STUDY COMMITTEE ON WAGE GARNISHMENT
FINAL REPORT TO SCOPE AND PROGRAM

Submitted by Bill Henning, Chair
April 8, 2013

Since submitting its 2013 Midyear Report to Scope and Program, the Study Committee on Wage Garnishment has concluded that further deliberations are unnecessary and that a stakeholder meeting is not likely to be productive. Accordingly, this report constitutes the committee's final report. The unanimous recommendation of the committee's members, advisors, and observers is that a drafting committee be authorized and charged with preparing an act on wage garnishment.

In its 2013 Midyear Report, the committee detailed the issues that it had identified as appropriate for a stakeholder meeting if one were to be held, and it now recommends that those issues be addressed by a drafting committee. A compilation of the issues is attached as Appendix I. There is one issue that the committee has considered but as to which it has not reached a conclusion: whether merely responding to a garnishment order (*i.e.*, filing an initial report to the issuing court) constitutes the unauthorized practice of law. The committee is aware that addressing this issue in an act poses difficulties, but it is of great importance to employers because of the cost associated with hiring an attorney to respond to each order. Accordingly, the study committee recommends that the charge to the drafting committee exclude the issue from the scope of the act but that the drafting committee be permitted to study the issue and, in its discretion, seek an expansion of its charge. The study committee also recommends that the charge to the drafting committee exclude the topics discussed in a memorandum submitted by Commissioner Steve Willborn (*i.e.*, voluntary wage assignments, the forms in which payment to employees must be made, pay periods, and the types of deductions from wages that should be authorized). Commissioner Willborn's memorandum is attached to this report (Appendix II) to assist Scope and Program, and a drafting committee should one be authorized, in understanding exactly what is being excluded.

In light of the specificity of the Study Committee's recommendations concerning issues that should and should not be addressed by a drafting committee, Scope and Program may wish to consider recommending that a drafting committee be authorized to address only the issues recommended in this report (including a study of the practice-of-law issue) and that it be required to seek an expansion of its charge if it wishes to address additional issues. This type of limited charge has proven useful in the past, such as with the drafting committee that produced the 2010 amendments to Article 9 of the UCC.

The study committee has received significant help from observers representing the American Payroll Association (APA), which brought the initial proposal to Scope and Program, and the National Federation of Independent Business. Although quite a number of other potential stakeholders have been identified,[1] there has been no success in bringing them into the process at

[1] *E.g.*, National Association of Consumer Bankruptcy Attorneys, National Consumer Law Center, Consumers Union, U.S. Chamber of Commerce, AFL-CIO, National Association

the study-committee stage. The committee has concluded that the prospect of a drafting project on wage garnishment is unlikely to have sufficient visibility to bring them to a stakeholder meeting. Experience indicates that some of these potential stakeholders will participate once a drafting project is underway.

The study committee has considered carefully the Statement of Policy Establishing Criteria and Procedures for Designation and Consideration of Uniform and Model Acts and has concluded that a drafting project would be appropriate in light of the criteria set forth therein. Specifically:

1) There is an obvious reason for a uniform or model act on wage garnishment and preparation of such an act will be a practical step toward uniformity of state law;

2) There is a reasonable probability that such an act will be enacted in a substantial number of states. Experience indicates that acts are most successful when there is no strong opposition and when there are stakeholders that will expend significant resources to gain enactment. In this instance, there is every reason to believe that the APA and perhaps other stakeholders will expend significant resources at the enactment stage, and there is no reason to believe that there will be strong opposition;

3) Such an act will facilitate interstate economic needs by i) dramatically reducing the cost to multistate employers of complying with complex, outdated, and not easily understood laws that vary widely from state to state, and ii) resolving significant conflict-of-law issues; and

4) None of the negative criteria set forth in the Statement of Policy are applicable.

The study committee requests that, if feasible, Scope and Program consider this report and make a recommendation to the Executive Committee before the 2013 Annual Meeting. Although we assume that no drafting committee meetings would be held before the fall, the early appointment of a committee and selection of a reporter would be a significant advantage in meeting the goal of presenting a thorough first draft for consideration at the 2014 Annual Meeting.

Please let me know if there are concerns that need to be addressed before Scope and Program meets to consider this report. I am available to attend a meeting of Scope and Program, either by phone or in person.

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of Manufacturers, National Association of Retail Collection Attorneys, Consumer Federation of America, Consumer Financial Protection Bureau, National Association of Manufacturers.

Appendix I

Study Committee on Wage Garnishment
Compilation of Reports on Potential Issues

This compilation contains reports prepared by members of the Study Committee and observers on issues that might be addressed by a drafting committee. The reports were submitted in different formats and, with minor variations, those formats have not been changed for purposes of this compilation.

Issue I. Choice of Law

An issue not addressed in the December 23, 2011, APA proposal to Scope & Program but which the study committee concluded might appropriately be addressed in a uniform act deals with choice of law. This memo will be brief because the basic choice-of-law issue a uniform law might address can be stated with relative ease, but there is an underlying due-process issue that would be best addressed by a constitutional-law scholar.

The following example illustrates the due-process issue.[2] Assume a New York court with *in personam* jurisdiction has rendered a money judgment against a debtor who currently lives and works at a Wal-Mart store located in Florida. Wal-Mart is incorporated in Delaware, has its chief executive office in Arkansas, and does business all over the country. Can the creditor domesticate the judgment in Connecticut and constitutionally garnish the employee's wages by serving Wal-Mart in that state? There are really two due-process issues here: whether there are sufficient minimum contacts between Wal-Mart and Connecticut to permit the garnishment to proceed in that state, and whether there are sufficient minimum contacts between the debtor and Connecticut. This report assumes that the court that issues the garnishment summons may lawfully do so under the Constitution.

The choice-of-law issue addressed by this report relates to the substantive garnishment law that should be applied in a multi-jurisdictional case. Using the prior example (and assuming the Connecticut court has proper jurisdiction), should the court apply the substantive garnishment rules of Connecticut or of Florida, where the debtor works? There is much at stake here because Florida law does not permit wage garnishment at all. There is no clear answer under current law and this report takes no position on the issue. The purpose of the report is simply to point out that there is a serious choice-of-law problem. Perhaps the best way to resolve the problem is by a uniform law, enacted in both Connecticut and Florida, that gives the same answer in all cases. Historically, the ULC has often promulgated uniform laws dealing with choice-of-law issues and should be well situated to deal with this one.

[2] The example is from R. Laurence, *Out-of-State Garnishments: Work in Progress, Offered in Tribute to Robert A Leflar*, 50 Ark. L. Rev. 415 (1997).

Issue II. Obligation to Notify Debtor

Present Practice

It is common today to require employers to notify employees of wage garnishments. In a few states, the garnisher is required to notify the employee. There is a wide variety among the states as to the contents of the notification.

Issues

The desire to provide notice to the employee raises the following issues.

1. Should creditor, employer, or both give notice to the employee?

2. How soon after service of the garnishment summons should notice to the employee be required?

3. Should notice be required before service of the garnishment summons?

4. What information should the notice contain beyond notice of the garnishment itself?

    a. The effect of the garnishment?

    b. The right to contest the garnishment?

    c. The procedure for contesting garnishment?

    d. The amount of exempt wages to be paid to the employee despite the garnishment?

    e. Protections for the employee, including prohibition of discharge?

5. Should the sheriff be used to give notice?

6. How can the cost of notice be kept to a minimum?

7. How can notice be made easily understandable?

8. Should a uniform act provide a statutory form for notice?

9. Should notice explain multiple garnishments?

10. Should notice get into explaining competing priorities, including child support?

Objectives

The appropriate objectives for imposing an obligation to notify the debtor of the wage garnishment include:

1. To give the debtor/employee as much time as possible to adjust to the reduced pay about to be received as a consequence of the withheld amounts of pay;

2. To avoid telegraphing the garnishment at a time when employer and employee can conspire to defeat all or a portion of the garnishment;

3. To make the cost of giving notice as low as possible;

4. To make it certain that notice is understood;

5. To prevent employee confusion about the collateral consequences of the garnishment;

6. To make receipt of notice as reliable as possible; and

7. To design a system of notice that will be adopted uniformly.

Issue 3. Procedures for multiple garnishments

Present Law

Most states give priority to the first garnishment served, requiring garnishees to apply all sums withheld to the benefit of that garnisher. When that debt has been satisfied, the next earliest garnishment becomes the effective garnishment. This creates a race for priority and probably pushes some creditors to garnishment when, were there not a race, they would be more patient with the debtor.

Montana has a provision that gives priority to garnishments in the order the garnishment summons is received by the sheriff, not in the order served on the employer.

Kansas places all garnishees on the same priority, requiring employers to apportion all withheld sums to creditors on an equal footing, no matter when their garnishment summons was served.

Some claims have a higher priority than others. These priorities are illustrated by the Michigan priorities, which are, in order: orders from bankruptcy court, orders for past due state and federal taxes, support orders, and earlier served garnishments. Michigan is alone, or almost alone, in listing the priorities in its garnishment statute. More common is for the priorities to be established in other law, that is, in tax law or child support law.

Federal law creates "federal rules of aggregation" that are to be applied when different types of wage garnishment are served. That refers to {cite} [and discuss]

A variation on multiple garnishments is when a creditor has made an agreement with the debtor, either to except a lesser amount than non-exempt wages or an assignment of wages. A uniform act would have to address what happens to such an agreement or assignment when a subsequent garnishment from a different creditor is served?

Issues

1. Should state law repeat or expand the federal priorities? Or should state law accept that the federal law prevails under the supremacy clause? Or should state law have a backup provision to kick in if the federal rule is ever repealed?

2. How should an existing agreement between employee and creditor for the creditor to except less than non-exempt wages be treated when a different creditor serves a garnishment?

3. How should an assignment of wages be affected by a subsequent garnishment?

4. Should the first garnishment have priority until satisfied? Or should all garnishers share equally in non-exempt wages (the Kansas rule)?

5. Should a subsequent garnishment be a nullity when served or should it simply be dormant until the debt underlying the earlier garnishment is satisfied?

6. What kind of notice to employee, and earlier garnishers, should be required when a creditor with a higher priority serves a garnishment? And what other procedural complications arise in that situation?

Issue 4. Involvement of court and clerk of court

States vary on how much the court is involved with garnishments. Most surprising to me was that quite a few states require that withheld sums be paid to the clerk of court who pays them over to the creditor (most likely to the creditor's attorney). That makes the clerk of court a bookkeeper for the parties. More commonly withheld sums are paid directly to the creditor's attorney. Paying to the clerk seems an unnecessary safeguard against a nonexistent risk. Both lawyer and employer will be keeping a record and, in my view, can be trusted to keep honest accounts.

Minnesota may have the most court-free procedure. This may sound strange for a consumer-friendly state like Minnesota, but wage garnishment is permitted before judgment is entered. (That is unless memory fails me and I misread Amy's material). A socialist (Finnish) legislator and consumer friend from Northern Minnesota was the author of the procedure shortly after I left the senate. He was prompted by the cost to creditor -- and ultimately debtor -- of filing the papers to get a default judgment (travel to county seat in his huge county and the filing fee itself), even when a complaint was not answered. So he persuaded the legislature to authorize wage garnishment based on mere *eligibility* for a default judgment. That leaves the court out of the

whole thing, unless the garnishment is objected to.

Iowa has a strange procedural variation. After an employer receives a "Notice of Garnishment" the employer gives that notice to the employee. The employee has ten days to contest the garnishment and to claim exemptions. I think the wiser procedure, apparently followed in most states, is to have the employer calculate and pay to the employee the amount of wages exempt.

I think one of our issues should be how to make the employer's "answer" as simple as possible, while giving the employee a fair shot at asserting all defenses.

Issue 5. Disposable income; withholding calculations; process for claiming exemptions

If a wage garnishment project were approved, the drafting committee would have to consider issues relating to the definition of disposable income, withholding calculations, and the process for claiming exemptions. You asked us to think about how these issues might be presented and addressed in a uniform law.

We will discuss each of these issues below (and a couple of others that seem to us to be closely related), but we thought it might be useful to talk first about how a uniform law might provide value on this general class of issues. One of the principal problems multi-state employers have in complying with wage garnishment laws is large differences between the states in how they define disposable income, in the measures and levels they use for exemptions, in how they define limits on the amount that can be garnished, etc. Although this presents compliance problems for multi-state employers, it is also true that different states have different preferences about the level of protection they want to provide for employees subject to garnishment. It is these different preferences that result in different statutory language across the states. We think that a uniform law could provide great value by (a) providing common definitions for subjects such as disposable income, exemptions, and limits while, at the same time (b) permitting states the option of inserting whatever ***level*** of protection they want within those common definitions. In essence, each state would be ordering off the same menu of definitions, but they might order bigger or smaller helpings. This would ease the compliance burdens of multistate employers, while preserving the ability of states to implement their different preferences.

You will see what we mean by this as we go through the list of issues we were assigned.

Disposable Income. Wage garnishment statutes must contain a definition of disposable income. This is the income that might be garnished, subject to other restrictions such as exemptions and limits. In general, definitions of disposable income contain two components: (1) a definition of what is included in an individual’s gross income (for example, does it include bonuses, commissions, pension payments, etc.) and (2) specification of what deductions can be

made from gross income (for example, all states deduct taxes, but some also deduct things like union dues, health insurance premiums, etc.).

The general idea here would be that a uniform law could provide standard definitions of each of the possible items that might be included within either gross income or deductions. Thus, it could provide a standard general definition of gross income and definitions of things such as bonuses, commissions, union dues, insurance premiums, etc. The uniform law might make suggestions about whether states should include or not include certain subcategories in their statutes based on considerations such as administrative efficiency and wage policy but, in general, states would be able to pick and choose which standard definitions they would include. The goal would be to provide standard definitions that could be pulled off the shelf to accomplish that particular state's policy goals. This would tend to ease, even if it would not solve, problems multistate employers have in complying with differing garnishment laws in various states. The drafting committee for a uniform law could also consider the structure and feasibility of broader solutions. For example, the committee might consider proposing truly uniform provisions or comity provision through which each state would agree to the disposable income definitions of the employer's state of incorporation.

Exemption Amounts. This is the amount that is exempt from garnishment. Generally, the exemption amount is a multiple of the federal minimum wage (say 30, 40, or 50 times the federal minimum wage), but some states use the state minimum wage instead, or vary the amount if the garnishee is the head of a household, or use flat dollar amounts.

Again, the general idea here would be to develop a standard definition for the exemption amount and standard definitions for situations in which the exemption amount might be increased (for example, for a head of household). Under this approach, as with the definition of disposable income, States would have options for expressing their preferences about the proper level(s) of the exemption, but they would be choosing off a standardized menu of options, which would ease administrative burdens.

Withholding Limits. Withholding limits define the maximum amount that can be garnished. Federal law provides a minimum level of protection for the employee; the maximum that can be withheld under federal law is the lesser of the amount disposable earnings exceeds 30 times the federal minimum wage or 25% of disposable income.[3] (There is a higher limit if the garnishment is for child support, bankruptcy or taxes and there is aggregation of multiple orders so that employees are left with a minimum amount of money.) Some states, however, provide greater protections and their formulations differ. Some states define a limit based on gross

[3] In practice, this means that under federal law the maximum that can be withheld for a person making between 30 and 40 times the federal minimum wage is the amount the person makes above 30 times the federal minimum wage. For persons earning more than 40 times the federal minimum wage, the maximum is 25% of disposable income.

income rather than disposable income and some decrease the maximum percentage that can be withheld (thereby granting greater protection to the employee's interests over the creditor's interests).

Again, the idea here would be to have a standard definition of the withholding limit that almost certainly would mirror the federal statute. But states would have the option of inserting a different number in their statutes to increase protection, if they wish.

Employee *Protection from Employer Discrimination*. There are two issues here. First, federal law prohibits employers from firing employees for one garnishment. Some states have similar or stronger protections. Some include protection from any "discrimination" and others only protect from "discharge." A uniform law could provide language on this and each state could insert the level of protection is might want. Second, state laws have language governing the order of payment when there are multiple garnishments at the same time. These laws could be standardized and clarified through a uniform law.

Processes. States currently use different procedures for processing garnishments. For example, some states (but not all) permit employee objections after the service of garnishments and some states (but not all) begin the process by serving interrogatories on employers as a prerequisite to issuing withholding orders. In most states, the burden is placed on employers to resolve appropriately all the issues above and then to implement each writ of garnishment appropriately. Employers generally suffer some risk of liability if errors are made.

A uniform law would be useful if it provided a uniform procedure for processing garnishment claims. Uniformity would provide some benefit almost regardless of what that procedure is. But even more value could be added if the uniform procedure were sensible and efficient. In general, a sensible and efficient procedure would attempt to position the employer as a relatively disinterested party (almost a functionary) in the garnishment process and to place the risk and burden of determining the relevant issues (such as those discussed above) on the creditor, debtor (employee), and court. This would be a challenging task, but could provide great value if it could be done.

Issue 6. How long a garnishment remains in effect

The purpose of this memo is to give a very brief sketch of the current state of the law regarding how long wage garnishments run, and issues that may arise in the course to trying to come up with a uniform rule in this area.[4]

[4] In preparing this memo, I depended largely on the work of Amy Bryant, who was kind enough to provide material to Bill Henning from the upcoming edition of her Complete Guide to Federal and State Garnishment.

It appears that over half the states allow garnishments to run until the underlying judgment is satisfied.

a. Terminology varies. Some of these statutes say until the "debt is paid in full," others say until the judgment is "paid" or "satisfied," and at least one refers to the "amount due." Some refer to the "writ," others to the "garnishment lien."

b. Some statutes include costs, post-judgment interest, attorney's fees, etc., while others are silent on those points.

c. Some of these states provide alternative possibilities for when the garnishment ends. For example, in Iowa garnishment ends when the writ expires, when the judgment has been satisfied, when the annual maximum allowed to be garnished from an individual under Iowa law (based on expected annual earnings) has been reached, or when the garnishment is released, whichever occurs first.

d. Most of these states provide that if a second garnishment is served while the first is running, the first takes priority. But some states try to accommodate the second if that can be done without maxing out the amount allowed to be garnished in a given pay period.

The other states have chosen a wide range of time limits. Among the shortest are New Hampshire (where the garnishment applies only to wages that have already been earned at the time of service of the writ of garnishment, and not to future wages), Missouri (where the creditor can choose a period between 30 and 180 days), and Washington (expiration of payroll period ending on or before 60 days after the effective date of the writ). More to the middle are Minnesota (70 days from the date of service of the writ), Oregon (90 days after the writ is delivered), and South Dakota (120 days after the effective date of the garnishee summons). The longest appear to be North Dakota (270 days) and Montana (6 years from date of issuance, or 10 years in the case of support garnishments). North Carolina allows no wage garnishment except for "public debt," but such garnishments remain in effect until the earliest of the satisfaction of the judgment, expiration of the order, or 60 months from the date of entry of the order of garnishment.

The full range of time periods I saw included 30 days, 60 days, 70 days, 90 days, 13 weeks, 120 days, 179 days, 180 days, 182 days, 6 calendar months, 270 days, 1 year, and 6 to 10 years.

a. Many of the states which put time limits on their garnishments do so as part of a list of alternatives (for example, Oregon's limit is the earliest of 90 days after delivery of the writ, the date on which the garnishment is released or satisfied in full, or in the case of a writ of garnishment issued on behalf of a county or county agency, until the full amount owed is paid or the writ is released by the county or county agency or by a court order). These alternatives vary widely.

b. States vary in the event that triggers the start of the time period (e.g., issuance of the writ, service of the writ).

c. Some of these statutes include costs, post-judgment interest, attorney's fees, etc., while others are silent on those points.

d. These states also vary in the effect given to a second garnishment served while a prior garnishment is already in effect.

e. Some states allow a time-limited garnishment to be renewed for another period of time. This raises the issue of whether and when a renewed first garnishment will continue to have priority over a second garnishment served while the first was in effect.

Issue 7. Liability for Failure to Comply with Garnishment Order

Introduction

The December 23, 2011, APA proposal to Scope & Program states as follows:

> The penalties under state law for failing to withhold properly or for failing to answer a garnishment summons in full or on time are excessively punitive. Even minor errors may cause the employer to be held liable for the entirety of the employee's debt. These penalty provisions are inconsistent with those imposed by other types of garnishment, such as child support withholding, federal tax levies, and student loan garnishments, which generally hold the employer liable only for the amount it fails to withhold according to the order.

My research, based on the information provided by Amy Bryant, supports that statement. The following analysis may be helpful to understanding the current state of the law.

Liability for Amounts That Should Have Been Withheld

In terms of monetary liability to the creditor, the most common approach is that an employer that fails to answer or otherwise fails to comply with a garnishment order is liable for the amounts that should have been withheld. This approach, sometimes with minor variations (such as liability for a creditor's attorneys' fees), is followed in, *e.g.*, Alaska, Arkansas, California, Colorado, Connecticut, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and West Virginia.

Liability for Entire Judgment Debt

If an employer fails to answer, quite a few states impose liability to the creditor for the full amount of the judgment debt: *e.g.*, District of Columbia, Florida, Georgia, Indiana, New Mexico, North Carolina, Oklahoma, South Dakota, and Tennessee.

Misdemeanor Liability and Contempt of Court

Quite a few states impose criminal (misdemeanor) sanctions on certain defined types of employer misconduct. For example, in South Carolina an employer that withholds wages in violation of the garnishment laws is guilty of a misdemeanor and subject to a fine of not more than $1,000. In several states, failure to pay over amounts deducted from wages constitutes a misdemeanor: *e.g.*, California, Colorado, Kansas, Nevada, and New Hampshire In other states, the failure to pay over deducted amounts constitutes contempt of court: *e.g.*, Kentucky and Louisiana.

Conclusion

Although limited, my research makes it clear that there is a distinct lack of uniformity in the approaches taken by the states to an employer's failure to comply with a garnishment order. The above analysis oversimplifies the situation somewhat by suggesting that the consequences of employer failure fall neatly into just a few categories; in fact, the current state of the law is quite chaotic and, as stated in the APA proposal, at times excessively punitive.

Issue 8. Remission of withheld funds on each payday

We looked at the process of remitting garnished funds to the creditor after they have been withheld from the debtor by the garnishee. The questions that we determined could arise in this process are numerous and include:

1) How long does the garnishee keep the money before remitting it;
2) To whom does the garnishee send the money when remitting it;
3) Are the funds automatically remitted after a certain period of time, or do certain preconditions need to be met first;
4) Whom must the garnishee notify regarding the withdrawal and remittance of the funds;
5) Should the debtor have an ability to object to the garnishment, and, if so, what should that process look like, including what are acceptable basis for objection;
6) Who should pay the expense of the garnishment, including expenses to garnishee for the withholding, notice, and compliance with certain pre-conditions, if necessary;
7) If funds are withheld from the debtor/employee, does interest accrue and, if so, how is that calculated and paid, and to whom; and,
8) How are all of the above questions addressed with a pre-judgment writ of garnishment?

1) How long does the garnishee keep the money before remitting it?

Generally, employers would like to be able to send the funds at the time deducted e.g. 7 to 10 days from withheld. If we must come up with an alternative, Amy Bryant's recommendation is to delay withholding for a specific number of days.

2) To whom does the garnishee send the money when remitting it?

The options range from sending the money to the creditor, the court clerk, a Marshall or Sheriff. Of course whenever the money is sent anywhere but to the creditor, it creates problems when there are back logs at court or law enforcement offices. Our recommendation is to send the money directly to the creditor or attorney for the creditor, if applicable.

3) Are the funds automatically remitted after a certain period of time, or do certain preconditions need to be met first?

Pre-conditions could be to allow time for an employee objection, time for the court to verify amounts, verification of amounts due. Some states require holding until garnishee is given additional directions for remittance, depending on answers to interrogatories from garnishee.

4) Whom must the garnishee notify regarding the withdrawal and remittance of the funds?

Any requirements for notification increase the cost and burden on the garnishee. The garnishee should not be required to deliver notices regarding the deduction to the employee as the type and amount of deduction are recorded on the employee's check stub or pay advice statement.. Some states require the payment be attached to an answer/interrogatory.

5) Should the debtor have an ability to object to the garnishment, and, if so, what should that process look like, including what are acceptable basis for objection?

Allowing an Objection increases the time necessary to hold the funds, but it seems like this is a reasonable demand, likely related to due process. Objections can be to the amount due, the validity of the debt, financial hardship, or other basis. We would recommend limited the basis to object, recognizing that this should not be the place to dispute the judgment (assuming it is a post-judgment garnishment).). Withholding from the employee wages should not begin until the time period to file and obtain a stay, a change to the amount to deduct, etc.

6) Who should pay the expense of the garnishment, including expenses to garnishee for the withholding, notice, and compliance with certain pre-conditions, if necessary?

Expenses should be eventually paid by the debtor/employee. However, the more burdensome the process for the garnishee, the more expensive it becomes with the hidden costs of clerical time to process the request.

7) If funds are withheld from the debtor/employee, does interest accrue and, if so, how is that calculated and paid, and to whom?

While it seems unfair to an employee to hold their money and not pay interest on it, the concept adds another layer of complexity to a process we are trying to simplify and make uniform. The debtor should receive credit for the amount deducted, when deducted, to prevent additional interest from accruing on the debt The creditor should be penalized in some manner if they fail to release a garnishment that was not approved by the court.

8) How are all of the above questions addressed with a pre-judgment writ of garnishment?

Maybe we don't want to go here. There are few states, possibly only Minnesota, that allows this process to occur.

Issues 9. Time for responding to garnishment order and how order is served

In reviewing the materials sent, I was asked to focus on two issues:

1. Time for responding to Garnishment Order.
2. How Garnishment Order is served upon the employer and other third parties.

Before addressing the issues, I had four questions related to the proposed act:

1. May installment payments be enforced by contempt proceedings?
2. Are pre-judgment remedies allowed for garnishment orders?
3. May voluntary wage assignments be included in the act?
4. At what time do you deduct/withhold funds subject to the order?

Regarding Issue #1: Time to Responding for Garnishment Order.

There is no uniformity in determining the time frame for responding to Wage Garnishment Orders:

- Promptly

- Ten days
- Twenty days
- Twenty five days

Other issues:

- The failure to comply leads to penalties which again differ from state.
- Some states require that the employer complete and return a questionnaire within the given time frame

Regarding Issue #2: How Wage Garnishment Order is served upon the employer and other third parties?

Method of service varies from state to state.

- Service is issued by:
  - The Clerk of the Court or
  - The attorney for the garnishor.
- Service is delivered by:
  - Certified mail or
  - In-hand delivery

Other means of service the committee might consider:

- Electronic service
- UPS/Fedex-type delivery

Issue 10. Administrative fees

There is a great deal of nonuniformity in the administrative fees that can be charged by an employer. The attached chart shows current law on this matter.

[Chart Omitted from Final report to Scope and Program]

Appendix II

MEMORANDUM

To: Bill Henning
From: Steve Willborn
Date: May 1, 2012
Re: Scope of the Study Committee on Wage Garnishment

I write to raise an issue about the scope of the Study Committee on Wage Garnishment. I have reviewed the materials you forwarded earlier today. I was very impressed with them, especially the December 23, 2011, memo from the American Payroll Association. But the thing that struck me about the presentation was that it picked out only one issue (garnishment) out of the package of things that are commonly covered by state wage-payment statutes. I wonder if we should think about asking Scope and Program to expand the scope of the Study Committee to include some of these other issues.

I have not done a comprehensive survey, but I think that most state wage payment statutes cover these topics in addition to garnishment:

1. *Assignment of Wages*. This is probably the area most analogous to garnishment. The state statutes often contain limits on the number, how to calculate income, etc. *See, e.g*., Md. Com. Law Code Ann. §§ 15-302 – 15305; Cal. Labor Code § 300. *See also* D.C. Code Ann. § 28-2305 (prohibiting wage assignments).

2. *Form of Payments*. These laws generally say the payment has to be made in cash or a cash equivalent (not script, e.g.), what kind of notice has to be provided with the payment (e.g., itemized deductions), etc. *See, e.g.,* Mich. Comp. Laws Ann. § 408-476.

3. *Pay Periods*. These laws generally say wages have to be paid every X days or weeks and they often shorten the period when an employee is discharged or laid off. *See, e.g.,* Mass. Gen. Laws Ann. ch 179, § 148; Utah Code Ann. § 34-28-5.

4. *Deductions from Wages*. These laws regulate what types of deductions can be made from wage payments. For example, union dues, health insurance, etc. can be deducted, but no deductions can be made unless the employee agrees, etc. *See, e.g.*, N.J. Stat. Ann. § 34:11-4.4.

In the abstract I would think most of the issues raised by the APA memo would also apply to these other areas (lots of differences between states, hard for multistate employers to comply, problems when employee and employer are located in different states, etc.). Again, I would think that the assignment issue would be quite close in concept to the garnishment issue. The others are a little further afield. But all of them are pretty closely related to payroll administration so people who might be brought into the room to talk about garnishment may well also have knowledge and experience on the other topics.