

To: New Jersey Law Revision Commission
From: John Cannel, Kayvon Paul (Pro Bono Intern, Rutgers Law School - Camden)
Re: Uniform Wage Garnishment Act
Date: June 08, 2020

Memorandum

In 2016, the Uniform Law Commission approved the Uniform Wage Garnishment Act (UWGA). While no state has yet enacted the Act, it is the policy of this Commission to consider Uniform Acts. This Memorandum is intended to facilitate a decision whether to begin a project on the act. A copy of the Uniform Act is included with this Memorandum.

Generally, the UWGA offers a streamlined approach that largely removes the garnishment process from the courts, to reduce costs. It resolves choice-of-law issues and provides greater protection to employees and certain independent contractors. The UWGA applies only to garnishments by a creditor with a money judgment, and does not apply to other procedures that are sometimes called “garnishments” but are known collectively under the UWGA as “ordered deductions.” These include support orders, orders of bankruptcy court, or a debt owed to local or state government.

Under the UWGA, garnishment begins with a court action by the creditor against the employer. The debtor is given notice of the action and has the right to request a hearing, but does not seem to be a formal party. Since the debtor may have defenses, and, in New Jersey, a court has discretion to adjust the amount of garnishment down from 10%, there may be a need to adjust the UWGA procedures. The notices required to be given to debtors are good, but not a substitute for procedural safeguards.

Pursuant to the UWGA, after a garnishment is ordered, court involvement ends. The employer and creditor agree on how the money deducted will be transmitted to the creditor. That process reduces the cost, and therefore the fees that will be charged to the debtor. However, it is not clear in the UWGA how there is an official record of the amount paid to the creditor. That record is necessary for assessment of interest and for determining when the judgment is paid.

An important change made by UWGA concerns situations where there are multiple creditors seeking garnishment. Now, only one creditor at a time may garnish wages. Under UWGA, all would garnish, dividing the amount deducted from wages. Outreach would be necessary to determine the practical effect of the change.

The choice of law provision in UWGA is good, but it does not seem to be a change from New Jersey practice. The reclassification of support orders as “ordered deductions” rather than garnishments complicates the issue but (on first reading) does not seem to change their priority or effect.

When the Law Revision Commission last dealt with wage garnishments in the Report on Judgments and their Enforcement, it preserved the existing drafting approach. That Report condenses the four sections of existing law to three. That approach leaves much detail to court rule and practice. UWGA approach is entirely different; it provides detail and forms. Some of that difference is the result of approach of the Uniform Law Commission. But the approach of current law may be too elliptical. Some of the detail in UWGA may be useful to provide clear guidance for creditors, debtors and employers.

As always, the Commission has the option whether to begin a project on UWGA at all. If it does so, it may direct consideration of necessary New Jersey changes to the uniform text. In the alternative, it could consider amendments to current New Jersey law.