Act - 15 U.S.C. § 1673 as well as any court orders that may be issued regarding the defendant's entitlement to an exemption outlined under Florida or federal law.

### **III. GARNISHMENT PROCEEDINGS BEFORE ENTRY OF A JUDGMENT**

If the plaintiff pursues a garnishment action before the entry of a judgment, then the provisions of Florida Statutes § 77.031 govern. In relevant part, Section 77.031 provides as follows:

Before judgment has been obtained by the plaintiff against the defendant: (1) A writ of garnishment shall be issued by the court or by the clerk on order of the court. (2) To obtain issuance of the writ, the plaintiff, or the plaintiff's agent or attorney, shall file in the court where the action is pending a verified motion or affidavit alleging by specific

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<sup>1</sup> Subsection (b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673, contains several complicated exceptions to the twenty-five percent aggregate garnishment limit. Therefore, if there are any questions regarding whether the twenty-five percent limit applies, please contact the City Attorney's Office for further legal review. Additionally, under Florida law the amount of wages that may be deducted could also be reduced should the court find that the defendant is entitled to certain exemptions - such as the head of household exemption. See Fla.Stat. 77.041(3) (listing potential exemptions for garnishment actions); see also Fla. Stat. § 222.11 (stating in relevant part, "(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$750 a week are exempt from attachment or garnishment. (b) Disposable earnings of a head of a family, which are greater than \$750 a week, may not be attached or garnished unless such person has agreed otherwise in writing.").

facts the nature of the cause of action; the amount of the debt and that the debt for which the plaintiff sues is just, due, and unpaid; that the garnishment is not sued out to injure either the defendant or the garnishee; and that the plaintiff believes that the defendant will not have in his or her possession, after execution is issued, tangible or intangible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy the plaintiff's claim. The writ of garnishment shall set forth a notice to the defendant of the right to an immediate hearing for dissolution of such writ pursuant to s. 77.07. Upon issuance of the writ of garnishment, the clerk of the court shall provide by mail a copy of the writ to the defendant.

Fla. Stat. § 77.031. Thus, a court may issue a garnishment writ simply based upon the filing of a motion by the plaintiff outlining its entitlement to recovery for a purported debt. Seemingly, to assuage due process and fraud concerns, Section 77.031 also provides:

Except when the plaintiff has had an attachment writ issued, no writ of garnishment before judgment shall issue until the plaintiff, or the plaintiff's agent or attorney, gives a bond with surety to be approved by the clerk payable to the defendant in at least double the amount of the debt demanded, conditioned to pay all costs, damages, and attorney's fees that the defendant sustains in consequence of the plaintiff's improperly suing out the writ of garnishment.

Fla. Stat. § 77.031.

#### **IV. STATUTORY LEGAL PRINCIPLES OF GARNISHMENT ACTIONS**

##### **A. FORM OF THE WRIT OF GARNISHMENT**

In accordance with Florida Statutes § 77.04, the issued writ of garnishment should:

[R]equire the garnishee to serve an answer to it on plaintiff within 20 days after service stating whether he or she is indebted to defendant at the time of the answer, or was indebted at the time of service of the writ, plus sufficient time not to exceed 1 business day for the garnishee to act expeditiously on the writ, or at any time between such times; and in what sum and what tangible or intangible personal property of defendant the garnishee has in his or her possession or control at the time of his or her answer, or had at the time of the service of the writ, or at any time between such times; and whether the garnishee knows of any other person indebted to defendant, or who may have any of the property of defendant in his or her possession or control. The writ shall state the amount named in plaintiff's motion.

Fla. Stat. § 77.04. Furthermore, Florida Statutes § 77.041, applicable where the defendant is an individual, sets forth the parameters for the notice that the Clerk of Courts must attach to the writ and provide to the defendant. Section 77.041 also lays out the mechanism for the defendant to assert an exemption from garnishment as well as to request a hearing to determine the validity of any such claimed exemption.

##### **B. THE EFFECT OF SERVICE OF A GARNISHMENT WRIT**

In accordance with Florida Statutes § 77.06, once the writ is served on the garnishee, then the garnishee becomes liable to the defendant for all debts owed to the defendant and service of the writ creates a lien on such debts. See Fla. Stat. § 77.06. Moreover, § 77.06(2) requires that the garnishee must "report in its

answer and retain, subject to the provisions of s. 77.19<sup>2</sup> and subject to disposition as provided in this chapter, any deposit, account, or tangible or intangible personal property in the possession or control of such garnishee; and the answer shall state the name or names and addresses, if known to the garnishee, of the defendant and any other persons having or appearing to have an ownership interest in the involved property." Fla. Stat. § 77.06(2).

In *Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc.*, 982 So. 2d 628 (Fla. 2008), the Florida Supreme Court expressly acknowledged the duty of the garnishee to retain any deposit, account, or tangible or intangible personal property in its possession or control, when it stated, "[i]n addition to filing the answer, the garnishee is required to 'retain ... any deposit, account, or tangible or intangible personal property in the possession or control of such garnishee' until disposition or dissolution of the writ." *Id.* at 633 (citing Fla. Stat. § 77.06(2)). Importantly, the *First American Holdings* court also warned that "[i]f a garnishee fails to retain the property of the defendant or otherwise comply with the writ, the plaintiff may obtain a monetary judgment against the garnishee." *Id.* (citing Fla. Stat. § 77.081(1)-(2)).

To avoid potential liability concerns for garnishees in complying with garnishment writs, Section 77.06(3) expressly provides immunity to the garnishee for such compliance. Section 77.06(3) states, "[i]n any case where a garnishee in good faith is in doubt as to whether any indebtedness or property is required by law to be included in the garnishee's answer or retained by it, the garnishee may include and retain the same, subject to the provisions of s. 77.19 and subject to disposition as provided in this chapter, and in such case the garnishee shall not be liable for so doing to the defendant or to any other person claiming the same or any interest therein or claiming to have sustained damage on account thereof." Fla. Stat. § 77.06(3) (emphasis added).

### **C. A GARNISHEE'S FAILURE TO ANSWER THE WRIT COULD RESULT IN SUBSTANTIAL DAMAGES**

Importantly, a failure to answer the garnishment writ could result in substantial damage to the garnishee. Indeed, § 77.081 establishes that a default judgment may be entered against the garnishee, if it fails to file an answer to the garnishment writ. In part, § 77.081 states:

If the garnishee fails to answer as required, a default shall be entered against him or her. On the entry of judgment for plaintiff, a final judgment shall be entered against the garnishee for the amount of plaintiff's claim with interest and costs. No final judgment against a garnishee shall be entered before the entry of, or in excess of, the final judgment against the original defendant with interest and costs. If the claim of the plaintiff is dismissed or judgment is entered against the plaintiff the default against garnishee shall

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<sup>2</sup> Florida Statutes § 77.19 limits the amount of money that a garnishee may retain under Section 77.06 to no more than double the amount specified by the plaintiff, in the writ of garnishment, as to what the plaintiff expects to recover from the defendant. Section 77.19 states, "[ n ]o garnishee who is indebted to or has in his or her possession the money of a person whose money or credits may be garnisheed shall retain out of the money more than double the amount which the writ of garnishment specifies as the amount plaintiff expects to recover or more than double the amount of the judgment plaintiff has recovered." Fla. Stat. § 77.19 (listing potential exemptions for garnishments); see also Fla. Stat. § 222.11 (stating in relevant part, "(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$750 a week are exempt from attachment or garnishment. (b) Disposable earnings of a head of a family, which are greater than \$750 a week, may not be attached or garnished unless such person has agreed otherwise in writing.").

be vacated and judgment for the garnishee's costs entered. This means that the garnishee's failure to answer the writ could result in the garnishee being held liable for the entirety of the defendant's purported debt to the plaintiff (plus interest), should the plaintiff succeed on its underlying action against the defendant.

Fla. Stat. 77.081. Consequently, it is imperative that the garnishee timely answer the writ of garnishment to avoid a perverse scenario where the garnishee - who did not incur the debt in question - is held financially responsible for the debt's full payment plus interest thereon.

#### **D. DISCHARGE THE GARNISHEE FROM LIABILITY UNDER THE WRIT**

Notably, in accordance with Florida Statutes § 77.061, a plaintiff may file a reply to the garnishee's answer and failure to do so constitutes grounds for the garnishee to be discharged from further liability under the garnishment writ. Section 77.061 states, "[w]hen any garnishee answers and plaintiff is not satisfied with the answer, he or she shall serve a reply within 20 days thereafter denying the allegations of the answer as he or she desires. On failure of plaintiff to file a reply, the answer shall be taken as true and on proper disposition of the assets, if any are disclosed thereby, *the garnishee is entitled to an order discharging him or her from further liability under the writ.*" Fla. Stat. § 77.061 (emphasis added). Accordingly, Chapter 77 expressly provides a mechanism for the garnishee to be discharged from the garnishment action and, thereby, avoid liability for the defendant's purported debts outlined in the writ of garnishment. Florida Statutes § 77.082, moreover, states that "[i]f no reply to garnishee's answer is served, garnishee may surrender any goods, chattels, or effects of defendant in garnishee's hands or possession to the sheriff and may pay any money or debt into registry of court. In such event or if garnishee prevails in the trial of any reply and after proper disposition of any property disclosed by garnishee's answer, the court shall discharge him or her from further liability under the writ."

#### **E. PLAINTIFF IS RESPONSIBLE FOR SERVING THE GARNISHEE'S ANSWER ON DEFENDANT**

Pursuant to Florida Statutes § 77.055, "[w]ithin 5 days after service of the garnishee's answer on the plaintiff or after the time period for the garnishee's answer has expired, the plaintiff shall serve, by mail, the following documents: a copy of the garnishee's answer, and a notice advising the recipient that he or she must move to dissolve the writ of garnishment within 20 days after the date indicated on the certificate of service in the notice if any allegation in the plaintiff's motion for writ of garnishment is untrue." Fla. Stat. § 77.055. Thus, the plaintiff bears the burden of serving the defendant with the garnishee's answer to the writ. Section 77.055 further provides that "the plaintiff shall serve [the above described documents] on the defendant at the defendant's last known address and any other address disclosed by the garnishee's answer and on any other person disclosed in the garnishee's answer to have any ownership interest in the deposit, account, or property controlled by the garnishee." *Id.*

#### **F. PROCESS FOR DISSOLUTION OF THE GARNISHMENT WRIT**

Under Florida Statutes § 77.07(1), the defendant may move to dissolve the garnishment writ. More specifically, Section 77.07(1) provides:

The defendant, by motion, may obtain the dissolution of a writ of garnishment, unless the petitioner proves the grounds upon which the writ was issued and unless, in the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action will be rendered in his or her favor. The court shall set down such motion for an immediate hearing. If the writ is dissolved, the action then shall proceed as if no writ had been issued."

Fla. Stat. § 77.07(1). The specific mechanism for such a dissolution is as follows:

The defendant and any other person having an ownership interest in the property, as disclosed by the garnishee's answer, shall file and serve a motion to dissolve the garnishment within 20 days after the date indicated in the certificate of service on the defendant and such other person of the plaintiff's notice required by s. 77.055, stating that any allegation in plaintiff's motion for writ is untrue. On such motion this issue shall be tried, and if the allegation in plaintiff's motion which is denied is not proved to be true, the garnishment shall be dissolved. Failure of the defendant or other interested person to timely file and serve the motion to dissolve within such time limitation shall result in the striking of the motion as an unauthorized nullity by the court, and the proceedings shall be in a default posture as to the party involved; (3) If the motion denies the debt demanded before judgment, the judge may require pleadings on motion of either party on the debt demanded to be filed in such time as he or she fixes; (4) The issue, if any, raised by the pleadings shall be tried at the same time as the issue, if any, made by defendant's motion to plaintiff's motion; (5) If the plaintiff fails to file a dismissal or motion for final judgment within 6 months after filing the writ of garnishment, the writ shall automatically be dissolved and the garnishee shall be discharged from further liability under the writ. The plaintiff has the right to extend the writ for an additional 6 months by serving the garnishee and the defendant a notice of extension and filing in the underlying proceeding a certification of such service.

Fla. Stat. § 77.07(1).

#### **G. JUDGMENT ENTERED AGAINST GARNISHEE**

In addition to potential damages for a garnishee's failure to provide an answer to a Writ of Garnishment, as outlined above, the garnishee is also subject to potential damages for failure to comply with its statutory obligations under the writ. Indeed, pursuant to Florida Statutes § 77.083, judgment will be entered against the garnishee for his or her amount of liability, as established in the garnishee's answer. Specifically, Section 77.083 states:

Judgment against the garnishee on the garnishee's answer or after trial of a reply to the garnishee's answer shall be entered for the amount of his or her liability as disclosed by the answer or trial. Instead of scire facias, the court may subpoena the garnishee to inquire about his or her liability to or possession of property of the defendant. No judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the amount of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee.

Fla. Stat. § 77.083. Thus, the garnishee becomes liable to the plaintiff based on the garnishee's answer. As such, any deviation from the instructions of the writ could render the garnishee liable for any damages sustained as a result of said deviation.

The judgment, however, is not without limit. In *Fehlhaber v. Fehlhaber*, 941 F. 2d 1484 (11th Cir. 1991), the Eleventh Circuit explained the extent of the garnishee's liability pursuant to § 77.083 when it reasoned, "[u]nder Florida law a garnishee is liable to a judgment creditor only to the extent the judgment creditor suffers damages from the garnishee's failure to honor its statutory obligation . . . If the judgment creditor eventually receives the funds to which it was entitled, then there is no basis for requesting compensation from the garnishee." *Fehlhaber v. Fehlhaber*, 941 F. 2d 1484, 1487 (11th Cir. 1991). Thus, the garnishee would remain liable to the plaintiff until the plaintiff receives the funds to which it is entitled. Once the funds are received by the plaintiff, the garnishee is no longer liable to the plaintiff. Therefore, it is imperative that the garnishee not only answer the writ, but also comply with the obligations established by the writ.

#### **H. DEFENDANT'S PERSONAL PROPERTY IN GARNISHEE POSSESSION**

Under Florida law the garnishee is required to surrender any personal property belonging to the defendant which garnishee has in its possession. In any case where the garnishee refuses to surrender said property, the plaintiff may petition the court to order an execution against the garnishee for the unpaid amount of the plaintiff's judgment. More specifically, Florida Statutes § 77.13 provides that

If garnishee will not surrender the personal property belonging to defendant, provided he or she has the power to do so, and which garnishee has admitted is in his or her possession, the court may order execution issued against garnishee for the unpaid amount of plaintiff's judgment against defendant. The officer shall sell garnishee's property as under other executions. Garnishee may release his or her property from the levy and sale by surrendering the property of defendant to the officer levying the execution at the time appointed for the sale of garnishee's property so levied on, or at any time before the day of the sale and by paying the costs of the proceedings to sell up to the time of the surrender.

Fla. Stat. § 77.13. Thus, if garnishee refuses to surrender any of defendant's personal property in its possession, the garnishee may be subjected to an additional court proceeding in which the court may order a writ of execution against the garnishee. Once the writ of execution has been issued, the garnishee's property will be levied and sold with proceeds to be forwarded to the plaintiff. Alternatively, the garnishee can surrender the defendant's property in order to release the levy.

Upon any surrender of property by the garnishee, said property will be sold by the sheriff to fulfill the plaintiff's judgment. Pursuant to Florida Statutes § 77.14, "[w]hen any garnishee has any of the personal property of defendant in his or her possession or control and surrenders it, the sheriff shall receive the property and sell it under the execution against defendant." Fla. Stat. § 77.14.

#### **CONCLUSION & GUIDELINES**

In conclusion, in order to protect the City of Coral Gables as garnishee, it is important to abide by the guidelines outlined above. To summarize the above legal principals, the following guidelines apply to garnishment actions served upon the City of Coral Gables:

- The City of Coral Gables' duties and obligations under a Continuing Writ of Garnishment do not end at filing an Answer to the Continuing Writ of Garnishment.
- In addition to filing the Answer, the City, as the garnishee, must immediately begin retaining the calculated withholding amount from the employee's wages on a biweekly pay period basis.
- The City, as garnishee, is required to submit an answer to a Writ of Garnishment within twenty (20) days. Failure to answer the Writ would subject the garnishee to substantial liability. Thus, it is imperative that the Writ of Garnishment be forwarded to the City Attorney's Office as soon as the Writ is received by any City department.
- The garnishee is permitted to collect up to \$5 against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction, and \$2 for every deduction thereafter.
- Under Florida's Garnishment Statute, once the continuing writ is served on the garnishee, the garnishee becomes liable for all debts it owes to the defendant, for any tangible or intangible property, in the garnishee's possession or control at the time of service of the writ. This includes salary and wages owed to an employee.
- Any deviation by the City of Coral Gables from the Writ of Garnishment will render the City liable to the plaintiff for any damages sustained.
- If the City of Coral Gables fails to surrender any personal property belonging to the defendant, a Writ of Execution will be issued against the City and the City's property could be levied to fulfill the Writ of Garnishment. Upon surrender of the property, any levies placed on City property shall be released.
- When withholding an employee's salary and/or wages pursuant to a continuing writ of garnishment, please bear in mind that under the Consumer Credit Protection Act, 15 U.S.C. § 1673(a), "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) *25 per centum* of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less." 15 U.S.C. § 1673(a).

To: Craig E. Leen, City Attorney for the City of Coral Gables

From: Bridgette N. Thornton Richard, Deputy City Attorney & Yaneris Figueroa, Special Counsel to the City Attorney's Office

RE: Legal Opinion Outlining and Analyzing Florida's Garnishment Law In Relation to the City of Coral Gables' Duties and Obligations Thereunder As Garnishee

Date: August 13, 2013

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To clarify the City of Coral Gables' duties and responsibilities, under Florida law, when served with writs of garnishment, this memorandum shall provide an overview, explanation, and analysis of garnishment proceedings and the City's legal obligations thereunder. For purposes of this memo, the following definitions shall apply: the term "garnishee" means the entity garnishing wages or property; "plaintiff" means the individual or entity seeking to recover debts owed to it through the garnishment process; and "defendant" means the individual that owes the underlying debt to plaintiff.

**I. FLORIDA'S GARNISHMENT LAW: A COMPLICATED STATUTORY FRAMEWORK**

In Florida, garnishment is a method utilized to collect a monetary judgment. Chapter 77 of the Florida Statutes governs garnishment proceedings. It involves a multifaceted process. As an initial matter, to proceed with a garnishment action the plaintiff must sue to secure a debt purportedly owed by the defendant *or* secure a judgment against the defendant. Thus, there must be a separate predicate action involving the purported creditor and debtor to serve as the basis for a garnishment action. Florida Statutes § 77.01 of the Garnishment Statute summarizes this predicate action requirement and states in relevant part:

*Every person or entity who has sued to recover a debt or has recovered judgment in any court against any person or entity has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person or any debt not evidenced by a negotiable instrument that will become due absolutely through the passage of time only to the defendant by a third person, and any tangible or intangible personal property of defendant in the possession or control of a third person.*

Fla. Stat. § 77.01 (emphasis added). Accordingly, a garnishment action may be instituted before or after the entry of a judgment in the predicate action. It should be noted, however, that a writ of garnishment cannot be issued for predicate actions sounding in tort until a judgment is entered

against the defendant. Fla. Stat. § 77.02 (“Before judgment against a defendant no writ of garnishment shall issue in any action sounding in tort.”).

This memorandum will discuss and analyze garnishment proceedings, instituted prior to or after the entry of a judgment in the underlying predicate debt action as well as outline the major contours of Florida’s garnishment law from the perspective of the employer — in this case, the garnishee.

## II. GARNISHMENT PROCEEDINGS *AFTER* ENTRY OF A JUDGMENT

For a post-judgment garnishment, the total amount sought to be garnished must be contained in a judgment that exists *prior* to the issuance of the writ. *Pineiro v. American Exp. Card Services Co.*, 105 So. 3d 614, 616 (Fla. 4th DCA 2013) (“Reading sections 77.01, 77.03, and 77.0305 together, it is apparent that, for a post-judgment garnishment, the total amount sought to be garnished must be contained in a judgment that exists prior to the issuance of the writ.”). Florida Statutes § 77.03 governs post judgment garnishment proceedings. Specifically, § 77.03 states, “[a]fter judgment has been obtained against defendant but before the writ of garnishment is issued, the plaintiff, the plaintiff’s agent or attorney, shall file a motion (which shall not be verified or negative defendant’s exemptions) stating the amount of the judgment. The motion may be filed and the writ issued either before or after the return of execution.” Fla. Stat. § 77.03.

### A. CONTINUING WRIT OF GARNISHMENT – GARNISHING SALARY AND WAGES

Under Florida Statutes § 77.0305, a continuing writ of garnishment is available to garnish “salary or wages.” Fla. Stat. § 77.0305. “The statute contemplates regular payment of salary or wages. The continuing writ to the debtor’s employer ‘provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due....’” *Brock v. Westport Recovery Corp.*, 832 So. 2d 209, 212-13 (Fla. 4th DCA 2002) (quoting Fla. Stat. § 77.0305). More specifically, Section 77.305 states, “if salary or wages are to be garnished to *satisfy a judgment*, the court shall issue a continuing writ of garnishment to the judgment debtor’s employer which provides for the periodic payment of a portion of the salary or wages of the judgment debtor as the salary or wages become due until the judgment is satisfied or until otherwise provided by court order.” Fla. Stat. § 77.0305. Notably, as further discussed below, “[t]he garnishee is only liable for debts due by the garnishee to the defendant, and for tangible or intangible personal property of defendant which is in possession of the garnishee.” *See Security*

*Bank, N.A. v. BellSouth Adver. & Publ'g Corp.*, 679 So. 2d 795, 800 (Fla. 3d DCA 1996), approved, 698 So. 2d 254 (Fla. 1997).

Moreover, “[a] debtor’s status as an employee of the state or its agencies or political subdivisions does not preclude a judgment creditor’s right to garnish the debtor’s wages,” and, “the state, for itself and for its agencies and subdivisions, waives sovereign immunity for the express and limited purpose necessary to carry out [the dictates of Section 77.0305].” *Id.* Section 77.0305 further provides:

[T]he court shall allow the judgment debtor’s employer to collect up to \$5 against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction from the judgment debtor’s salary or wages and up to \$2 for each deduction thereafter. The funds collected by the state under this section must be deposited in the Department of Financial Services Administrative Trust Fund for purposes of carrying out this section.

*Id.* It should be noted, however, that in accordance with the Consumer Credit Protection Act, 15 U.S.C. § 1673(a), “the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) 25 per centum of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less.” 15 U.S.C. § 1673(a).<sup>1</sup>

In sum, based upon the above-discussed statutory provisions where a judgment has already been entered against a defendant and a continuing writ of garnishment is served upon the defendant’s employer as a garnishee, the garnishee should fully comply with said writ by deducting the appropriate withholding amount and forwarding those funds to the plaintiff or transferring the funds in whatever manner directed by the continuing writ of garnishment. . If the

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<sup>1</sup> Subsection (b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673, contains several complicated exceptions to the twenty-five percent aggregate garnishment limit. Therefore, if there are any questions regarding whether the twenty-five percent limit applies, please contact the City Attorney’s Office for further legal review. Additionally, under Florida law the amount of wages that may be deducted could also be reduced should the court find that the defendant is entitled to certain exemptions — such as the head of household exemption. *See Fla.Stat. 77.041(3)* (listing potential exemptions for garnishment actions); *see also Fla. Stat. § 222.11* (stating in relevant part, “(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$750 a week are exempt from attachment or garnishment. (b) Disposable earnings of a head of a family, which are greater than \$750 a week, may not be attached or garnished unless such person has agreed otherwise in writing.”).

continuing writ directs the garnishee to simply hold the funds until further court order, then the funds should be deducted from the defendants salary and/or wages and held until the garnishee receives further direction from the court. Indeed, many continuing writs have express language to that effect. Furthermore, as discussed above, the amount withheld from a defendant's wages, for garnishment purposes, must comply with the provisions of the Consumer Credit Protection Act — 15 U.S.C. § 1673 as well as any court orders that may be issued regarding the defendant's entitlement to an exemption outlined under Florida or federal law.

### III. GARNISHMENT PROCEEDINGS *BEFORE* ENTRY OF A JUDGMENT

If the plaintiff pursues a garnishment action *before* the entry of a judgment, then the provisions of Florida Statutes § 77.031 govern. In relevant part, Section 77.031 provides as follows:

Before judgment has been obtained by the plaintiff against the defendant: (1) A writ of garnishment shall be issued by the court or by the clerk on order of the court. (2) To obtain issuance of the writ, the plaintiff, or the plaintiff's agent or attorney, shall file in the court where the action is pending a verified motion or affidavit alleging by specific facts the nature of the cause of action; the amount of the debt and that the debt for which the plaintiff sues is just, due, and unpaid; that the garnishment is not sued out to injure either the defendant or the garnishee; and that the plaintiff believes that the defendant will not have in his or her possession, after execution is issued, tangible or intangible property in this state and in the county in which the action is pending on which a levy can be made sufficient to satisfy the plaintiff's claim. The writ of garnishment shall set forth a notice to the defendant of the right to an immediate hearing for dissolution of such writ pursuant to s. 77.07. Upon issuance of the writ of garnishment, the clerk of the court shall provide by mail a copy of the writ to the defendant.

Fla. Stat. § 77.031. Thus, a court may issue a garnishment writ simply based upon the filing of a motion by the plaintiff outlining its entitlement to recovery for a purported debt. Seemingly, to assuage due process and fraud concerns, Section 77.031 also provides:

Except when the plaintiff has had an attachment writ issued, no writ of garnishment before judgment shall issue until the plaintiff, or the plaintiff's agent or attorney, gives a bond with surety to be approved by the clerk payable to the defendant in at least double the amount of the debt demanded, conditioned to pay all costs, damages, and attorney's fees that the defendant sustains in consequence of the plaintiff's improperly suing out the writ of garnishment.

Fla. Stat. § 77.031.

### IV. STATUTORY LEGAL PRINCIPLES OF GARNISHMENT ACTIONS

## A. FORM OF THE WRIT OF GARNISHMENT

In accordance with Florida Statutes § 77.04, the issued writ of garnishment should:

[R]equire the garnishee to serve an answer to it on plaintiff within 20 days after service stating whether he or she is indebted to defendant at the time of the answer, or was indebted at the time of service of the writ, plus sufficient time not to exceed 1 business day for the garnishee to act expeditiously on the writ, or at any time between such times; and in what sum and what tangible or intangible personal property of defendant the garnishee has in his or her possession or control at the time of his or her answer, or had at the time of the service of the writ, or at any time between such times; and whether the garnishee knows of any other person indebted to defendant, or who may have any of the property of defendant in his or her possession or control. The writ shall state the amount named in plaintiff's motion.

Fla. Stat. § 77.04. Furthermore, Florida Statutes § 77.041, applicable where the defendant is an individual, sets forth the parameters for the notice that the Clerk of Courts must attach to the writ and provide to the defendant. Section 77.041 also lays out the mechanism for the defendant to assert an exemption from garnishment as well as to request a hearing to determine the validity of any such claimed exemption.

## B. THE EFFECT OF SERVICE OF A GARNISHMENT WRIT

In accordance with Florida Statutes § 77.06, once the writ is served on the garnishee, then the garnishee becomes liable to the defendant for all debts owed to the defendant and service of the writ creates a lien on such debts. *See* Fla. Stat. § 77.06. Moreover, § 77.06(2) requires that the garnishee must “report in its answer and retain, subject to the provisions of s. 77.19<sup>2</sup> and subject to disposition as provided in this chapter, any deposit, account, or tangible or intangible personal property in the possession or control of such garnishee; and the answer shall state the

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<sup>2</sup> Florida Statutes § 77.19 limits the amount of money that a garnishee may retain under Section 77.06 to no more than double the amount specified by the plaintiff, in the writ of garnishment, as to what the plaintiff expects to recover from the defendant. Section 77.19 states, “[n]o garnishee who is indebted to or has in his or her possession the money of a person whose money or credits may be garnisheed shall retain out of the money more than double the amount which the writ of garnishment specifies as the amount plaintiff expects to recover or more than double the amount of the judgment plaintiff has recovered.” Fla. Stat. § 77.19 (listing potential exemptions for garnishments); *see also* Fla. Stat. § 222.11 (stating in relevant part, “(2)(a) All of the disposable earnings of a head of family whose disposable earnings are less than or equal to \$750 a week are exempt from attachment or garnishment. (b) Disposable earnings of a head of a family, which are greater than \$750 a week, may not be attached or garnished unless such person has agreed otherwise in writing.”).

name or names and addresses, if known to the garnishee, of the defendant and any other persons having or appearing to have an ownership interest in the involved property.” Fla. Stat. § 77.06(2).

In *Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc.*, 982 So. 2d 628 (Fla. 2008), the Florida Supreme Court expressly acknowledged the duty of the garnishee to retain any deposit, account, or tangible or intangible personal property in its possession or control, when it stated, “[i]n addition to filing the answer, the garnishee is required to ‘retain ... any deposit, account, or tangible or intangible personal property in the possession or control of such garnishee’ until disposition or dissolution of the writ.” *Id.* at 633 (citing Fla. Stat. § 77.06(2)). Importantly, the *First American Holdings* court also warned that “[i]f a garnishee fails to retain the property of the defendant or otherwise comply with the writ, the plaintiff may obtain a monetary judgment against the garnishee.” *Id.* (citing Fla. Stat. § 77.081(1)-(2)).

To avoid potential liability concerns for garnishees in complying with garnishment writs, Section 77.06(3) expressly provides immunity to the garnishee for such compliance. Section 77.06(3) states, “[i]n any case where a garnishee in good faith is in doubt as to whether any indebtedness or property is required by law to be included in the garnishee’s answer or retained by it, the garnishee may include and retain the same, subject to the provisions of s. 77.19 and subject to disposition as provided in this chapter, *and in such case the garnishee shall not be liable for so doing to the defendant or to any other person claiming the same or any interest therein or claiming to have sustained damage on account thereof.*” Fla. Stat. § 77.06(3) (emphasis added).

### **C. A GARNISHEE’S FAILURE TO ANSWER THE WRIT COULD RESULT IN SUBSTANTIAL DAMAGES**

Importantly, a failure to answer the garnishment writ could result in substantial damage to the garnishee. Indeed, § 77.081 establishes that a default judgment may be entered against the garnishee, if it fails to file an answer to the garnishment writ. In part, § 77.081 states:

If the garnishee fails to answer as required, a default shall be entered against him or her. On the entry of judgment for plaintiff, a final judgment shall be entered against the garnishee for the amount of plaintiff’s claim with interest and costs. No final judgment against a garnishee shall be entered before the entry of, or in excess of, the final judgment against the original defendant with interest and costs. If the claim of the plaintiff is dismissed or judgment is entered against the plaintiff the default against garnishee shall be vacated and judgment for the garnishee’s costs entered. This means that the garnishee’s failure to answer the

writ could result in the garnishee being held liable for the entirety of the defendant's purported debt to the plaintiff (plus interest), should the plaintiff succeed on its underlying action against the defendant.

Fla. Stat. 77.081. Consequently, it is imperative that the garnishee timely answer the writ of garnishment to avoid a perverse scenario where the garnishee — who did not incur the debt in question — is held financially responsible for the debt's full payment plus interest thereon.

#### **D. DISCHARGING THE GARNISHEE FROM LIABILITY UNDER THE WRIT**

Notably, in accordance with Florida Statutes § 77.061, a plaintiff may file a reply to the garnishee's answer and failure to do so constitutes grounds for the garnishee to be discharged from further liability under the garnishment writ. Section 77.061 states, "[w]hen any garnishee answers and plaintiff is not satisfied with the answer, he or she shall serve a reply within 20 days thereafter denying the allegations of the answer as he or she desires. On failure of plaintiff to file a reply, the answer shall be taken as true and on proper disposition of the assets, if any are disclosed thereby, *the garnishee is entitled to an order discharging him or her from further liability under the writ.*" Fla. Stat. § 77.061 (emphasis added). Accordingly, Chapter 77 expressly provides a mechanism for the garnishee to be discharged from the garnishment action and, thereby, avoid liability for the defendant's purported debts outlined in the writ of garnishment. Florida Statutes § 77.082, moreover, states that "[i]f no reply to garnishee's answer is served, garnishee may surrender any goods, chattels, or effects of defendant in garnishee's hands or possession to the sheriff and may pay any money or debt into registry of court. In such event or if garnishee prevails in the trial of any reply and after proper disposition of any property disclosed by garnishee's answer, the court shall discharge him or her from further liability under the writ."

#### **E. PLAINTIFF IS RESPONSIBLE FOR SERVING THE GARNISHEE'S ANSWER ON DEFENDANT**

Pursuant to Florida Statutes § 77.055, "[w]ithin 5 days after service of the garnishee's answer on the plaintiff or after the time period for the garnishee's answer has expired, the plaintiff shall serve, by mail, the following documents: a copy of the garnishee's answer, and a notice advising the recipient that he or she must move to dissolve the writ of garnishment within 20 days after the date indicated on the certificate of service in the notice if any allegation in the plaintiff's motion for writ of garnishment is untrue." Fla. Stat. § 77.055. Thus, the plaintiff bears the burden of serving the defendant with the garnishee's answer to the writ. Section 77.055

further provides that “the plaintiff shall serve [the above described documents] on the defendant at the defendant’s last known address and any other address disclosed by the garnishee’s answer and on any other person disclosed in the garnishee’s answer to have any ownership interest in the deposit, account, or property controlled by the garnishee.” *Id.*

#### **F. PROCESS FOR DISSOLUTION OF THE GARNISHMENT WRIT**

Under Florida Statutes § 77.07(1), the defendant may move to dissolve the garnishment writ. More specifically, Section 77.07(1) provides:

The defendant, by motion, may obtain the dissolution of a writ of garnishment, unless the petitioner proves the grounds upon which the writ was issued and unless, in the case of a prejudgment writ, there is a reasonable probability that the final judgment in the underlying action will be rendered in his or her favor. The court shall set down such motion for an immediate hearing. If the writ is dissolved, the action then shall proceed as if no writ had been issued.”

Fla. Stat. § 77.07(1). The specific mechanism for such a dissolution is as follows:

The defendant and any other person having an ownership interest in the property, as disclosed by the garnishee’s answer, shall file and serve a motion to dissolve the garnishment within 20 days after the date indicated in the certificate of service on the defendant and such other person of the plaintiff’s notice required by s. 77.055, stating that any allegation in plaintiff’s motion for writ is untrue. On such motion this issue shall be tried, and if the allegation in plaintiff’s motion which is denied is not proved to be true, the garnishment shall be dissolved. Failure of the defendant or other interested person to timely file and serve the motion to dissolve within such time limitation shall result in the striking of the motion as an unauthorized nullity by the court, and the proceedings shall be in a default posture as to the party involved; (3) If the motion denies the debt demanded before judgment, the judge may require pleadings on motion of either party on the debt demanded to be filed in such time as he or she fixes; (4) The issue, if any, raised by the pleadings shall be tried at the same time as the issue, if any, made by defendant’s motion to plaintiff’s motion; (5) If the plaintiff fails to file a dismissal or motion for final judgment within 6 months after filing the writ of garnishment, the writ shall automatically be dissolved and the garnishee shall be discharged from further liability under the writ. The plaintiff has the right to extend the writ for an additional 6 months by serving the garnishee and the defendant a notice of extension and filing in the underlying proceeding a certification of such service.

Fla. Stat. § 77.07(1).

#### **G. JUDGMENT ENTERED AGAINST GARNISHEE**

In addition to potential damages for a garnishee's failure to provide an answer to a Writ of Garnishment, as outlined above, the garnishee is also subject to potential damages for failure to comply with its statutory obligations under the writ. Indeed, pursuant to Florida Statutes § 77.083, judgment will be entered against the garnishee for his or her amount of liability, as established in the garnishee's answer. Specifically, Section 77.083 states:

Judgment against the garnishee on the garnishee's answer or after trial of a reply to the garnishee's answer shall be entered for the amount of his or her liability as disclosed by the answer or trial. Instead of scire facias, the court may subpoena the garnishee to inquire about his or her liability to or possession of property of the defendant. No judgment in excess of the amount remaining unpaid on the final judgment against the defendant or in excess of the amount of the liability of the garnishee to the defendant, whichever is less, shall be entered against the garnishee.

Fla. Stat. § 77.083. Thus, the garnishee becomes liable to the plaintiff based on the garnishee's answer. As such, any deviation from the instructions of the writ could render the garnishee liable for any damages sustained as a result of said deviation.

The judgment, however, is not without limit. In *Fehlhaber v. Fehlhaber*, 941 F. 2d 1484 (11th Cir. 1991), the Eleventh Circuit explained the extent of the garnishee's liability pursuant to § 77.083 when it reasoned, "[u]nder Florida law a garnishee is liable to a judgment creditor only to the extent the judgment creditor suffers damages from the garnishee's failure to honor its statutory obligation ... If the judgment creditor eventually receives the funds to which it was entitled, then there is no basis for requesting compensation from the garnishee." *Fehlhaber v. Fehlhaber*, 941 F. 2d 1484, 1487 (11th Cir. 1991). Thus, the garnishee would remain liable to the plaintiff until the plaintiff receives the funds to which it is entitled. Once the funds are received by the plaintiff, the garnishee is no longer liable to the plaintiff. Therefore, it is imperative that the garnishee not only answer the writ, but also comply with the obligations established by the writ.

#### **H. DEFENDANT'S PERSONAL PROPERTY IN GARNISHEE'S POSSESSION**

Under Florida law the garnishee is required to surrender any personal property belonging to the defendant which garnishee has in its possession. In any case where the garnishee refuses to surrender said property, the plaintiff may petition the court to order an execution against the garnishee for the unpaid amount of the plaintiff's judgment. More specifically, Florida Statutes § 77.13 provides that

If garnishee will not surrender the personal property belonging to defendant, provided he or she has the power to do so, and which garnishee has admitted is in his or her possession, the court may order execution issued against garnishee for the unpaid amount of plaintiff's judgment against defendant. The officer shall sell garnishee's property as under other executions. Garnishee may release his or her property from the levy and sale by surrendering the property of defendant to the officer levying the execution at the time appointed for the sale of garnishee's property so levied on, or at any time before the day of the sale and by paying the costs of the proceedings to sell up to the time of the surrender.

Fla. Stat. § 77.13. Thus, if garnishee refuses to surrender any of defendant's personal property in its possession, the garnishee may be subjected to an additional court proceeding in which the court may order a writ of execution against the garnishee. Once the writ of execution has been issued, the garnishee's property will be levied and sold with proceeds to be forwarded to the plaintiff. Alternatively, the garnishee can surrender the defendant's property in order to release the levy.

Upon any surrender of property by the garnishee, said property will be sold by the sheriff to fulfill the plaintiff's judgment. Pursuant to Florida Statutes § 77.14, "[w]hen any garnishee has any of the personal property of defendant in his or her possession or control and surrenders it, the sheriff shall receive the property and sell it under the execution against defendant." Fla. Stat. § 77.14.

#### **CONCLUSIONS & GUIDELINES**

In conclusion, in order to protect the City of Coral Gables as garnishee, it is important to abide by the guidelines outlined above. To summarize the above legal principals, the following guidelines apply to garnishment actions served upon the City of Coral Gables:

- The City of Coral Gables' duties and obligations under a Continuing Writ of Garnishment do not end at filing an Answer to the Continuing Writ of Garnishment.
- In addition to filing the Answer, the City, as the garnishee, must immediately begin retaining the calculated withholding amount from the employee's wages on a bi-weekly pay period basis.
- The City, as garnishee, is required to submit an answer to a Writ of Garnishment within twenty (20) days. Failure to answer the Writ would subject the garnishee to substantial liability. Thus, it is imperative that the Writ of Garnishment be forwarded to the City Attorney's Office as soon as the Writ is received by any City department.

- The garnishee is permitted to collect up to \$5 against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction, and \$2 for every deduction thereafter.
- Under Florida's Garnishment Statute, once the continuing writ is served on the garnishee, the garnishee becomes liable for all debts it owes to the defendant, for any tangible or intangible property, in the garnishee's possession or control at the time of service of the writ. This includes salary and wages owed to an employee.
- Any deviation by the City of Coral Gables from the Writ of Garnishment will render the City liable to the plaintiff for any damages sustained.
- If the City of Coral Gables fails to surrender any personal property belonging to the defendant, a Writ of Execution will be issued against the City and the City's property could be levied to fulfill the Writ of Garnishment. Upon surrender of the property, any levies placed on City property shall be released.
- When withholding an employee's salary and/or wages pursuant to a continuing writ of garnishment, please bear in mind that under the Consumer Credit Protection Act, 15 U.S.C. § 1673(a), "the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) *25 per centum* of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less." 15 U.S.C. § 1673(a).