

Served with a Writ of Garnishment? Understand the Duties, Deadlines to Avoid Liability



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Few things give financial institutions and employers more agita than being served with a writ of garnishment. Whether large or small, any business that holds assets or pays wages can be served with a writ of garnishment, and no matter how sophisticated the operation, can inadvertently run afoul of the statutory scheme for garnishment in Florida. Unfortunately, when a company on whom a writ has been served fails to comply with Florida's garnishment statute, it can find itself on the hook for the amount sought to be garnished. Accordingly, knowing what to do when a writ comes in, and the deadlines by which to do it, are vital to avoiding this potential liability. This article addresses some, but not all, of these issues.

A writ of garnishment is a legal tool that can be used by someone who has sued to recover a debt or has already obtained a judgment against a defendant. The person trying to collect on the debt is known as the "garnishor," the defendant whose assets or wages are being sought is known as the "debtor," and the third party served with the writ is known as the "garnishee."

Essentially, the garnishor is asking the garnishee to hold some or all of the assets or wages it has that belong to the debtor so that the garnishee can use them to satisfy the debt owed to it by the debtor. There are two types of writs that can be issued: a "writ of garnishment" seeks to recover property of the debtor in the garnishee's possession (like cash or securities), while a "continuing writ of garnishment" seeks to garnish a portion of the debtor's salary or wages.

Florida's garnishment scheme is codified in Chapter 77 of the Florida Statutes. Because garnishment proceedings are statutory in nature, they must be strictly construed and interpreted as written.

The first duty of a garnishee when served with a writ is to immediately freeze the appropriate amount of the debtor's assets it holds. Under Florida's statute, the appropriate amount of assets to be frozen is no more than double the amount stated in the writ. Immediately freezing the debtor's assets is of paramount importance because the service of the writ instantly places a lien on the debtor's debts and property held by the garnishee. The lien is in favor of the garnishor and makes the garnishee liable to the garnishor for all debts the garnishee owes to the debtor, as well as for any personal property of the debtor in the garnishee's possession or control. As a result, if the garnishee fails to freeze the appropriate amount of assets and permits them to be disbursed, the garnishor will likely have a claim against the garnishee for the value of the assets or the amount stated in the writ.

After the assets are frozen, the garnishee has 20 days to answer the writ. It is important to note that, since this deadline is statutory, it may not be extended even if there is agreement between the parties. The answer must state: (1) whether the garnishee holds assets belonging to the debtor between the time the garnishee was served with the writ and the time it answers the writ, (2) the amount and a description of any said assets, (3) the name and address of the debtor and anyone else who has or appears to have an ownership interest in the assets, and (4) whether the garnishee knows of any other person who holds assets belonging to the debtor.

Importantly, where a garnishee has a good faith doubt as to whether assets are subject to the writ, the statute provides a safe harbor sheltering the garnishee from liability for freezing and including such assets in its answer. The statute also permits the garnishee to recover its reasonable attorney's fees and costs in connection with responding to the writ. The company's request for these statutory fees should be made in the answer so as not to waive this relief.

The answer must be served on the garnishor and filed with the court. A relatively recent statutory amendment permits an authorized employee or agent of the company (even if not an attorney) to execute, file, and serve the answer on the entity's behalf. If handling a garnishment internally without retaining counsel, it is imperative that the garnishee ensure that its answer is timely filed, as failure to do so will likely result in a default and entry of a final judgment against the garnishee in the amount of the garnishor's claim, plus interest and costs.

Once the answer is served, a garnishee's involvement is ordinarily minimal and concludes when it is instructed to dispose of the assets at issue pursuant to a court order. Sometimes, however, a garnishee may have to actively participate in the litigation. This can occur, for example, when a party challenges the information in the answer or the ownership of the property being retained. There are also other issues that can require the garnishee to appear in court and, in some instances, present evidence in a jury trial. These potential issues, along with concerns regarding the unauthorized practice of law and the fact that Florida's garnishment statute permits garnishees to recover their reasonable attorney's fees and costs, lead many companies to retain counsel once they receive a writ of garnishment.

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