

STUDY COMMITTEE ON WAGE GARNISHMENT REPORT TO SCOPE AND PROGRAM

Submitted by Bill Henning, Chair
June 15, 2012

The Study Committee on Wage Garnishment is off to a strong start. We held a very productive organizational conference call on May 31, 2012. All committee members, including our ABA Advisor, except one were able to be on the call, and we were ably assisted by John Sebert, Katie Robinson, and Nicole Julal. We discussed the charge to the committee from Scope and Program and in addition:

- discussed the issues raised in the proposal submitted to Scope and Program by the American Payroll Association (APA);
- identified other issues related to wage garnishment that should be included in the study;
- considered our research needs;
- began the process of identifying potential stakeholders; and
- discussed the process we would follow and the timeline for completion of the project.

We also discussed a memo submitted by Commissioner Steve Willborn regarding subjects related to wage garnishment. The topics raised by Commissioner Willborn are outside the committee's charge but it was felt that we should investigate whether they are so closely related to wage garnishment that they might appropriately be addressed in our final report. It is my intention to appoint a task force to consider the issues and to recommend to the committee whether to seek a modification of the committee's charge.

Nicole Julal prepared minutes of the conference call and they are attached to give you more of the context of our discussions.

Prior to the call, I spoke at length with Martin Brook, an attorney and member of the APA team that prepared the proposal to Scope and Program. Mr. Brook provided me with a comprehensive resource guide that will be invaluable, and after the call I sent samples of the analysis from the resource guide to members of the committee. I also spoke again after the call with Mr. Brook and he has been designated as the committee's first observer. Mr. Brook referred me to the author of the resource guide, Amy Bryant, who was also a member of the APA team. Ms. Bryant is not an attorney but has a tremendous knowledge of the area and the practical problems faced by employers, and she also has been designated as an observer. Ms. Bryant agreed to make more of her research available to the committee. She also made me aware of a study on wage garnishment being undertaken by the Georgia legislature and gave me information about a contact person. I will follow up soon with the goal of forging a constructive relationship with that study group. Ms. Bryant also indicated that there is a study underway in Missouri, and she will locate a person for us to contact.

With regard to other potential observers, members of the committee made several suggestions (see attached minutes), and we will follow up on all of them. In addition, Mr. Brook gave me the following list of potential stakeholders when I spoke with him after the call: AFL-CIO, National Association of Manufacturers, National Chamber of Commerce, National Association of Retail Credit Attorneys, Commercial Law League of America, National Payroll Reporting Consortium, and payroll software vendors. An important task for the committee will be to determine whether, assuming we conclude generally that a drafting project would be appropriate, to recommend that a stakeholder's meeting be held.

I plan to attend the meeting of Scope and Program at the 2012 Annual Meeting in order to answer any questions not addressed by this report.

STUDY COMMITTEE ON WAGE GARNISHMENT

Meeting Minutes

Call to order

Committee Chair Bill Henning called to order the first meeting of the Study Committee on Wage Garnishment at 9:30 am (Central Time) on May 31, 2012 via teleconference.

Roll call

Chair Henning conducted a roll call. The following persons were present: Commissioners Jack Davies, Michael Ferry, Lawrence Klemin, Neal Ossen, Steven Willborn, Steven Leitess, ABA Advisor Kathleen Hopkins, and ULC staff members John Sebert, Katie Robinson and Nicole Julal.

Opening remarks

Chair Henning welcomed the committee members and reviewed the charge of the committee.

Discussion

- Discussion of Issues Raised in the APA Proposal (Page 4).

The committee reviewed the issues suggested by the American Payroll Association (APA) (pp. 4-5 of the APA's 12-23-2011 proposal to Scope and Program) with the objective of identifying any issues that the committee felt might be outside the committee's charge or might present difficulties in obtaining a consensus. Committee members raised concerns about Issue #1 – a uniform definition of “disposable income.” It was noted that a uniform definition would be tremendously helpful but might not be widely accepted by the states. There was a discussion of the possibility of providing the states with alternatives, and of the viability of a drafting project if no definition was provided. Some committee members felt that there were alternative ways of addressing this issue and would reserve those ideas for later. It was concluded that this was an issue to watch carefully.

- Identification of Other Issues Related to Wage Garnishment

The committee identified and discussed four issues not found in the APA proposal:

1. In a few states the handling of a garnishment on behalf of an employer is considered the practice of law, making the process inordinately expensive. It was noted that this might be a difficult issue to address given that it involves regulating the legal profession.
2. Choice-of-law issues arise when an employer is served with a garnishment in a state in which the employer is located but in which the employee neither lives nor works. Committee members agreed that this is an issue worth addressing because creditors may forum shop.
3. Simplifying the process of claiming exemptions in the states. An example used in the discussion was the complex process of claiming a head-of-household exemption in Missouri.

4. Pre-judgment garnishments. It was suggested that this might not be an issue because such garnishments might be unconstitutional but further research is necessary to make this determination.

- Discussion of Project's Scope (see attached memo from Steve Willborn)

The committee discussed a memo prepared by Commissioner Willborn regarding subjects related to wage garnishment; specifically, assignment of wages, form of payments, pay periods, and deductions from wages. Although the topics are outside the committee's charge, it was determined that further consideration should be given to them. Executive Director Sebert suggested inviting an expert group of observers to participate regularly with the study committee to assist the study committee in addressing the issues that have been identified to date and in considering the issues outlined in Commissioner Willborn's memo.

- Discussion of Additional Research Needs

One committee member inquired about the availability of state comparisons so that the committee could ascertain what the current law on wage garnishment is in each state. Chair Henning noted that he had been provided by the APA with a comprehensive publication on the subject entitled "Complete Guide to State and Federal Garnishment," (2011) and published by Aspen. He indicated that he would provide committee members with copies of chapters on 2-3 states so they could see the format of the publication.

- Identification of Stakeholders

Chair Henning charged the group with the collective task of identifying potential stakeholders. Some of the suggestions by committee members and John Sebert include: unions, health insurance companies, the American Payroll Association, the National Federation of Independent Businesses, the Consumer Federation of America, Consumers Union, the U.S. Chamber of Commerce, and the National Association of Consumer Bankruptcy Attorneys. It was also suggested that contact be made with the Consumer Financial Protection Bureau, and Chair Henning said he would do that.

One committee member inquired whether the APA had a competitor. Chair Henning will look into it.

- Process and Timeline for Completing Study

Chair Henning explained that the committee is expected to complete its work by summer of 2013. It will begin its substantive work after the 2012 Annual Meeting and in the process of doing its work will determine whether to recommend a stakeholders meeting. The committee will continue its meetings via conference call and subsequent calls will include observers as well as committee members.

Chair Henning will prepare a draft interim report to be submitted to Scope and Program for consideration at the 2012 Annual Meeting and will circulate the draft to the committee members for comment. He stated that the report is due by June 15, 2012.

Action items

Michael Ferry will provide a contact at the Consumer Federation of America.

Chair Henning will contact the APA and the Consumer Financial Protection Bureau.

Adjournment

Chair Henning adjourned the meeting at **10:30 am**.