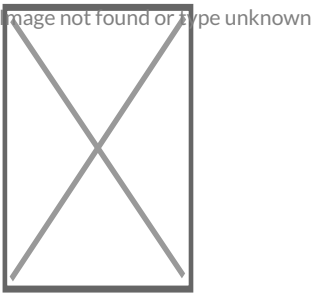


Garnishment Decision Could Expose Banks & Employers to Significant Liability



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A September 8, 2015, judgment from the District Court for the Northern District of Georgia may have profound implications for employers, financial institutions, or anyone else attempting to collect on a debt or judgment in Georgia.

Judge Shoob, writing for the Court in *Strickland v. Alexander*, held that Georgia's garnishment statute is unconstitutional. Garnishment is a legal process by which a creditor can seize wages, bank accounts, or other assets from a third party (the "garnishee") to satisfy a debt that the creditor is owed. For example, an ex-wife who is owed child support payments could initiate garnishment proceedings against her ex-husband's employer and garnish a portion of his wages. She could do the same to his bank accounts and seize a portion of his assets.

There are exceptions to the garnishment statute. Certain kind of funds (like, for example, worker's compensation payments) cannot be garnished by a creditor. Georgia's garnishment statute, however, does not provide judgment debtors with notice that some of their funds may be exempt from garnishment, nor does it inform them of the process to claim such exemptions. In effect, the Georgia Code allows debtors to retain certain crucial categories of funds, but the garnishment statute does require creditors or garnishees to inform debtors of their right to do so or how to go about it.

The Sept. 8 order issued by the Court addressed these deficiencies, and it held that Georgia's garnishment process violates the due process clause of the federal Constitution. That clause guarantees that the government will not “deprive any person of life, liberty, or property, without due process of law.” Judge Shoob reasoned that the garnishment statute deprives debtors of property without due process of law because it does not inform them of their potential exemptions or the method for claiming them. Specifically, the garnishment statute does not provide “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” The Court therefore ruled that the garnishment statute was unconstitutional and prohibited any garnishment of Mr. Strickland's bank accounts or wages.

This decision has major ramifications for Georgia businesses now, and potentially even more profound impacts if upheld by the Court of Appeals for the Eleventh Circuit. For now, the trial court Order only prohibits the Gwinnett County State Court Clerk from garnishing Mr. Strickland's assets. However, its reasoning could well influence other courts in the state. Even if this decision is only persuasive for those other courts, litigants who see their wages garnished will likely now raise the constitutional line of attack much more frequently. If the decision is affirmed by the Eleventh Circuit, then creditors will be completely unable to deploy the garnishment statute until the Legislature modifies it. And in the meantime, the *Strickland* decision increases the practical likelihood that other trial courts will follow the Northern District's lead and declare the garnishment statute unconstitutional.

As many problems as the decision presents for creditors, however, it may present even more problems for banks and employers. Before the *Strickland* decision, those entities were relatively “safe” during garnishment proceedings: as long as a bank or employer verified that the paperwork filed by a creditor was legitimate, it could freeze garnished funds and pay those funds into court without fear of retribution.

However, *Strickland v. Alexander* could be read to impose a new duty on those garnishee institutions (banks and employers) to inform a debtor of exemptions to the garnishment statute and the procedures for invoking them. In other words, a bank or employer might have to give a debtor a rundown of applicable law or face sanctions itself. Furthermore, the *Strickland* Order was relatively particular about what such warnings should and should not contain. Failure to provide such warnings — and to provide them properly — could now expose employers and banks to liability. Finally, the decision may affect or jeopardize continuing garnishments that already exist. Banks, employers, and other institutions should carefully monitor developments as *Strickland* advances in the federal courts, and if they are concerned, should consult attorneys who have experience with Georgia's garnishment statute and federal law.

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Practice Areas

- Banks & Financial Institutions
- Business & Corporate Law

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