SCAC MEETING AGENDA-AMENDED
Friday, October 8th, 2021 [9:00 a.m. – 5:00 p.m.]
IN PERSON

I. WELCOME (C. BABCOCK)

II. STATUS REPORT FROM CHIEF JUSTICE HECHT

Chief Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the September 3, 2021 meeting.

III. COMMENTS FROM JUSTICE BLAND

IV. SEIZURE EXEMPTION RULES AND FORM

Legislative Sub-Committee Members:
Jim Perdue – Chair
Peter Schenkkan – Vice Chair
Prof. Elaine Carlson
Hon. David Evans
Robert Levy
Richard Orsinger
Richard Tomlinson – *Lone Star Legal Aid – On behalf of Debtors*
Craig Noack *– Co-Chair, Legal Administrative – On behalf of Creditors Affairs Committee for Texas Creditors Bar Association*
Bronson Tucker *– [1]Texas Justice Court Training Center*

1. June 2, 2021 Referral Letter with Supporting bills
2. October 6, 2021 Email from C. Noack detailing process and documents
3. October 6, 2021 Debtor Exemption Joint Memorandum
4. TXCBA and TATR Exemption Notification Rules
5. October 6, 2021 Ad Hoc Debtor Group Memorandum with exhibits:
- ***a.*** Garnishment Rules Revised
- ***b.*** Garnishment Notice Instructions and Form Revised
- ***c.*** Turnover Rules Revised
- ***d.*** Turnover Notice Instructions and Form Revised
- ***e.*** Execution Rules Revised
- ***f.*** Execution Exemption Notice and Claim Form Revised

6. October 6, 2021 Email from Rich Tomlinson
7. Sample Limited Order with Exemption Language
8. HB1029 Bill Anaysis

[1] *Mr. Tucker's availability is Tentative*

V. SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP & OUT OF TIME APPEALS IN PARENTAL RIGHTS TERMINATION CASES
[Stage 1(b) & Stage 2 still pending]

Appellate Sub-Committee Members:
Pamela Baron – Chair
Hon. Bill Boyce – Vice Chair
Prof. Elaine Carlson
Prof. William Dorsaneo
Connie Pfeiffer
Richard Phillips
Scott Stolley
Charles Watson
Evan Young

9. October 5, 2021 Report from Appellate Rules Subcommittee
10. V.T.C.A., Family Code § 161.211

Tab 1

The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
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June 2, 2021

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 87th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2021. The Committee should conclude its work on them by its June 18, 2021, meeting. Many of the changes may be simple and straightforward. They are:

MDL Applicability. Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. HB 2950, § 2 amends § 74.1625(a) to prohibit the MDL panel from transferring a Texas Medicaid Fraud Prevention Act action "brought by the consumer protection division of the attorney general's office." The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed to reference or restate the statute.

Family Violence Protective Orders. Rule of Civil Procedure 107(h) states: "No default judgment shall be granted in any case until proof of service . . . [has] been on file with the clerk of the court ten days . . . ." HB 39, § 2 amends Family Code § 85.006 to state: "Notwithstanding TRCP 107, a court may render a protective order that is binding on a respondent who does not attend a hearing if: (1) the respondent received service of the [protective order] application and notice of the hearing; and (2) proof of service was filed with the court before the time set for

hearing." The Committee should consider whether Rule 107(h) should be changed or a comment added to reference or restate the statute.

Time Limits for Child Protection Cases. Rule of Judicial Administration 6 governs time standards for the disposition of cases. HB 567, § 10 adds Family Code § 263.4011 to require a 90-day period for rendering a final order in a child protection case after the date the trial commences. The Committee should consider whether Rule 6 should be changed or a comment added to reference or restate the statute.

Uri-Related Direct Appeals. Several bills add provisions to the Utilities Code to provide that certain district court judgments related to a Winter Storm Uri "may be reviewed only by direct appeal to the Supreme Court of Texas": HB 1520, HB 4492, and SB 1580. The Committee should consider whether Rule of Appellate Procedure 57, governing direct appeals, should be changed or a comment added to reference or restate the statutes.

Protection of Sensitive Data. HB 1540 and HB 2669 add several statutes to protect sensitive data. HB 1540, § 4 adds Civil Practice and Remedies Code § 98.007 to permit a claimant in a trafficking suit to use a confidential identity and require a court use a confidential identity and maintain records in a confidential manner. § 98.007 also prohibits the Court from amending or adopting rules in conflict with § 98.007. HB 2669 amends Code of Criminal Procedure Art. 44.2811 and reenacts and amends Art. 45.0217 to make confidential a child's criminal records related to certain misdemeanor offenses. The Committee should consider whether the sensitive data rules should be changed or a comment added to reference or restate the statutes.

Sexual Assault Survivor Privilege. SB 295, § 3 amends Gov't Code § 420.071 to provide a sexual assault survivor with the privilege to refuse to disclose any communication with an advocate employed by or volunteering at a sexual assault program and related records. The Committee should consult with the State Bar of Texas Administration of Rules of Evidence Committee and consider whether Article V of the Texas Rules of Evidence, governing privileges, should be changed or a comment added to reference or restate the statute.

Oaths in Oral Depositions. HB 3774, § 17.07 adds Gov't Code § 154.105 to allow court reporters to administer the oath to certain witnesses, even if they are not in the same location as the witness. The Committee should consider whether Rule of Civil Procedure 199.1(b), governing remote oral depositions, should be changed or a comment added to reference or restate the statute.

One other matter arising from legislation passed by the 87th Legislature requires rulemaking by May 1, 2022.

Seizure Exemption Rules and Form. HB 3774, § 15.01 adds Gov't Code § 22.0042, which directs the Court to adopt rules that "establish a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or receiver" and a form for asserting such exemption. § 22.0042 also directs the Court to adopt rules that "require a court to stay a proceeding for a reasonable period, to allow for the assertion of [such] exemption" and "require a court to promptly set a hearing and stay proceedings until a

hearing is held, if a judgment debtor timely asserts [such] exemption." The Committee should consult with justice court stakeholders and make recommendations.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee's recommendations.

Rule of Judicial Administration 7. In the attached report, the Remote Proceedings Task Force recommends updating Rule of Judicial Administration 7 to include remote proceedings. The Committee should make recommendations.

Rule of Civil Procedure 199.2. In the attached memorandum, the State Bar of Texas Court Rules Committee proposes amendments to Rule of Civil Procedure 199.2. The Committee should review the proposal and make recommendations.

Rule of Civil Procedure 226a. In the attached memorandum, the State Bar of Texas Rules Committee proposes adding implicit bias instructions to Rule of Civil Procedure 226a. The Committee should review the proposal and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

Nathan L. Hecht
Chief Justice

Attachments

AN ACT

relating to the operation and administration of and practice and procedure related to proceedings in the judicial branch of state government.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. DISTRICT COURTS

SECTION 1.01. (a) Effective January 1, 2022, Section 24.129(b), Government Code, is amended to read as follows:

(b) The 27th, 146th, 169th, 264th, [~~and~~] 426th, and 478th judicial districts have concurrent jurisdiction in Bell County.

(b) Effective January 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60022 to read as follows:

Sec. 24.60022. 478TH JUDICIAL DISTRICT (BELL COUNTY). (a) The 478th Judicial District is composed of Bell County.

(b) The terms of the 478th District Court begin on the first Mondays in January, April, July, and October.

(c) Section 24.129, relating to the 27th District Court, contains provisions applicable to both that court and the 478th District Court.

(c) The 478th Judicial District is created on January 1, 2022.

SECTION 1.02. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60027 to read as follows:

Sec. 24.60027. 482ND JUDICIAL DISTRICT (HARRIS COUNTY). The 482nd Judicial District is composed of Harris County.

(b) The 482nd Judicial District is created on the effective date of this Act.

SECTION 1.03. (a) Effective January 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60030 to read as follows:

Sec. 24.60030. 485TH JUDICIAL DISTRICT (TARRANT COUNTY). (a) The 485th Judicial District is composed of Tarrant County.

(b) The 485th District Court shall give preference to criminal matters.

(b) The 485th Judicial District is created on January 1, 2022.

SECTION 1.04. (a) Effective October 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60025 to read as follows:

Sec. 24.60025. 480TH JUDICIAL DISTRICT (WILLIAMSON COUNTY). The 480th Judicial District is composed of Williamson County.

(b) The 480th Judicial District is created on October 1, 2022.

SECTION 1.05. (a) Effective January 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60026 to read as follows:

Sec. 24.60026. 481ST JUDICIAL DISTRICT (DENTON COUNTY). The 481st Judicial District is composed of Denton County.

(b) The 481st Judicial District is created on January 1,

2022.

SECTION 1.06. (a) Effective September 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60028 to read as follows:

Sec. 24.60028. 483RD JUDICIAL DISTRICT (HAYS COUNTY). The 483rd Judicial District is composed of Hays County.

(b) The 483rd Judicial District is created on September 1, 2022.

SECTION 1.07. (a) Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60029 to read as follows:

Sec. 24.60029. 484TH JUDICIAL DISTRICT (CAMERON COUNTY). (a) The 484th Judicial District is composed of Cameron County.

(b) The 484th District Court shall give preference to juvenile matters under Title 3, Family Code.

(b) The 484th Judicial District is created on the effective date of this Act.

SECTION 1.08. (a) Effective October 1, 2022, Section 24.120(b), Government Code, is amended to read as follows:

(b) The 19th, 54th, 74th, 170th, [~~and~~] 414th, and 474th district courts have concurrent jurisdiction in McLennan County.

(b) Effective October 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60097 to read as follows:

Sec. 24.60097. 474TH JUDICIAL DISTRICT (MCLENNAN COUNTY). The 474th Judicial District is composed of McLennan County.

(c) The 474th Judicial District is created on October 1, 2022.

SECTION 1.09. (a) Effective January 1, 2023, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60098 to read as follows:

Sec. 24.60098. 475TH JUDICIAL DISTRICT (SMITH COUNTY). The 475th Judicial District is composed of Smith County.

(b) The 475th Judicial District is created January 1, 2023.

SECTION 1.10. (a) Effective September 1, 2022, Subchapter C, Chapter 24, Government Code, is amended by adding Section 24.60099 to read as follows:

Sec. 24.60099. 476TH JUDICIAL DISTRICT (HIDALGO COUNTY). The 476th Judicial District is composed of Hidalgo County.

(b) The 476th Judicial District is created on September 1, 2022.

ARTICLE 2. STATUTORY COUNTY COURTS AND CONSTITUTIONAL COUNTY COURTS

SECTION 2.01. Section 25.00211(a), Government Code, is amended to read as follows:

(a) Beginning on the first day of the state fiscal year, the state shall annually compensate each county that collects the additional fees under Section 51.704 in an amount equal to 60 percent of the annual base salary the state pays to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a) [~~$40,000~~] for each statutory probate court judge in the county.

SECTION 2.02. Section 25.0172(p), Government Code, is amended to read as follows:

(p) The county clerk shall keep a separate docket for each

county court at law. The county clerk shall appoint a deputy clerk for each county court at law. [~~An appointment of a deputy clerk of County Court at Law No. 2 or 3 takes effect when it is confirmed in writing by the judge of the court to which the deputy clerk is assigned and the deputy clerk serves at the pleasure of the judge of the court to which he is assigned.~~] A deputy clerk must take the constitutional oath of office and may be required to furnish bond in an amount, conditioned and payable, as required by the county clerk. A deputy clerk must attend all sessions of the court to which the deputy clerk [~~he~~] is assigned. A deputy clerk acts in the name of the county clerk and may perform any official act or service required of the county clerk and shall perform any other service required by the judge of a county court at law. The deputy clerks may act for one another in performing services for the county courts at law, but a deputy is not entitled to receive additional compensation for acting for another deputy. If a vacancy occurs, the county clerk shall immediately appoint another deputy clerk as provided by this subsection. [~~A deputy clerk of a county court at law is entitled to the same amount of compensation as received by the deputy clerks of the other county courts at law in Bexar County. The commissioners court shall pay the salary of a deputy clerk in equal monthly installments from county funds.~~]

SECTION 2.03. Section 25.0173(g), Government Code, is amended to read as follows:

(g) The county clerk shall appoint a deputy clerk for each statutory probate court. [~~An appointment takes effect when it is confirmed in writing by the judge of the court to which the deputy~~

~~clerk is assigned.~~] A deputy clerk serves at the pleasure of the judge of the court to which the deputy clerk is assigned. A deputy clerk must take the constitutional oath of office, and the county clerk may require the deputy clerk to furnish a bond in an amount, conditioned and payable, as required by law. A deputy clerk acts in the name of the county clerk and may perform any official act or service required of the county clerk and shall perform any other service required by the judge of a statutory probate court. A deputy clerk must attend all sessions of the court to which the deputy clerk [~~he~~] is assigned. [~~A deputy clerk is entitled to receive an annual salary set by the judge in an amount that does not exceed the amount paid the deputies of the county courts at law of Bexar County. The salary shall be paid in equal monthly installments as provided by law for the payment of salaries of deputy clerks.~~]

SECTION 2.04. (a) Effective January 1, 2022, Sections 25.0631(b) and (c), Government Code, are amended to read as follows:

(b) Denton County has the following statutory probate courts:

(1) [~~one statutory probate court, the~~] Probate Court of Denton County; and

(2) Probate Court Number 2 of Denton County.

(c) The statutory county courts of Denton County sit in the county seat or at another location in the county as assigned by the local administrative statutory county court judge. The statutory probate courts [~~court~~] of Denton County sit [~~sits~~] in the county

seat and may conduct docket matters at other locations in the county as the statutory probate court judges consider [~~judge considers~~] necessary for the protection of wards or mental health respondents or as otherwise provided by law.

(b) Section 25.0632(i), Government Code, is amended to read as follows:

(i) A judge of a statutory probate court is subject to assignment as provided by Section 25.0022. On request by the judge of a Denton County statutory county court, a judge of a statutory probate court may be assigned by the regional presiding judge to the requesting judge's court pursuant to Chapter 74. A statutory probate court judge assigned to a statutory county court by the regional presiding judge may hear any matter pending in the requesting judge's court.

(c) Section 25.0633(e), Government Code, is amended to read as follows:

(e) The County Court at Law No. 2 of Denton County has jurisdiction:

(1) over all civil causes and proceedings, original and appellate, prescribed by law for county courts; and

(2) regardless of the amount in controversy sought, over:

(A) eminent domain cases as provided by Section 21.001, Property Code, for statutory county courts; and

(B) direct and inverse condemnation cases.

(d) The Probate Court Number 2 of Denton County is created on January 1, 2022.

SECTION 2.05. (a) Effective October 1, 2022, Subchapter C, Chapter 25, Government Code, is amended by adding Sections 25.1331 and 25.1332 to read as follows:

Sec. 25.1331. KENDALL COUNTY. Kendall County has one statutory county court, the County Court at Law of Kendall County.

Sec. 25.1332. KENDALL COUNTY COURT AT LAW PROVISIONS. (a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Kendall County has:

(1) concurrent jurisdiction with the district court in state jail, third degree, and second degree felony cases on assignment from a district judge presiding in Kendall County and acceptance of the assignment by the judge of the county court at law to:

(A) conduct arraignments;

(B) conduct pretrial hearings;

(C) accept guilty pleas and conduct sentencing;

(D) conduct jury trials and nonjury trials;

(E) conduct probation revocation hearings;

(F) conduct post-trial proceedings; and

(G) conduct family law cases and proceedings; and

(2) jurisdiction in:

(A) Class A and Class B misdemeanor cases;

(B) probate proceedings;

(C) disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any

other class or type of trust, regardless of the amount in controversy or the remedy sought;

(D) eminent domain; and

(E) appeals from the justice and municipal courts.

(b) A judge of a county court at law shall be paid a total annual salary set by the commissioners court in an amount that is not less than $1,000 less than the annual salary received by a district judge with equivalent years of service as a judge, as provided under Section 25.0005, to be paid out of the county treasury by the commissioners court.

(c) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the district court, and the county clerk serves as clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law.

(d) The official court reporter of a county court at law is entitled to receive the same compensation and to be paid in the same manner as the court reporters of the district court in Kendall County.

(b) The County Court at Law of Kendall County is created on October 1, 2022.

SECTION 2.06. (a) Section 25.1571, Government Code, is amended to read as follows:

Sec. 25.1571. MCLENNAN COUNTY. McLennan County has the following statutory county courts:

(1) County Court at Law of McLennan County; [~~and~~]

(2) County Court at Law No. 2 of McLennan County; and

(3) County Court at Law No. 3 of McLennan County.

(b) Section 25.1572, Government Code, is amended by amending Subsections (a), (d), and (i) and adding Subsections (b), (c), and (e) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law and except as limited by Subsection (b), a county court at law in McLennan County has jurisdiction in third degree felony cases and jurisdiction to conduct arraignments, conduct pretrial hearings, accept guilty pleas, and conduct probation revocation hearings in felony cases.

(b) On request of a district judge presiding in McLennan County, the regional presiding judge may assign a judge of a county court at law in McLennan County to the requesting judge's court under Chapter 74. A county court at law judge assigned to a district court may hear any matter pending in the requesting judge's court.

(c) A county court at law does not have jurisdiction in:

(1) suits on behalf of the state to recover penalties or escheated property;

(2) misdemeanors involving official misconduct; or

(3) contested elections.

(d) A judge of a county court at law shall be paid an annual base salary set by the commissioners court in an amount not less than $1,000 less than the annual base salary the state pays to a district judge as set by the General Appropriations Act in accordance with Section 659.012 with equivalent years of service as

the judge [~~of not more than $20,000~~]. A county court at law judge's and a district judge's annual base salaries do not include contributions and supplements paid by the county [~~Each judge receives the same amount as salary. The salary shall be paid out of the county treasury by the commissioners court~~].

(e) The district clerk serves as clerk of a county court at law in matters of concurrent jurisdiction with the district court. The county clerk serves as the clerk of a county court at law in all other matters. Each clerk shall establish a separate docket for a county court at law.

(i) The official court reporter of a county court at law is entitled to receive a salary set by the judge of a county court at law with the approval of the commissioners court [~~the same compensation and to be paid in the same manner as the court reporters of the district courts in McLennan County~~].

(c) The County Court at Law No. 3 of McLennan County is created on the effective date of this Act.

SECTION 2.07. (a) Section 25.1721, Government Code, is amended to read as follows:

Sec. 25.1721. MONTGOMERY COUNTY. Montgomery County has the following statutory county courts:

(1) County Court at Law No. 1 of Montgomery County;

(2) County Court at Law No. 2 of Montgomery County;

(3) County Court at Law No. 3 of Montgomery County;

(4) County Court at Law No. 4 of Montgomery County; [~~and~~]

(5) County Court at Law No. 5 of Montgomery County;

and

(6) County Court at Law No. 6 of Montgomery County.

(b) The County Court at Law No. 6 of Montgomery County is created on the effective date of this Act.

SECTION 2.08. Sections 25.1972(a) and (b), Government Code, are amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, and except as limited by Subsection (b), a county court at law in Reeves County has:

(1) concurrent jurisdiction with the district court:

(A) in disputes ancillary to probate, eminent domain, condemnation, or landlord and tenant matters relating to the adjudication and determination of land titles and trusts, whether testamentary, inter vivos, constructive, resulting, or any other class or type of trust, regardless of the amount in controversy or the remedy sought;

(B) over civil forfeitures, including surety bond forfeitures without minimum or maximum limitation as to the amount in controversy or remedy sought;

(C) in all actions by or against a personal representative, in all actions involving an inter vivos trust, in all actions involving a charitable trust, and in all actions involving a testamentary trust, whether the matter is appertaining to or incident to an estate;

(D) in proceedings under Title 3, Family Code; and

(E) in family law cases and proceedings [~~any~~

~~proceeding involving an order relating to a child in the possession or custody of the Department of Family and Protective Services or for whom the court has appointed a temporary or permanent managing conservator~~];

(2) jurisdiction in mental health matters, original or appellate, provided by law for constitutional county courts, statutory county courts, or district courts with mental health jurisdiction, including proceedings under:

(A) Chapter 462, Health and Safety Code; and

(B) Subtitles C and D, Title 7, Health and Safety Code;

(3) jurisdiction over the collection and management of estates of minors, persons with a mental illness or intellectual disability, and deceased persons; and

(4) jurisdiction in all cases assigned, transferred, or heard under Sections 74.054, 74.059, and 74.094.

(b) A county court at law does not have jurisdiction of:

(1) felony cases, except as otherwise provided by law;

(2) misdemeanors involving official misconduct unless assigned under Sections 74.054 and 74.059; or

(3) contested elections[~~; or~~

[~~(4) except as provided by Subsections (a)(1)(D) and (E), family law cases~~].

SECTION 2.09. (a) Effective January 1, 2023, Section 25.2071(a), Government Code, is amended to read as follows:

(a) San Patricio County has the following [~~one~~] statutory county courts:

(1) [~~court,~~] the County Court at Law of San Patricio County; and

(2) the County Court at Law No. 2 of San Patricio County.

(b) Effective January 1, 2023, Section 25.2072, Government Code, is amended by amending Subsections (a), (d), and (m) and adding Subsections (g-1) and (g-2) to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in San Patricio County has concurrent jurisdiction with the district court except that a county court at law does not have jurisdiction of:

(1) felony criminal matters; and

(2) civil cases in which the matter in controversy exceeds the maximum amount provided by Section 25.0003 [~~in matters involving the juvenile and child welfare law of this state~~].

(d) [~~The judge of a county court at law shall be paid an annual salary in an amount of not less than $43,000.~~] The judge of a county court at law is entitled to receive travel and necessary office expenses, including administrative and clerical assistance.

(g-1) The county clerk serves as clerk of a county court at law except in family law cases. In family law cases, including juvenile and child welfare cases, the district clerk serves as clerk of a county court at law. The district clerk shall establish a separate family law docket for each county court at law.

(g-2) The commissioners court shall provide the deputy clerks, bailiffs, and other personnel necessary to operate the county courts at law.

(m) The judge of the county court and the judges [~~judge~~] of the [~~a~~] county courts [~~court~~] at law may agree on a plan governing the filing, numbering, and docketing of cases within the concurrent jurisdiction of their courts and the assignment of those cases for trial. The plan may provide for the centralized institution and filing of all such cases with one court, clerk, or coordinator designated by the plan and for the systemized assignment of those cases to the courts participating in the plan, and the provisions of the plan for the centralized filing and assignment of cases shall control notwithstanding any other provisions of this section. If the judges of the county court and the county courts [~~court~~] at law are unable to agree on a filing, docketing, and assignment of cases plan, a board of judges composed of the district judges and the county court at law judges for San Patricio County [~~the presiding judge of the 36th Judicial District~~] shall design a plan for the [~~both~~] courts.

(c) The County Court at Law No. 2 of San Patricio County is created January 1, 2023.

SECTION 2.10. Effective January 1, 2023, Section 25.2223(l), Government Code, is amended to read as follows:

(l) The County Criminal Court No. 5 of Tarrant County and the County Criminal Court No. 6 of Tarrant County shall give preference to cases brought under Title 5, Penal Code, involving family violence as defined by Section 71.004, Family Code, and cases brought under Sections 25.07, 25.072, and 42.072, Penal Code.

SECTION 2.11. (a) Effective October 1, 2022, Section 25.2481, Government Code, is amended to read as follows:

Sec. 25.2481. WILLIAMSON COUNTY. Williamson County has the following statutory county courts:

(1) County Court at Law No. 1 of Williamson County;

(2) County Court at Law No. 2 of Williamson County;

(3) County Court at Law No. 3 of Williamson County; [~~and~~]

(4) County Court at Law No. 4 of Williamson County; and

(5) County Court at Law No. 5 of Williamson County.

(b) The County Court at Law No. 5 of Williamson County is created on October 1, 2022.

SECTION 2.12. (a) Sections 26.006(a) and (b), Government Code, are amended to read as follows:

(a) A county judge is entitled to an annual salary supplement from the state in an amount equal to 18 percent of the state base salary paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a) if at least 18 [~~40~~] percent of the:

(1) functions that the judge performs are judicial functions; or

(2) total hours that the judge works are in the performance of judicial functions.

(b) To receive a supplement under Subsection (a), a county judge must file with the comptroller's judiciary section an affidavit stating that at least 18 [~~40~~] percent of the:

(1) functions that the judge performs are judicial functions; or

(2) total hours that the judge works are in the performance of judicial functions.

(b) The changes in law made by this section take effect on the effective date of this Act and apply only to a salary payment for a pay period beginning on or after that date. A salary payment for a pay period beginning before the effective date of this Act is governed by the law in effect on the date the pay period began, and that law is continued in effect for that purpose.

ARTICLE 3. JUSTICE AND MUNICIPAL COURTS

SECTION 3.01. Article 4.14(g), Code of Criminal Procedure, is amended to read as follows:

(g) A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a) or (b); and

(2) cases that arise under Section 821.022, Health and Safety Code.

SECTION 3.02. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.0241 to read as follows:

Art. 45.0241. ACCEPTANCE OF DEFENDANT'S PLEA. A justice or judge may not accept a plea of guilty or plea of nolo contendere from a defendant in open court unless it appears to the justice or

judge that the defendant is mentally competent and the plea is free and voluntary.

SECTION 3.03. Article 103.003, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) The clerk of a municipal court may collect money payable to the municipal court under this title.

SECTION 3.04. Article 103.0081, Code of Criminal Procedure, is amended to read as follows:

Art. 103.0081. UNCOLLECTIBLE FINES AND FEES. (a) Any officer authorized by this chapter to collect a fine, fee, or item of cost may request the trial court in which a criminal action or proceeding was held to make a finding that a fine, fee, or item of cost imposed in the action or proceeding is uncollectible if the officer believes:

(1) the defendant is deceased;

(2) the defendant is serving a sentence for imprisonment for life or life without parole; or

(3) the fine, fee, or item of cost has been unpaid for at least 15 years.

(b) On a finding by a court that any condition described by Subsections (a)(1)-(3) is true, the court may order the officer to designate the fine, fee, or item of cost as uncollectible in the fee record. The officer shall attach a copy of the court's order to the fee record.

SECTION 3.05. Section 29.003(i), Government Code, is amended to read as follows:

(i) A municipality may enter into an agreement with a

contiguous municipality or a municipality with boundaries that are within one-half mile of the municipality seeking to enter into the agreement to establish concurrent jurisdiction of the municipal courts in the municipalities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose, for:

(1) all cases in which either municipality has jurisdiction under Subsection (a) or (b); and

(2) cases that arise under Section 821.022, Health and Safety Code, or Section 65.003(a), Family Code.

SECTION 3.06. Section 292.001(d), Local Government Code, is amended to read as follows:

(d) A justice of the peace court may not be housed or conducted in a building located outside the court's precinct except as provided by Section 27.051(f) or 27.0515, Government Code, or unless the justice of the peace court is situated in the county courthouse in a county with a population of at least 305,000 [~~275,000~~] persons and the county seat of which is located in the Llano Estacado region of this state [~~but no more than 285,000 persons~~].

ARTICLE 4. JUVENILE JUSTICE AND FAMILY COURTS

SECTION 4.01. Subchapter H, Chapter 6, Family Code, is amended by adding Section 6.712 to read as follows:

Sec. 6.712. DATE OF MARRIAGE REQUIREMENT IN FINAL DECREE. (a) In a suit for dissolution of a marriage in which the court grants a divorce, the court shall state the date of the marriage in the decree of divorce.

(b) This section does not apply to a suit for dissolution of a marriage described by Section 2.401(a)(2).

SECTION 4.02. Section 51.02, Family Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Dual status child" means a child who has been referred to the juvenile justice system and is:

(A) in the temporary or permanent managing conservatorship of the Department of Family and Protective Services;

(B) the subject of a case for which family-based safety services have been offered or provided by the department;

(C) an alleged victim of abuse or neglect in an open child protective investigation; or

(D) a victim in a case in which, after an investigation, the department concluded there was reason to believe the child was abused or neglected.

SECTION 4.03. Section 51.04(h), Family Code, is amended to read as follows:

(h) A judge exercising jurisdiction over a child in a suit instituted under Subtitle E, Title 5, may refer any aspect of a suit involving a dual status [~~the~~] child that is instituted under this title to the appropriate associate judge appointed under Subchapter C, Chapter 201, serving in the county and exercising jurisdiction over the child under Subtitle E, Title 5, if the associate judge consents to the referral. The scope of an associate judge's authority over a suit referred under this subsection is subject to any limitations placed by the court judge in the order of referral.

SECTION 4.04. Section 51.0414(a), Family Code, is amended to read as follows:

(a) The juvenile court may transfer a dual status child's case, including transcripts of records and documents for the case, to a district or statutory county court located in another county that is exercising jurisdiction over the child in a suit instituted under Subtitle E, Title 5. A case may only be transferred under this section with the consent of the judge of the court to which the case is being transferred.

SECTION 4.05. Sections 107.004(d) and (e), Family Code, are amended to read as follows:

(d) Except as provided by Subsection (e), an attorney ad litem appointed for a child in a proceeding under Chapter 262, [~~or~~] 263, or 264 shall:

(1) meet before each court hearing with:

(A) the child, if the child is at least four years of age; or

(B) the individual with whom the child ordinarily resides, including the child's parent, conservator, guardian, caretaker, or custodian, if the child is younger than four years of age; and

(2) report to the court whether [~~if the child or individual is not present at the court hearing, file a written statement with the court indicating that~~] the attorney ad litem:

(A) complied with Subdivision (1); or

(B) requests that the court find good cause for noncompliance because compliance was not feasible or in the best

interest of the child under Subsection (e).

(e) An attorney ad litem appointed for a child in a proceeding under Chapter 262, [~~or~~] 263, or 264 is not required to comply with Subsection (d) before a hearing if the court finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance with that subsection is not feasible or in the best interest of the child. Additionally, a court may, on a showing of good cause, authorize an attorney ad litem to comply with Subsection (d) by conferring with the child or other individual, as appropriate, by telephone or video conference.

SECTION 4.06. The change in law made by Section 6.712, Family Code, as added by this article, applies only to a suit for dissolution of a marriage filed on or after the effective date of this Act. A suit for dissolution of a marriage filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

ARTICLE 5. MAGISTRATES AND MAGISTRATE COURTS

SECTION 5.01. Article 4.01, Code of Criminal Procedure, is amended to read as follows:

Art. 4.01. WHAT COURTS HAVE CRIMINAL JURISDICTION. The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;

2. Courts of appeals;

3. The district courts;

4. The criminal district courts;

5. The magistrates appointed by the judges of the

district courts of Bexar County, Dallas County, Tarrant County, or Travis County that give preference to criminal cases and the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County;

6. The county courts;

7. All county courts at law with criminal jurisdiction;

8. County criminal courts;

9. Justice courts;

10. Municipal courts;

11. The magistrates appointed by the judges of the district courts of Lubbock County; [~~and~~]

12. The magistrates appointed by the El Paso Council of Judges;

13. The magistrates appointed by the Collin County Commissioners Court;

14. The magistrates appointed by the Brazoria County Commissioners Court or the local administrative judge for Brazoria County; and

15. The magistrates appointed by the judges of the district courts of Tom Green County.

SECTION 5.02. Section 54.1502, Government Code, is amended to read as follows:

Sec. 54.1502. JURISDICTION. A magistrate has concurrent criminal jurisdiction with:

(1) the judges of the justice of the peace courts of Burnet County; and

(2) a municipal court in Burnet County, if approved by a memorandum of understanding between the municipality and Burnet County.

SECTION 5.03. Chapter 54, Government Code, is amended by adding Subchapter PP to read as follows:

SUBCHAPTER PP. BRAZORIA COUNTY CRIMINAL LAW MAGISTRATE COURT

Sec. 54.2501. CREATION. The Brazoria County Criminal Law Magistrate Court is a court with the jurisdiction provided by this subchapter.

Sec. 54.2502. APPOINTMENT. (a) On recommendation from the local administrative judge, the commissioners court of Brazoria County may appoint one or more full- or part-time judges to preside over the criminal law magistrate court for the term determined by the commissioners court. The local administrative judge shall appoint one or more full- or part-time judges to preside over the criminal law magistrate court if the commissioners court is prohibited by law from appointing a judge.

(b) To be eligible for appointment as a judge of the criminal law magistrate court, a person must meet all the requirements and qualifications to serve as a district court judge.

(c) A judge of the criminal law magistrate court is entitled to the salary set by the commissioners court. The salary may not be less than the annual base salary paid to a district judge under Chapter 659.

(d) A judge appointed under this section serves at the pleasure of the commissioners court or the local administrative judge, as applicable.

Sec. 54.2503. JURISDICTION. (a) Except as provided by this subsection, the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of this state for county courts at law. The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a misdemeanor offense, other than a Class C misdemeanor, on the merits if a jury trial is demanded; or

(2) hear a trial of a misdemeanor, other than a Class C misdemeanor, on the merits if a defendant pleads not guilty.

(b) The criminal law magistrate court has the jurisdiction provided by the constitution and laws of this state for magistrates. A judge of the criminal law magistrate court is a magistrate as that term is defined by Article 2.09, Code of Criminal Procedure.

(c) Except as provided by this subsection, the criminal law magistrate court has the criminal jurisdiction provided by the constitution and laws of this state for a district court. The criminal law magistrate court does not have jurisdiction to:

(1) hear a trial of a felony offense on the merits if a jury trial is demanded;

(2) hear a trial of a felony offense on the merits if a defendant pleads not guilty;

(3) sentence in a felony case unless the judge in whose court the case is pending assigned the case to the criminal law magistrate court for a guilty plea and sentence; or

(4) hear any part of a capital murder case after indictment.

(d) A criminal law magistrate court may not issue writs of habeas corpus in felony cases but may hear and grant relief on a writ of habeas corpus issued by a district court and assigned by the district court to the criminal law magistrate court.

(e) A felony or misdemeanor indictment or information may not be filed in or transferred to the criminal law magistrate court.

(f) A judge of the criminal law magistrate court shall exercise jurisdiction granted by this subchapter over felony and misdemeanor indictments and informations only as judge presiding for the court in which the indictment or information is pending and under the limitations set out in the assignment order by the assigning court or as provided by local administrative rules.

(g) The criminal law magistrate court has concurrent criminal jurisdiction with the justice courts located in Brazoria County.

Sec. 54.2504. POWERS AND DUTIES. (a) The criminal law magistrate court or a judge of the criminal law magistrate court may issue writs of injunction and all other writs necessary for the enforcement of the jurisdiction of the court and may issue misdemeanor writs of habeas corpus in cases in which the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and the judge may punish for contempt as provided by law for district courts. A judge of the criminal law magistrate court has all other powers, duties, immunities, and privileges provided by law for:

(1) justices of the peace when acting in a Class C misdemeanor case;

(2) county court at law judges when acting in a Class A or Class B misdemeanor case; and

(3) district court judges when acting in a felony case.

(b) A judge of the criminal law magistrate court may hold an indigency hearing and a capias pro fine hearing. When acting as the judge who issued the capias pro fine, a judge of the criminal law magistrate court may make all findings of fact and conclusions of law required of the judge who issued the capias pro fine. In conducting a hearing under this subsection, the judge of the criminal law magistrate court is empowered to make all findings of fact and conclusions of law and to issue all orders necessary to properly dispose of the capias pro fine or indigency hearing in accordance with the provisions of the Code of Criminal Procedure applicable to a misdemeanor or felony case of the same type and level.

(c) A judge of the magistrate court may accept a plea of guilty or nolo contendere from a defendant charged with a misdemeanor or felony offense.

Sec. 54.2505. TRANSFER AND ASSIGNMENT OF CASES. (a) Except as provided by Subsection (b) or local administrative rules, the local administrative judge or a judge of the criminal law magistrate court may transfer between courts a case that is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction if the case is:

(1) an unindicted felony case;

(2) a Class A or Class B misdemeanor case if an

information has not been filed; or

(3) a Class C misdemeanor case.

(b) A case may not be transferred from or to the magistrate docket of a district court judge, county court at law judge, or justice of the peace without the consent of the judge of the court to which it is transferred.

(c) Except as provided by Subsection (d) or local administrative rules, the local administrative judge may assign a judge of the criminal law magistrate court to act as presiding judge in a case that is pending in the court of any magistrate in the criminal law magistrate court's jurisdiction if the case is:

(1) an unindicted felony case;

(2) a Class A or Class B misdemeanor case if an information has not been filed; or

(3) a Class C misdemeanor case.

(d) A case may not be assigned to a district court judge, county court at law judge, or justice of the peace without the assigned judge's consent.

(e) This section applies only to the district courts, county courts at law, and justice courts in the county.

Sec. 54.2506. PROCEEDING THAT MAY BE REFERRED. A district judge, county court at law judge, or justice of the peace may refer to a judge of the criminal law magistrate court any criminal case or matter relating to a criminal case for any proceeding other than presiding over a criminal trial on the merits, whether or not the trial is before a jury.

Sec. 54.2507. OATH OF OFFICE. A judge of the criminal law

magistrate court must take the constitutional oath of office prescribed for appointed officers.

Sec. 54.2508. JUDICIAL IMMUNITY. A judge of the criminal law magistrate court has the same judicial immunity as a district judge.

Sec. 54.2509. CLERK. The clerk of a district court or county court at law that refers a proceeding to a magistrate under this subchapter shall perform the statutory duties necessary for the magistrate to perform the duties authorized by this subchapter.

Sec. 54.2510. SHERIFF. The county sheriff, either in person or by deputy, shall attend the criminal law magistrate court as required by the judge of that court.

Sec. 54.2511. WITNESSES. (a) A witness who is sworn and who appears before a magistrate is subject to the penalties for perjury and aggravated perjury provided by law.

(b) A referring court may fine or imprison a witness or other court participant for failure to appear after being summoned, refusal to answer questions, or other acts of direct contempt before a magistrate.

SECTION 5.04. Chapter 54, Government Code, is amended by adding Subchapter QQ to read as follows:

SUBCHAPTER QQ. CRIMINAL LAW MAGISTRATES IN TOM GREEN COUNTY

Sec. 54.2601. APPOINTMENT. (a) The judges of the district courts of Tom Green County, with the consent and approval of the commissioners court of Tom Green County, shall jointly appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter.

(b) Each magistrate's appointment must be made with the approval of at least two-thirds of all the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of district judges, each magistrate shall serve equally in the courts of those judges.

Sec. 54.2602. QUALIFICATIONS. To be eligible for appointment as a magistrate, a person must:

(1) be a resident of this state; and

(2) have been licensed to practice law in this state for at least four years.

Sec. 54.2603. COMPENSATION. (a) A full-time magistrate is entitled to the salary determined by the commissioners court of Tom Green County. The salary may not be less than an amount equal to the salary, supplements, and allowances paid to a justice of the peace of Tom Green County as set by the annual budget of Tom Green County.

(b) A magistrate's salary is paid from the county fund available for payment of officers' salaries.

(c) The salary of a part-time magistrate is equal to the per-hour salary of a full-time magistrate. The per-hour salary is determined by dividing the annual salary by a 2,080 work-hour year. The judges of the courts trying criminal cases in Tom Green County shall approve the number of hours for which a part-time magistrate is to be paid.

Sec. 54.2604. JUDICIAL IMMUNITY. A magistrate has the same judicial immunity as a district judge.

Sec. 54.2605. TERMINATION OF SERVICES. (a) A magistrate

who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of all the judges whom the magistrate serves.

Sec. 54.2606. PROCEEDING THAT MAY BE REFERRED. (a) A judge may refer to a magistrate any criminal case or matter relating to a criminal case for proceedings involving:

(1) a negotiated plea of guilty or no contest and sentencing before the court;

(2) a bond forfeiture, remittitur, and related proceedings;

(3) a pretrial motion;

(4) a writ of habeas corpus;

(5) an examining trial;

(6) an occupational driver's license;

(7) a petition for an order of expunction under Chapter 55, Code of Criminal Procedure;

(8) an asset forfeiture hearing as provided by Chapter 59, Code of Criminal Procedure;

(9) a petition for an order of nondisclosure of criminal history record information or an order of nondisclosure of criminal history record information that does not require a petition provided by Subchapter E-1, Chapter 411;

(10) a motion to modify or revoke community supervision or to proceed with an adjudication of guilty;

(11) setting conditions, modifying, revoking, and surrendering of bonds, including surety bonds;

(12) specialty court proceedings;

(13) a waiver of extradition; and

(14) any other matter the judge considers necessary and proper.

(b) A judge may refer to a magistrate a civil case arising out of Chapter 59, Code of Criminal Procedure, for any purpose authorized by that chapter, including issuing orders, accepting agreed judgments, enforcing judgments, and presiding over a case on the merits if a party has not requested a jury trial.

(c) A magistrate may accept a plea of guilty from a defendant charged with misdemeanor, felony, or both misdemeanor and felony offenses.

(d) A magistrate may select a jury. A magistrate may not preside over a criminal trial on the merits, whether or not the trial is before a jury.

(e) A magistrate may not hear a jury trial on the merits of a bond forfeiture.

(f) A judge of a designated juvenile court may refer to a magistrate any proceeding over which a juvenile court has exclusive original jurisdiction under Title 3, Family Code, including any matter ancillary to the proceeding.

Sec. 54.2607. ORDER OF REFERRAL. (a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report only on specific issues, perform particular

acts, or only receive and report on evidence;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the magistrate's findings;

(5) designate proceedings for more than one case over which the magistrate shall preside;

(6) direct the magistrate to call the court's docket; and

(7) provide the general powers and limitations of authority of the magistrate applicable to any case referred.

Sec. 54.2608. POWERS. (a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel production of relevant evidence;

(4) rule on admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine witnesses;

(7) swear witnesses for hearings;

(8) make findings of fact on evidence;

(9) formulate conclusions of law;

(10) rule on a pretrial motion;

(11) recommend the rulings, orders, or judgment to be made in a case;

(12) regulate proceedings in a hearing;

(13) accept a plea of guilty from a defendant charged

with misdemeanor, felony, or both misdemeanor and felony offenses;

(14) select a jury;

(15) accept a negotiated plea on probation revocation;

(16) conduct a contested probation revocation hearing;

(17) sign a dismissal in a misdemeanor case;

(18) in any case referred under Section 54.656(a)(1), accept a negotiated plea of guilty or no contest and:

(A) enter a finding of guilty and impose or suspend the sentence; or

(B) defer adjudication of guilty; and

(19) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may sign a motion to dismiss submitted by an attorney representing the state on cases referred to the magistrate, or on dockets called by the magistrate, and may consider adjudicated cases at sentencing under Section 12.45, Penal Code.

(c) A magistrate has all the powers of a magistrate under the laws of this state and may administer an oath for any purpose.

Sec. 54.2609. COURT REPORTER. At the request of a party in a felony case, the court shall provide a court reporter to record the proceedings before the magistrate.

Sec. 54.2610. WITNESS. (a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54.2611. PAPERS TRANSMITTED TO JUDGE. At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

Sec. 54.2612. JUDICIAL ACTION. (a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

Sec. 54.2613. MAGISTRATE. (a) If a magistrate appointed under this subchapter is absent or unable to serve, the judge referring the case may appoint another magistrate to serve for the absent magistrate.

(b) A magistrate serving for another magistrate under this section has the powers and shall perform the duties of the magistrate for whom the magistrate is serving.

Sec. 54.2614. CLERK. The clerk of a district court that

refers a proceeding to a magistrate under this subchapter shall perform the statutory duties necessary for the magistrate to perform the duties authorized by this subchapter.

SECTION 5.05. Section 54.653(b), Government Code, is repealed.

ARTICLE 6. ELECTRONIC FILING SYSTEM

SECTION 6.01. Section 72.031(a), Government Code, is amended by adding Subdivision (5) to read as follows:

(5) "State court document database" means a database accessible by the public and established or authorized by the supreme court for storing documents filed with a court in this state.

SECTION 6.02. Section 72.031(b), Government Code, is amended to read as follows:

(b) The office as authorized by supreme court rule or order may:

(1) implement an electronic filing system for use in the courts of this state;

(2) allow public access to view information or documents in the state court document database; and

(3) charge a reasonable fee for additional optional features in the state court document database.

ARTICLE 7. TRANSFER OF CASES

SECTION 7.01. Section 155.207, Family Code, is amended to read as follows:

Sec. 155.207. TRANSFER OF COURT FILES. (a) Not later than the 10th working day after the date an order of transfer is signed,

the clerk of the court transferring a proceeding shall send, using the electronic filing system established under Section 72.031, Government Code, to the proper court in the county to which transfer is being made:

(1) a transfer certificate and index of transferred documents [~~the pleadings in the pending proceeding and any other document specifically requested by a party~~];

(2) [~~certified copies of all entries in the minutes;~~

[~~(3)~~] a [~~certified~~] copy of each final order;

(3) [~~and~~

[~~(4)~~] a [~~certified~~] copy of the order of transfer signed by the transferring court;

(4) a copy of the original papers filed in the transferring court;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any costs that have accrued in the transferring court.

(a-1) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037, Government Code, when transferring a proceeding under this section.

(b) The clerk of the transferring court shall keep a copy of [~~the~~] transferred pleadings [~~and other requested documents. If the transferring court retains jurisdiction of another child who was the subject of the suit, the clerk shall send a copy of the~~

~~pleadings and other requested documents to the court to which the transfer is made and shall keep the original pleadings and other requested documents~~].

(c) The [~~On receipt of the pleadings, documents, and orders from the transferring court, the~~] clerk of the transferee court shall:

(1) accept documents transferred under Subsection (a);

(2) docket the suit; and

(3) [~~shall~~] notify, using the electronic filing system established under Section 72.031, Government Code [~~the judge of the transferee court~~], all parties, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the suit has been docketed.

(c-1) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (c), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(d) The clerk of the transferring court shall send a certified copy of the order directing payments to the transferee court:

(1) [~~,~~] to any party [~~or employer~~] affected by the [~~that~~] order, and, if appropriate, to the local registry of the transferee court using the electronic filing system established under Section 72.031, Government Code; and

(2) to an employer affected by the order

electronically or by first class mail.

(e) The clerks of both the transferee and transferring courts may each produce under Chapter 51, Government Code, certified or uncertified copies of documents filed in a case transferred under this section, but shall also include a copy of the transfer certificate and index of transferred documents with each document produced.

(f) Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

SECTION 7.02. Section 51.3071, Government Code, is amended to read as follows:

Sec. 51.3071. TRANSFER OF CASES. (a) If a case is transferred from a district court to a county court, the clerk of the district court shall [~~may~~] send to the county clerk using the electronic filing system established under Section 72.031 [~~in electronic or paper form~~]:

(1) a transfer certificate and index of transferred documents [~~certified transcript of the proceedings held in the district court~~];

(2) a copy of the original papers filed in the transferring [~~district~~] court; [~~and~~]

(3) a copy of the order of transfer signed by the transferring court;

(4) a copy of each final order;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any [~~the~~] costs that have accrued in the

transferring [~~district~~] court.

(b) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037 when transferring a case under this section.

(c) The clerk of the transferee court shall accept documents transferred under Subsection (a) and docket the case.

(d) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (c), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(e) Sections 80.001 and 80.002 do not apply to the transfer of documents under this section.

SECTION 7.03. Section 51.403, Government Code, is amended to read as follows:

Sec. 51.403. TRANSFER OF CASES. (a) If a case is transferred from a county court to a district court, the clerk of the county court shall send to the district clerk using the electronic filing system established under Section 72.031 [~~in electronic or paper form~~]:

(1) a transfer certificate and index of transferred documents [~~certified transcript of the proceedings held in the county court~~];

(2) a copy of the original papers filed in the transferring [~~county~~] court; [~~and~~]

(3) a copy of the order of transfer signed by the transferring court;

(4) a copy of each final order;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any [~~the~~] costs that have accrued in the transferring [~~county~~] court.

(a-1) The clerk of the transferring court shall use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037 when transferring a case under this section.

(a-2) The clerk of the transferee court shall accept documents transferred under Subsection (a) and docket the case.

(a-3) The clerk of the transferee court shall physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (a-2), but may not physically or electronically mark or stamp any other document transferred under Subsection (a).

(b) If civil or criminal jurisdiction of a county court is transferred to a district court, the clerk of the county court shall send using the electronic filing system established under Section 72.031 a certified copy of the judgments rendered in the county court that remain unsatisfied[~~, in electronic or paper form,~~] to the district clerks of the appropriate counties.

(c) Sections 80.001 and 80.002 do not apply to the transfer of documents under this section.

SECTION 7.04. Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.037 to read as follows:

Sec. 72.037. TRANSFER CERTIFICATE AND INDEX OF TRANSFERRED DOCUMENTS FORM. (a) The office shall develop and make available a standardized transfer certificate and an index of transferred documents form to be used for the transfer of cases and proceedings under Section 155.207, Family Code, and Sections 51.3071 and 51.403 of this code.

(b) In developing a form under this section, the office shall consult with representatives of county and district clerks.

SECTION 7.05. As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall adopt rules and develop and make available all forms and materials required by Section 72.037, Government Code, as added by this Act.

ARTICLE 8. HABEAS CORPUS

SECTION 8.01. Section 3(b), Article 11.07, Code of Criminal Procedure, is amended to read as follows:

(b) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challenged was obtained, and the clerk shall assign the application to that court. When the application is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to

that of the conviction being challenged), and forward a copy of the application by certified mail, return receipt requested, by secure electronic mail, or by personal service to the attorney representing the state in that court, who shall answer the application not later than the 30th [~~15th~~] day after the date the copy of the application is received. Matters alleged in the application not admitted by the state are deemed denied.

SECTION 8.02. Section 5(a), Article 11.072, Code of Criminal Procedure, is amended to read as follows:

(a) Immediately on filing an application, the applicant shall serve a copy of the application on the attorney representing the state[~~,~~] by:

(1) [~~either~~] certified mail, return receipt requested;

(2) [~~, or~~] personal service;

(3) electronic service through the electronic filing manager authorized by Rule 21, Texas Rules of Civil Procedure; or

(4) a secure electronic transmission to the attorney's e-mail address filed with the electronic filing system as required under Section 80.003, Government Code.

SECTION 8.03. Section 3(b), Article 11.07, Code of Criminal Procedure, as amended by this Act, applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 8.04. Section 5(a), Article 11.072, Code of

Criminal Procedure, as amended by this Act, applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

ARTICLE 9. PUBLICATION OF CITATION FOR RECEIVERSHIP

SECTION 9.01. Section 64.101(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) Except as provided by Section 17.032, the [~~The~~] citation shall be published on the public information Internet website maintained as required by Section 72.034, Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019, and in a newspaper of general circulation:

(1) once in the county in which the missing person resides; and

(2) once in each county in which property of the missing person's estate is located.

SECTION 9.02. Section 51.103(b), Estates Code, is amended to read as follows:

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

(A) the certificate of the county clerk making

the service, or the affidavit of the personal representative or other person making the service, stating that the citation or notice was mailed and the date of the mailing; and

(B) the return receipt attached to the certificate or affidavit, as applicable, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication:

(A) a statement [~~an affidavit~~]:

(i) made by the Office of Court Administration of the Texas Judicial System or an employee of the office;

(ii) that contains or to which is attached a copy of the published citation or notice; and

(iii) that states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019; and

(B) an affidavit:

(i) made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;

(ii) that contains or to which is attached a copy of the published citation or notice; and

(iii) that states the date of publication printed on the newspaper in which the citation or notice was published.

SECTION 9.03. Section 1051.153(b), Estates Code, is amended

to read as follows:

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the guardian or other person making the service that states that the citation or notice was mailed and the date of the mailing; and

(B) the return receipt attached to the certificate, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication:

(A) a statement [~~an affidavit~~] that:

(i) is made by the Office of Court Administration of the Texas Judicial System or an employee of the office;

(ii) contains or to which is attached a copy of the published citation or notice; and

(iii) states the date of publication on the public information Internet website maintained as required by Section 72.034, Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019; and

(B) an affidavit that:

(i) is made by the publisher of the

newspaper in which the citation or notice was published or an employee of the publisher;

(ii) contains or to which is attached a copy of the published citation or notice; and

(iii) states the date of publication printed on the newspaper in which the citation or notice was published.

ARTICLE 10. EVIDENCE

SECTION 10.01. Section 2, Article 38.01, Code of Criminal Procedure, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Forensic examination or test not subject to accreditation" means an examination or test described by Article 38.35(a)(4)(A), (B), (C), or (D) that is exempt from accreditation.

SECTION 10.02. Article 38.01, Code of Criminal Procedure, is amended by adding Section 3-b to read as follows:

Sec. 3-b. CODE OF PROFESSIONAL RESPONSIBILITY. (a) The commission shall adopt a code of professional responsibility to regulate the conduct of persons, laboratories, facilities, and other entities regulated under this article.

(b) The commission shall publish the code of professional responsibility adopted under Subsection (a).

(c) The commission shall adopt rules establishing sanctions for code violations.

(d) The commission shall update the code of professional responsibility as necessary to reflect changes in science, technology, or other factors affecting the persons, laboratories,

facilities, and other entities regulated under this article.

SECTION 10.03. Sections 4(a), (a-1), (b-1), and (c), Article 38.01, Code of Criminal Procedure, are amended to read as follows:

(a) The commission shall:

(1) develop and implement a reporting system through which a crime laboratory may report professional negligence or professional misconduct;

(2) require a crime laboratory that conducts forensic analyses to report professional negligence or professional misconduct to the commission; and

(3) investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of:

(A) the results of a forensic analysis conducted by a crime laboratory;

(B) an examination or test that is conducted by a crime laboratory and that is a forensic examination or test not subject to accreditation; or

(C) testimony related to an analysis, examination, or test described by Paragraph (A) or (B).

(a-1) The commission may initiate [~~for educational purposes~~] an investigation of a forensic analysis or a forensic examination or test not subject to accreditation, without receiving a complaint[~~,~~] submitted through the reporting system implemented under Subsection (a)(1), [~~that contains an allegation of professional negligence or professional misconduct involving the~~

~~forensic analysis conducted~~] if the commission determines by a majority vote of a quorum of the members of the commission that an investigation of the [~~forensic~~] analysis, examination, or test would advance the integrity and reliability of forensic science in this state.

(b-1) If the commission conducts an investigation under Subsection (a)(3) of a crime laboratory that is not accredited under this article or the investigation involves a forensic examination or test not subject to accreditation [~~is conducted pursuant to an allegation involving a forensic method or methodology that is not an accredited field of forensic science~~], the investigation may include the preparation of a written report that contains:

(1) observations of the commission regarding the integrity and reliability of the applicable [~~forensic~~] analysis, examination, or test conducted;

(2) best practices identified by the commission during the course of the investigation; or

(3) other recommendations that are relevant, as determined by the commission.

(c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) and Sections 4-d(b)(1), (b-1), and (d) to any person the commission determines to be qualified to assume those duties.

SECTION 10.04. Section 4-a(c), Article 38.01, Code of Criminal Procedure, is amended to read as follows:

(c) The commission by rule may establish voluntary

licensing programs for forensic examinations or tests [~~disciplines that are~~] not subject to accreditation [~~under this article~~].

SECTION 10.05. Section 4-d(b-1), Article 38.01, Code of Criminal Procedure, is amended to read as follows:

(b-1) As part of the accreditation process established and implemented under Subsection (b), the commission may:

(1) establish minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and applicable laws;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, standards, and practices to improve the quality of forensic analyses conducted in this state.

SECTION 10.06. Article 38.01, Code of Criminal Procedure, is amended by adding Section 14 to read as follows:

Sec. 14. FUNDING FOR TRAINING AND EDUCATION. The commission may use appropriated funds for the training and education of forensic analysts.

SECTION 10.07. Section 2254.002(2), Government Code, is amended to read as follows:

(2) "Professional services" means services:

(A) within the scope of the practice, as defined by state law, of:

(i) accounting;

(ii) architecture;

(iii) landscape architecture;

(iv) land surveying;

(v) medicine;

(vi) optometry;

(vii) professional engineering;

(viii) real estate appraising; [~~or~~]

(ix) professional nursing; or

(x) forensic science;

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

(i) a certified public accountant;

(ii) an architect;

(iii) a landscape architect;

(iv) a land surveyor;

(v) a physician, including a surgeon;

(vi) an optometrist;

(vii) a professional engineer;

(viii) a state certified or state licensed real estate appraiser; [~~or~~]

(ix) a registered nurse; or

(x) a forensic analyst or forensic science expert; or

(C) provided by a person lawfully engaged in interior design, regardless of whether the person is registered as an interior designer under Chapter 1053, Occupations Code.

ARTICLE 11. JURY SERVICE

SECTION 11.01. Sections 61.003(a) and (c), Government Code,

are amended to read as follows:

(a) Each person who reports for jury service shall be personally provided a form letter that when signed by the person directs the county treasurer to donate all, or a specific amount designated by the person, of the person's daily reimbursement under this chapter to:

(1) the compensation to victims of crime fund established under Subchapter J, Chapter 56B, Code of Criminal Procedure;

(2) the child welfare, child protective services, or child services board of the county appointed under Section 264.005, Family Code, that serves abused and neglected children;

(3) any program selected by the commissioners court that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence;

(4) any other program approved by the commissioners court of the county, including a program established under Article 56A.205, Code of Criminal Procedure, that offers psychological counseling in criminal cases involving graphic evidence or testimony; [~~or~~]

(5) a veterans treatment court program established by the commissioners court as provided by Chapter 124; or

(6) a veterans county service office established by the commissioners court as provided by Subchapter B, Chapter 434.

(c) The county treasurer shall:

(1) send all donations made under Subsection (a)(1) to the comptroller, at the time and in the manner prescribed by the

attorney general, for deposit to the credit of the compensation to victims of crime fund;

(2) deposit donations made to the county child welfare board under Subsection (a)(2) in a fund established by the county to be used by the child welfare board in a manner authorized by the commissioners court of the county; and

(3) send all donations made under Subsection (a)(3), [~~or~~] (a)(4), or (a)(6) directly to the program or office, as applicable, specified on the form letter signed by the person who reported for jury service.

SECTION 11.02. Section 62.202(b), Government Code, is amended to read as follows:

(b) The district judge may draw a warrant on the jury fund or other appropriate fund of the county in which the civil case is tried to cover the cost of buying and transporting the meals to the jury room. The judge may spend a reasonable amount [~~Not more than $3~~] per meal [~~may be spent~~] for a juror serving on a jury in a civil case.

SECTION 11.03. Section 434.032, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The commissioners court of a county that maintains an office:

(1) may not consider a juror's donation to the office of the juror's daily reimbursement under Section 61.003 for purposes of determining the county's budget for the office; and

(2) may use donations described by Subdivision (1) only to supplement, rather than supplant, amounts budgeted by the

county for the office.

ARTICLE 12. SPECIALTY COURT PROGRAMS

SECTION 12.01. Chapter 121, Government Code, is amended by adding Sections 121.003 and 121.004 to read as follows:

Sec. 121.003. APPOINTMENT OF PRESIDING JUDGE OR MAGISTRATE FOR REGIONAL SPECIALTY COURT PROGRAM. A judge or magistrate of a district court or statutory county court who is authorized by law to hear criminal cases may be appointed to preside over a regional specialty court program recognized under this subtitle only if:

(1) the local administrative district and statutory county court judges of each county participating in the program approve the appointment by majority vote or another approval method selected by the judges; and

(2) the presiding judges of each of the administrative judicial regions in which the participating counties are located sign an order granting the appointment.

Sec. 121.004. JURISDICTION AND AUTHORITY OF JUDGE OR MAGISTRATE IN REGIONAL SPECIALTY COURT PROGRAM. (a) A judge or magistrate appointed to preside over a regional specialty court program may hear any misdemeanor or felony case properly transferred to the program by an originating trial court participating in the program, regardless of whether the originating trial court and specialty court program are in the same county. The appointed judge or magistrate may exercise only the authority granted under this subtitle.

(b) The judge or magistrate of a regional specialty court program may for a case properly transferred to the program:

(1) enter orders, judgments, and decrees for the case;

(2) sign orders of detention, order community service, or impose other reasonable and necessary sanctions;

(3) send recommendations for dismissal and expunction to the originating trial court for a defendant who successfully completes the program; and

(4) return the case and documentation required by this subtitle to the originating trial court for final disposition on a defendant's successful completion of or removal from the program.

(c) A visiting judge assigned to preside over a regional specialty court program has the same authority as the judge or magistrate appointed to preside over the program.

SECTION 12.02. Section 124.003(b), Government Code, is amended to read as follows:

(b) A veterans treatment court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the program [~~county or counties in which those defendants reside~~].

SECTION 12.03. Sections 124.006(a) and (d), Government Code, are amended to read as follows:

(a) A veterans treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another veterans treatment court program that is located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the

consent of both veterans treatment court programs and the defendant.

(d) If a defendant is charged with an offense in a county that does not operate a veterans treatment court program, the court in which the criminal case is pending may place the defendant in a veterans treatment court program located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a veterans treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and instructions of the program.

SECTION 12.04. (a) Section 121.003, Government Code, as added by this Act, applies only to the appointment of a judge or magistrate to preside over a regional specialty court program that occurs on or after the effective date of this Act.

(b) Section 121.004, Government Code, as added by this Act, applies to a case pending in a regional specialty court program on or after the effective date of this Act.

ARTICLE 13. PROTECTIVE ORDERS

SECTION 13.01. Section 72.151(3), Government Code, is amended to read as follows:

(3) "Protective order" means:

(A) an order issued by a court in this state under Chapter 83 or 85, Family Code, to prevent family violence, as defined by Section 71.004, Family Code;

(B) an order issued by a court in this state under

Subchapter A, Chapter 7B, Code of Criminal Procedure, to prevent sexual assault or abuse, stalking, trafficking, or other harm to the applicant; or

(C) [~~. The term includes~~] a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

SECTION 13.02. Section 72.152, Government Code, is amended to read as follows:

Sec. 72.152. APPLICABILITY. This subchapter applies only to:

(1) an application for a protective order filed under:

(A) Chapter 82, Family Code;

(B) Subchapter A, Chapter 7B, Code of Criminal Procedure; or

(C) [~~(B)~~] Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence; and

(2) a protective order issued under:

(A) Chapter 83 or 85, Family Code;

(B) Subchapter A, Chapter 7B, Code of Criminal Procedure; or

(C) [~~(B)~~] Article 17.292, Code of Criminal Procedure, with respect to a person who is arrested for an offense involving family violence.

SECTION 13.03. Sections 72.154(b) and (d), Government Code, are amended to read as follows:

(b) Publicly accessible information regarding each protective order must consist of the following:

(1) the court that issued the protective order;

(2) the case number;

(3) the full name, county of residence, birth year, and race or ethnicity of the person who is the subject of the protective order;

(4) the dates the protective order was issued and served; and

(5) [~~the date the protective order was vacated, if applicable; and~~

[~~(6)~~] the date the protective order expired or will expire, as applicable.

(d) The office may not allow a member of the public to access through the registry any information related to:

(1) a protective order issued under Article 7B.002 or 17.292, Code of Criminal Procedure, or Chapter 83, Family Code; or

(2) a protective order that was vacated.

SECTION 13.04. Section 72.155(a), Government Code, is amended to read as follows:

(a) The registry must include a copy of each application for a protective order filed in this state and a copy of each protective order issued in this state, including an [~~a vacated or~~] expired order, or a vacated order other than an order that was vacated as the result of an appeal or bill of review from a district or county court. Only an authorized user, the attorney general, a district attorney, a criminal district attorney, a county attorney, a

municipal attorney, or a peace officer may access that information under the registry.

SECTION 13.05. Section 72.157, Government Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Except as provided by Subsection (b-1), for [~~For~~] a protective order that is vacated or that has expired, the clerk of the applicable court shall modify the record of the order in the registry to reflect the order's status as vacated or expired. The clerk shall ensure that a record of a vacated order is not accessible by the public.

(b-1) For a protective order that is vacated as the result of an appeal or bill of review from a district or county court, the clerk of the applicable court shall notify the office not later than the end of the next business day after the date the protective order was vacated. The office shall remove the record of the order from the registry not later than the third business day after the date the notice from the clerk was received.

SECTION 13.06. Section 72.158(a), Government Code, is amended to read as follows:

(a) The office shall ensure that the public may access information about protective orders, other than information about vacated orders or orders under Article 7B.002 or 17.292, Code of Criminal Procedure, or Chapter 83, Family Code, through the registry, only if:

(1) a protected person requests that the office grant the public the ability to access the information described by

Section 72.154(b) for the order protecting the person; and

(2) the office approves the request.

SECTION 13.07. Section 72.152, Government Code, as amended by this Act, applies only to an application for a protective order filed or a protective order issued on or after the effective date of this Act.

SECTION 13.08. As soon as practicable after the effective date of this Act, the Office of Court Administration of the Texas Judicial System shall:

(1) remove the record of any protective orders that have been vacated as the result of an appeal or bill of review from a district or county court from the protective order registry established under Subchapter F, Chapter 72, Government Code, as amended by this Act; and

(2) ensure that the records of vacated orders, other than orders described by Subdivision (1) of this section that are removed from the registry, are not accessible by the public.

ARTICLE 14. DISTRICT AND COUNTY ATTORNEYS

SECTION 14.01. Section 43.137, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) In addition to exercising the duties and authority conferred on district attorneys by general law, the district attorney represents the state in the district and inferior courts in Ector County in all criminal cases, juvenile matters under Title 3, Family Code, and matters involving children's protective services.

(d) The district attorney has no power, duty, or privilege

in any civil matter, other than civil asset forfeiture and civil bond forfeiture matters.

SECTION 14.02. Subchapter B, Chapter 45, Government Code, is amended by adding Section 45.168 to read as follows:

Sec. 45.168. ECTOR COUNTY. (a) It is the primary duty of the county attorney in Ector County to represent the state, Ector County, and the officials of the county in all civil matters, other than asset forfeiture and bond forfeiture matters for which the district attorney is responsible, pending before the courts of Ector County and any other court in which the state, Ector County, or the county officials have matters pending.

(b) The county attorney has no power, duty, or privilege in Ector County relating to criminal matters, juvenile matters under Title 3, Family Code, or matters involving children's protective services.

SECTION 14.03. Section 43.137, Government Code, as amended by this Act, and Section 45.168, Government Code, as added by this Act, apply only to a proceeding commenced on or after the effective date of this Act. A proceeding commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

ARTICLE 15. APPELLATE COURTS

SECTION 15.01. Subchapter A, Chapter 22, Government Code, is amended by adding Section 22.0042 to read as follows:

Sec. 22.0042. RULES REGARDING EXEMPTIONS FROM SEIZURE OF PROPERTY; FORM. (a) The supreme court shall adopt rules that:

(1) establish a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor or a receiver appointed under Section 31.002, Civil Practice and Remedies Code;

(2) require a court to stay a proceeding, for a reasonable period, to allow for the assertion of an exemption under Subdivision (1); and

(3) require a court to promptly set a hearing and stay proceedings until a hearing is held, if a judgment debtor timely asserts an exemption under Subdivision (1).

(b) Rules adopted under this section shall require the provision of a notice in plain language to a judgment debtor regarding the right of the judgment debtor to assert one or more exemptions under Subsection (a)(1). The notice must:

(1) be in English with an integrated Spanish translation that can be readily understood by the public and the court;

(2) include the form promulgated under Subsection (c);

(3) list all exemptions under state and federal law to the seizure of personal property; and

(4) provide information for accessing free or low-cost legal assistance.

(c) Rules adopted under this section shall include the promulgation of a form in plain language for asserting an exemption under Subsection (a)(1). A form promulgated under this subsection must:

(1) be in English with an integrated Spanish

translation that can be readily understood by the public and the court; and

(2) include instructions for the use of the form.

(d) A court shall accept a form promulgated under Subsection (c) unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

SECTION 15.02. Not later than May 1, 2022, the Supreme Court of Texas shall adopt rules and promulgate forms under Section 22.0042, Government Code, as added by this article.

ARTICLE 16. MISDEMEANOR CASES

SECTION 16.01. The heading to Article 45.0445, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0445. RECONSIDERATION OF SATISFACTION OF FINE OR COSTS.

SECTION 16.02. Article 66.252, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1) At any time before final disposition of the case, the justice or judge of a court having jurisdiction of the case of a misdemeanor described by Subsection (b)(3) may order a law enforcement officer to use the uniform incident fingerprint card to take the fingerprints of an offender who is charged with the misdemeanor, but was not placed under custodial arrest at the time of the offense.

SECTION 16.03. The changes in law made by this article apply only to a misdemeanor case that is initially filed in a justice or municipal court on or after the effective date of this Act, regardless of whether the offense for which the case is filed

occurred before, on, or after the effective date of this Act.

ARTICLE 17. COURT REPORTERS

SECTION 17.01. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.25 to read as follows:

Art. 42.25. FILING OF REPORTER NOTES. A court reporter may comply with Rule 13.6, Texas Rules of Appellate Procedure, by electronically filing with the trial court clerk not later than the 20th day after the expiration of the time the defendant is allotted to perfect the appeal the untranscribed notes created by the court reporter using computer-aided software.

SECTION 17.02. Section 52.001(a)(4), Government Code, is amended to read as follows:

(4) "Shorthand reporter" and "court reporter" mean a person who is certified as a court reporter, apprentice court reporter, or provisional court reporter under Chapter 154 to engage [~~engages~~] in shorthand reporting.

SECTION 17.03. Section 52.011, Government Code, is amended to read as follows:

Sec. 52.011. PROVISION OF SIGNED DEPOSITION CERTIFICATE; CERTIFICATE REQUIREMENTS [~~CERTIFICATION~~]. (a) A court reporting firm representative or a court reporter who reported a deposition for a case shall complete and sign a deposition certificate, known as the further certification.

(b) On request of a court reporter who reported a deposition for a case, a court reporting firm shall provide the reporter with a copy of the deposition certificate [~~document related to the deposition, known as the further certification,~~] that the reporter

has signed or to which the reporter's signature has been applied.

(c) The deposition certificate must include:

(1) a statement that the deposition transcript was submitted to the deponent or the deponent's attorney for examination and signature;

(2) the date the transcript was submitted to the deponent or the deponent's attorney;

(3) the date the deponent returned the transcript, if returned, or a statement that the deponent did not return the transcript;

(4) a statement that any changes the deponent made to the transcript are reflected in a separate document attached to the transcript;

(5) a statement that the transcript was delivered in accordance with Rule 203.3, Texas Rules of Civil Procedure;

(6) the amount charged for preparing the original deposition transcript;

(7) a statement that a copy of the certificate was served on all parties to the case; and

(8) the date the copy of the certificate was served on the parties to the case.

SECTION 17.04. Section 52.046(d), Government Code, is amended to read as follows:

(d) A judge of a county court or county court at law shall appoint a [~~certified~~] shorthand reporter to report the oral testimony given in any contested probate matter in that judge's court.

SECTION 17.05. Section 154.001(a)(4), Government Code, is amended to read as follows:

(4) "Shorthand reporter" and "court reporter" mean a person who is certified as a court reporter, apprentice court reporter, or provisional court reporter under this chapter to engage [~~engages~~] in shorthand reporting.

SECTION 17.06. Section 154.101(e), Government Code, is amended to read as follows:

(e) A person may not assume or use the title or designation "court recorder," "court reporter," or "shorthand reporter," or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the person is a court reporter or shorthand reporter, unless the person is certified as a shorthand reporter or provisional court reporter by the supreme court. Nothing in this subsection shall be construed to either sanction or prohibit the use of electronic court recording equipment operated [~~by a noncertified court reporter pursuant and~~] according to rules adopted or approved by the supreme court.

SECTION 17.07. Section 154.105, Government Code, is amended by amending Subsection (b) and adding Subsections (c), (d), and (e) to read as follows:

(b) A [~~certified~~] shorthand reporter may administer oaths to witnesses:

(1) anywhere in this state;

(2) in a jurisdiction outside this state if:

(A) the reporter is at the same location as the witness; and

(B) the witness is or may be a witness in a case filed in this state; and

(3) at any location authorized in a reciprocity agreement between this state and another jurisdiction under Section 152.202(b).

(c) Notwithstanding Subsection (b), a shorthand reporter may administer an oath as provided under this subsection to a person who is or may be a witness in a case filed in this state without being at the same location as the witness:

(1) if the reporter is physically located in this state at the time the oath is administered; or

(2) as authorized in a reciprocity agreement between this state and another jurisdiction under Section 152.202(b) if:

(A) the witness is at a location in the other jurisdiction; and

(B) the reporter is at a location in the same jurisdiction as the witness.

(d) The identity of a witness who is not in the physical presence of a shorthand reporter may be proven by:

(1) a statement under oath on the record by a party to the case stating that the party has actual knowledge of the witness's identity;

(2) a statement on the record by an attorney for a party to the case, or an attorney for the witness, verifying the witness's identity;

(3) a statement on the record by a notary who is in the presence of the witness verifying the witness's identity; or

(4) the witness's presentation for inspection by the court reporter of an official document issued by this state, another state, a federal agency, or another jurisdiction that verifies the witness's identity.

(e) A shorthand reporter to which this section applies shall state on the record and certify in each transcript of the deposition the physical location of:

(1) the witness; and

(2) the reporter.

SECTION 17.08. Section 154.112, Government Code, is amended to read as follows:

Sec. 154.112. EMPLOYMENT OF NONCERTIFIED PERSON FOR SHORTHAND REPORTING [~~REPORTERS~~]. (a) A person who is not certified as a court [~~noncertified shorthand~~] reporter may be employed to engage in shorthand reporting until a certified shorthand reporter is available.

(b) A person who is not certified as a court [~~noncertified shorthand~~] reporter may engage in shorthand reporting to report an oral deposition only if:

(1) the person [~~noncertified shorthand reporter~~] delivers an affidavit to the parties or to their counsel present at the deposition stating that a certified shorthand reporter is not available; or

(2) the parties or their counsel stipulate on the record at the beginning of the deposition that a certified shorthand reporter is not available.

(c) This section does not apply to a deposition taken

outside this state for use in this state.

SECTION 17.09. The changes in law made by this article apply only to a deposition taken on or after the effective date of this Act. A deposition taken before that date is governed by the law in effect on the date the deposition was taken, and the former law is continued in effect for that purpose.

ARTICLE 18. TRANSITION

SECTION 18.01. A state agency subject to this Act is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the state agency may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

ARTICLE 19. EFFECTIVE DATE

SECTION 19.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2021.

_____ _____

President of the Senate Speaker of the House

I certify that H.B. No. 3774 was passed by the House on May 7, 2021, by the following vote: Yeas 141, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3774 on May 28, 2021, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3774 on May 30, 2021, by the following vote: Yeas 134, Nays 3, 2 present, not voting; and that the House adopted H.C.R. No. 118 authorizing certain corrections in H.B. No. 3774 on May 31, 2021, by the following vote: Yeas 134, Nays 0, 1 present, not voting.

_____

Chief Clerk of the House

I certify that H.B. No. 3774 was passed by the Senate, with amendments, on May 26, 2021, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3774 on May 30, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 118 authorizing certain corrections in H.B. No. 3774 on May 31, 2021, by the following vote: Yeas 31, Nays 0.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

Tab 2

Zamen, Shiva

Subject: FW: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774

Attachments: Debtor Exemption Joint Memorandum - 10-6-2021.docx; TXCBA and TATR Exemption Notification Rules and Form.pdf; Attachment A--Garnishment Rules Revised.docx; Attachment B--Garnishment Notice Instructions and Form Revised.docx; Attachment C--Turnover Rules Revised.docx; Attachment D--Turnover Notice Instructions and Form Revised.docx; Attachment E--Execution Rules Revised.docx; Attachment F -- Execution Exemption Notice and Claim Form Revised.docx; Exemption.Memo Ad Hoc Debtors Group 10.6.21.docx

From: Craig Noack <craig@noacklawfirm.com>
Sent: October 6, 2021 11:03 AM
To: Jim M. Perdue Jr. <jperduejr@perdueandkidd.com>; Nicholas Chu <Nicholas.Chu@traviscountytx.gov>; Whalen, Theadora <td24@txstate.edu>; Sarosdy, Randall L <rsarosdy@txstate.edu>; Richard Tomlinson <RTomlinson@lonestarlegal.org>; Ann Baddour <abaddour@texasappleseed.org>
Cc: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>; 'Tucker, Bronson T' <bt16@txstate.edu>; 'Tom Kolker' <tom@greensteinandkolker.com>
Subject: RE: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774

Jim –

As we indicated yesterday, our un-official ad hoc working group of stakeholders on the HB 3774 Debtor Exemption bill have been meeting repeatedly over the last three weeks. What is attached is the outcome of our meetings and work.

Although some common ground was reached, and the parties approached a center point on some issues, it became apparent after a few sessions that we were not going to be able to reach agreement on a common proposed set of rules and forms. Given that realization, we worked on a joint memorandum to narrow the issues that your committee must consider, and present the positions of each side for determination. To use the language of your prior email, we understand that the Sword of Damocles is hanging over each of these issues; we have done our best to make each sword drop as informed and decisive as possible.

Each stakeholder group also substantially revised their proposals to address the Committee's initial feedback, as well as feedback received from the working group. Although the proposals are still fundamentally approaching from different perspectives, they are closer to a middle ground.

Attached are the following documents:

1. Debtor Exemption joint memorandum – a joint work product of the ad hoc group, outlining the issues, a brief summary of each stakeholder's proposal, and a brief critique of each proposal
2. TXCBA and TATR Exemption Notification Rules and Form – a revised proposal submitted jointly by the Texas Creditors Bar Association and the Texas Association of Turnover Receivers, containing a proposed rule, language for turnover orders, and proposed notice and claim form
3. Debtor Group Package of Rule and Forms – the Ad Hoc Debtor Group proposal of rules and forms, consisting of:
    a. Exemption Memo Ad Hoc Debtors Group – A summary and outline of the Ad Hob Debtor Group's proposal
    b. Attachment A – Garnishment Rules Revised
    c. Attachment B – Garnishment Notice Instructions and Form Revised
    d. Attachment C – Turnover Rules Revised

e. Attachment D – Turnover Notice Instructions and Form Revised
f. Attachment E – Execution Rules Revised
g. Attachment F – Execution Exemption Notice and Claim Form Revised

As far as the October 8th meeting, Rich Tomlinson and Craig Noack will both be present representing our respective groups, to assist the Committee as needed, and to answer any questions. Bronson Tucker will also be there on behalf of the Texas Justice Court Training Center, although he will have to leave early. It is possible that others, such as Ann Badour on behalf of Texas Appleseed or Tom Kolker or someone else on behalf of the Texas Association of Turnover Receivers, may also appear.

Thanks for the opportunity to provide input to the Committee, and let us know if you have any questions.

Craig Noack
Managing Member
NOACK LAW FIRM, PLLC
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Fax No.: (210) 579-1777

From: Jim M. Perdue Jr. <jperduejr@perdueandkidd.com>
Sent: Tuesday, September 14, 2021 4:14 PM
To: Nicholas Chu <Nicholas.Chu@traviscountytx.gov>; Craig Noack <craig@noacklawfirm.com>; Whalen, Theadora <td24@txstate.edu>; Sarosdy, Randall L <rsarosdy@txstate.edu>; Richard Tomlinson <RTomlinson@lonestarlegal.org>; Ann Baddour <abaddour@texasappleseed.org>
Cc: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>
Subject: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774

Dear folks:
First, thank you for being involved in this project. The presentations by Rich and Craig were very informative and helpful to the Court and the committee. You are now collectively un-officially the ad hoc working group of stakeholders on this HB 3774 Debtor's Exemptions issue.

Let me deliver a couple messages/takeaways from the Supreme Court Rules Advisory meeting, some mine, some from others, that I hope will offer you guidance going forward.

First, the Court's Committee would really like to have this project in a near complete, if not complete stage, to consider and vote on for the Court by the October 8 meeting.
Second, if the Creditor's Bar and Debtor's Advocates want to maintain role as leading stakeholders in this process, they are going to have to co-ordinate an actual dialogue, and include input from the judges and others versed in these issues toward a proposal that is closer to an agreement. For every issue that a line in the sand is drawn, there is a Sword of Damocles overhead that will make the decision for you.
Last, some guidance based on the discussion:

- The rule amendments should go where the trial courts will look. This probably requires a change to more than one rule, but if it could be captured all in one new rule, it should be in the 600's series proximal to the rules on these issues. The issue of garnishment and receivership being in two sets of rules is well taken and complicates this project. Nevertheless, this needs to be user friendly and thus the less engineered the solution, the better.
- I am not sure there was broad appetite to take statute stated purpose to want as an easier means for debtor to claim exemption as a legislative policy enactment mandating the Court to make receivership on par with garnishment. The words of the statute generally will be the touchstone for the Court's committee.

- The conversation of receivers did raise another step in the process that needs to be addressed. Based on Justice Bland's comments, you should consider that Committee requests that stakeholders should work on a form order for appointing a receiver, which would contain both the rights and obligations of the receiver (e.g., to notify the debtor about exemptions, and specific language the receiver must use).
- For the exemption form for the debtor (the meat of the project), the Debtors form is closer to plain language, but the Creditor form is accurately complete. Shorter form, user friendly would be better but there should be a middle ground of translation to plain language and what the list includes.

I am simply a facilitator at this point. Court will be ultimate arbiter, so its not for me to mediate your two perspectives (I don't think I could). I have been told to see if the stakeholders, with the help of the judges, could agree on a draft of the two items above (or give us the places where they disagree, but using one form) and any necessary rule amendments to provide for this exemption form by the October 8 meeting.

You are obviously free to include respected colleagues who I have not copied here. You all just happened to be the resource names provided to me.

P&K
PERDUE and KIDD
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Tab 3

JOINT MEMORANDUM

To: Supreme Court Advisory Committee (SCAC)
From: Ad Hoc Debtor Group (Debtor Group)
Texas Creditors Bar Association (TXCBA)
Texas Association of Turnover Receivers (TATR)
Re: Range of agreement and discussion over exemption notice and procedures
Date: October 6, 2021

A. Introduction

Following the passage of H.B. 3774 with its mandate for an expedited procedure for raising personal property exemptions in post-judgment proceedings, the Debtor Group and TXCBA appeared at the September 3, 2021 meeting of the SCAC to advocate for specific rule proposals. On September 14th, Jim Perdue, Jr. e-mailed these stakeholder groups to advise them to work out an agreed rule proposal before the next SCAC meeting on October 8th. Following that e-mail, the Debtor Group, TXCBA and TATR have met no fewer than six times on September 22nd, 24th, 27th, 30th and October 4th and 5th. Bronson Tucker of the Texas Justice Court Training Center (TJCTC) has participated in all but the earliest meetings.

The stakeholder groups have not been able to work out an agreement on the form of a proposed rule or rules to implement the mandate of H.B. 3774, but they have been able to narrow their differences, and have modified their proposals to address concerns raised by each side. The positions of these groups have moved closer on a number of issues, including the timing of the notice and the length of the suspension period. In addition, the parties have agreed to withdraw proposals that were not directly mandated by H.B. 3774, including notice about third party rights to joint accounts, notice about the right of judgment debtors to challenge the validity of the underlying judgment, and a provision for waiver of exemption rights if not timely raised.

What follows is a description of the major unresolved issues, grouped into subjects where compromise may be possible, and subjects where compromise could not be reached despite extensive discussion. Each party has provided a short description of their proposal and a critique of the alternative proposal. Bronson Tucker's comments and a separate proposal by the TJCTC related to notices included in the judgment or notice of judgment have also been included.

The parties' revised, full proposals relating to the rules, their notice and claim forms, and language for turnover orders are separately submitted.

B. Issues that remain unresolved but possibly subject to compromise

1. Timing of notice to be sent to judgment debtors

Issue summary: There is disagreement on how long the creditor or receiver has to send the exemption notice and claim form, and what should trigger the running of that period.

Debtors' proposal: The Debtor Group proposes that exemption notices and forms should be sent to judgment debtors within 3 business days of the day the relevant party (judgment creditors with garnishment and execution and turnover receivers with turnover) receives actual notice that the funds or tangible personal property at issue have been seized or frozen. To speed that process, the Debtor Group further proposes that constables should be required to inform judgment creditors or their counsel of the service of the writ of garnishment or a writ of execution by telephone or e-mail on the day service occurs. Similarly, recognizing that the apparent standard allowed long delays in giving notice, the Texas Judicial Council passed resolution no. 7 on September 24, 2020 to recommend that Rule 663a be amended to require that notice be sent in 3 business days.

This proposal is consistent with the approach taken by Georgia in its recently-reworked post-judgment rules which requires notice of exemptions to be sent within 3 business days after service of the writ of garnishment. Similarly, New York provides that such notice issue within 4 days after service of a restraint order. *McCahey v. L.P. Investors*, 593 F,Supp. 319, 322, 328 (E.D.N.Y. 1984)(N.Y. provides notice of restraint within 4 days after service), ***aff'd***, 774 F.2d 543 (2nd Cir. 1985). Moreover, it is consistent with caselaw holding that due process requires notice of exemptions be given shortly after the effective freezing or seizure of assets. *New v. Gemini Capital Group*, 859 F.Supp.2d 990, 996-997 (S.D. Iowa 2012)(declaring Iowa's post-judgment garnishment procedures unconstitutional in part because notice of garnishment did not need to be sent until the judgment creditor moves to seize garnished funds). Finally, the 3 business day proposal is consistent with the language in H.B. 3774, which requires an "expedited procedure."

Creditors' critique: The Debtor Group proposal ignores Texas' unique garnishment and turnover processes, and attempts to impose the minimal possible period for a reasonable creditor to process and send notifications. The creditors prefer consistency, and would like the timing of the notice of exemption to run with the timing for the garnishment notice under Rule 663a. There is no case holding that "as soon as practicable" is unconstitutional or improper. The TXCBA's largest concern is for small practitioners, where some error occurs in the notification that service was rendered, or the attorney is out of office for a few days. The judgment plaintiff should not be subject to an argument

that missing an arbitrary deadline would result in an unjust windfall to the defendant and the return of even non-exempt funds.

The issue of requiring constables or sheriffs to notify creditors of service was not discussed in prior meetings, and the TXCBA does not believe that the key stakeholders for such a rule have been consulted.

Creditors' proposal: The notice should not be sent until actual seizure occurs, to prevent defendants from withdrawing funds from slow-processing banks, and to prevent confusion and unnecessary hearings when an account with no balance is hit. Creditors believe the "as soon as practicable" language used elsewhere in the Rules is appropriate; creating a hard deadline does not allow flexibility based on the unique circumstances of each case.

Debtors' critique: Contrary to the mandate of H.B. 3774, the TXCBA proposal does not assure an expedited exemption procedure. By providing that notice need only be sent "as soon as practicable," TXCBA has proposed an unworkably vague standard. Currently, Rule 663a provides that notice of garnishment be given to judgment debtors "as soon as practicable," and that has been construed to mean no more than 14 days by most courts. *Arriaga v. Jess Enterprises*, 2014 WL 1875917, *2 (N.D. Tex. 2014)(applying Texas law); *Lease Finance Group, LLC v. Childers*, 310 S.W.3d 120, 124-128 (Tex. App. – Fort Worth 2010, no pet.); *Requena v. Salomon Smith Barney, Inc.*, 2002 WL 356696, *3-4 (Tex. App. – Houston [1st Dist.] 2002, no pet.). As a reflection of how amorphous this standard is, though, one appellate court more recently found that an 18-day delay in providing this notice was acceptable. *Carlson v. Schellhammer*, 2016 WL 6648754, *5-6 (Tex. App. – Fort Worth 2016, no pet.). Concurrent with TXCBA's proposal to impose no time limit on ruling upon exemption claims, the current process in the garnishment process would be lengthened, not expedited. This means judgment debtors with valid exemption claims will have to wait even longer to obtain relief.

2. Timing of hearing

Issue summary: There is disagreement on whether the rules should mandate that the hearing be held within a certain time period.

Debtors' proposal: The Debtor Group proposes that any hearing and ruling on an exemption claim should occur within 10 days after the claim is filed upon reasonable notice, which can be 3 days or less. This is the current standard for motions to dissolve writs of garnishment and sequestration which was imposed in response to successful constitutional challenges to those procedures in the 1970s. Tex.R.Civ.P. 664a and 712a.

Creditors' critique: A mandate of ten days to have a hearing will cause a significant amount of docket chaos for many courts. The courts should be required to promptly set a hearing, but left to fit the hearing within their schedules.

However, TXCBA's strongest concern is the proposed mandate that the court must make a finding at the first hearing, and may not continue the hearing if the case needs to be developed. The creditor or receiver will have almost no time to develop the case before the hearing – especially if the hearing is on fewer than three days' notice – and will be at an extreme disadvantage if the defendant does not bring sufficient evidence. The court needs the flexibility to continue the hearing to allow more evidence to be developed.

Creditors' proposal: The rule should instruct the court to promptly set a hearing, but not set a firm deadline, as court scheduling and the facts of each case vary. The rules should not mandate that a decision must be made at the first hearing, as the hearing may have been expedited, and the facts may need to be further developed. The critique of the Debtor Group that the lack of a strict deadline would likely deny due process is incorrect, as their cited case predates the automatic protections and federal preemption of state law under 31 CFR Part 212.

Debtors' critique: TXCBA's proposal on this issue also has the effect of delaying the ultimate hearing and ruling on exemptions, contrary to the statutory mandate to impose an *expedited* procedure. In fact, current Rules 614a, 664a and 712a (relating to distress warrants, garnishment and sequestration) impose a far more expedited ruling requirement, as they require a hearing to be held and a ruling made within 10 days, allowing continuances only when all parties agree. Rather than impose the standard which has been in effect since the 1970s, TXCBA merely seeks to require that hearings be held "promptly" and would allow judgment creditors to seek continuances of indefinite length. This is a step away from an expedited exemption procedure, as it would allow further delays in the process. By permitting such delays, suddenly destitute judgment debtors with valid exemption claims would have to wait even longer to obtain the return of funds desperately needed to pay basic bills like rent and utilities and cover the cost of necessities such as food. Moreover, under these circumstances, imposing no deadline for a ruling and allowing continuances would likely deny due process to exemption litigants. *Finberg v. Sullivan*, 634 F.2d 50, 59-61 (3d Cir. 1980)(permitting a hearing to occur in 15 days with no limit on continuances is unconstitutional).

TXCBA's proposal would also have the bizarre effect of allowing exemption claim proceedings, presumably filed most by unsophisticated, pro se judgment debtors, to take more time that hearings on motions to dissolve writs of garnishment which must be ruled upon 10 days. Since only judgment debtors who can afford counsel are likely to utilize the current procedure in Rule 664a, that means debtors with more resources receive speedier justice than those who have less. That cannot have been the intent of the Legislature when it passed H.B. 3774.

The reference to 31 C.F.R. Part 212 does not save TXBCA's proposal from due process attack, because it only covers a few federal exemptions and even that protection

for federal benefits is limited by amount (not to exceed two months) and account (only protects funds in account that receive wire from U.S. Treasury and not savings accounts).

3. Length of suspension period

Issue summary: There is disagreement on how long the post-judgment process must be suspended to give the judgment debtor time to receive, fill out and file a claim of exemption.

Debtors' proposal: The Debtor Group proposes that, for turnover receivers and with writs of execution, seized funds should not be distributed and seized tangible personal property should not be sold for a period of 30 days. A specified time period is not necessary for writs of garnishment, because funds and property that are frozen in garnishment proceedings cannot be distributed or sold until there is a final ruling by the court.

This 30-day proposed time period is half of our original proposal. We made the concession to try to accommodate concerns raised by TXCBA. Thirty days are needed simply to assure enough time for judgment debtors to receive notice, file an exemption claim and go to a hearing. Although funds could be retrieved after they are distributed, the process to do so is cumbersome and often time-consuming. The funds would need to be retrieved both from the turnover receiver and the judgment creditor, creating substantial hardship for the judgment debtor who assert funds or property are exempt.

Creditors' critique: This suspension period would mandate that seized personal property would sit in storage at extremely high rates while a writ of execution (good for only 30, 60 or 90 days) expires. When added to the time required for the court to set a hearing, the process for seizure and sale of personal property quickly becomes so costly, even for obviously non-exempt property, that all effective judgment enforcement against personal property will be useless. Worse, the defendant's property will still be sold, but any equity will be consumed by the costs of sale, so Defendants will lose much of the credit they would have obtained towards the judgment even when they have no intention of claiming an exemption.

No rationale is given as to why the exemption period should be 30 days when the response period for the lawsuit itself is only 14 days in justice court, or 20-27 days in county or district court. The suspension period does not need to contemplate that the hearing be held within the suspension period. If the claim of exemption is received, the rule can provide for further suspension until the claim is considered. This allows for a much more reasonable period for the vast majority of cases where no exemption is claimed.

Creditors' proposal: The proposed 14-day hold period should be aligned with the majority of states surveyed that have a 10–15-day response period. It also aligns with the answer period for justice courts, where the majority of enforcement of consumer debts

occur. If service of the notice and form occurs by mail, the mailbox rule would increase the response period to 17 days. The hold period must consider that for personal property seizures, the judgment creditor or receiver may be paying for costly storage of the personal property in anticipation of sale.

Debtors' critique: TXCBA's survey of state policies appears to be related to writs of garnishment and execution and not turnover receivers. The use of turnover receivers to collect consumer debts is unique to Texas. Comparing turnover receivers and their expansive powers to writs of garnishment and execution is not an apples-to-apples comparison.

Furthermore, a substantial number of states in TXCBA's own survey imposed a suspension period in excess of 14 days. In footnote 2 of its proposal, the TXCBA acknowledged in its informal survey of exemption periods of less than 30 states that at least 6 states (Florida, Georgia, Missouri, New York, North Carolina and Wisconsin) imposed a 20-day suspension period. The Debtor Group asserts that 30 days is ordinarily needed to give unsophisticated judgment debtors time to receive notice and to complete and file an exemption form. If the SCAC considers a period of less than 30 days, the Debtor Group would ask that it be no less than 21 days.

4. Time limit for raising exemptions before distribution or sale

Issue summary: While both sides have agreed to allow exemptions to be asserted after the suspension period, there is disagreement as to whether exemptions can be asserted right up until distribution or sale.

Debtors' proposal: The Debtor Group proposes that exemptions should be allowed to be raised at any time before distribution or sale, and even afterwards as agreed by both TXCBA and TATR. This is consistent with the current garnishment procedure which permits the filing of motions to dissolve writs of garnishment at any time before funds (frozen by a writ) are ordered to be distributed to the judgment creditor in the judgment of garnishment.

Creditors' critique: The Debtor Group proposal would allow for 11th-hour gamesmanship to prevent sales and distributions. Judgment defendants are getting a significant window and guarantee of their ability to assert their exemption rights; in return, third parties who purchase property at auction, and judgment creditors who have had to pursue the judgment defendant all the way to enforcement in order to obtain redress for their valid judgment, should have some certainty that the sale or distribution is conclusive.

Creditors' proposal: For an orderly sale of property to occur, and having already allowed weeks to pass for the exemption to be received, there needs to be a period of

time wherein the creditor and purchasers at auction may be assured that no last-minute exemption claim has been filed to stop the process or void the transfer. Otherwise, gamesmanship or the failure of unsophisticated defendants to copy the creditor, receiver or deputy could create unwelcome scenarios.

Debtors' critique: TXCBA's proposal only imposes vague standards on when exemption notices are sent and when rulings on exemption claims can be expected, and then follows that up with a requirement that funds or property be held in suspense only for 14 days. As the coup de grace, TXCBA provides that judgment debtors must provide judgment debtors and receivers of their exemption claims within 7 days of fund disbursement or property sale to make the process more convenient for parties seeking to collect judgment. (Their proposal would also be confusing to *pro se* litigants, because it does not state how to determine this deadline from TXCBA's proposed form notice.) Under their proposal, there is no assurance that a judgment debtor will receive the notice promptly and have sufficient time to file an exemption claim before funds are distributed and property sold. The exemption process would not be truly expedited --- instead, it would be a trap for the unwary, unsophisticated judgment debtor.

5. Language for turnover orders

Issue summary: While both sides agree that turnover orders should reference the new rules and instruct receivers to follow them, there is disagreement as to the scope of the instructions.

Debtors' proposal: The Debtor Group proposes that the following language be used in any order appointing a turnover receiver:

> In the first contact with the judgment debtor following the freezing or seizure of personal property, [receiver] must first inform the judgment debtor orally that this property may be exempt from seizure and that notice of exemption rights will be sent to the judgment debtor. [Receiver] shall not disburse funds or sell any tangible personal property has been served with the notice and form in compliance with Rule XXX, and at least X days have passed since the date of service, in compliance with Rule XXX. [Receiver] must likewise evaluate evidence of applicable exemptions before disbursement of funds, sale of tangible personal property or entry into a payment plan.

Creditors' critique: The instructions exceed the Legislative mandate, and create difficult-to-interpret standards for turnover receivers. What if the defendant does not contact the receiver by phone – must the receiver employ a call center to attempt to call the defendant in addition to sending the written notice? If funds are turned over with no explanation, is the receiver required to evaluate evidence of applicable exemptions even if the defendant

never claims an exemption? What if a defendant wants to enter into a payment plan and use exempt funds to do so – is the receiver required to reject the agreement? What if the receiver discovers the asset but does not locate the defendant? The instructions are designed to require receivers to assert exemptions on behalf of the defendants, even when they don't want to, which is inappropriate given their role.

Creditors' proposal: A one-sentence instruction that a turnover receiver must comply with proposed Rule 621b should suffice. Anything else is outside the Legislative mandate.

Debtors' critique: During our meetings, receivers stated that they usually discovered that funds had been frozen or seized (following a levy letter from the receiver to a bank) when they received telephone calls from judgment debtors. They further stated that it was during that first telephone conversation that the receiver would offer a payment plan in exchange for the release of funds in the frozen account. Many judgment debtors agree to those payment plans to obtain access to their bank accounts and consequently waive their exemption rights. The Debtor Group merely seeks to address the imbalance in knowledge between receivers and most judgment debtors by requiring some oral notice that judgment debtors may have exemption rights and will shortly receive some detailed information on the subject. In addition, the Debtor Group seeks to impose an obligation on turnover receivers to at least consider applicable exemptions with individual judgment debtors before entering into payment plans and distributing funds or proceeding with sales. Otherwise, the entire procedure will be rendered meaningless if turnover receivers induce less knowledgeable judgment debtors to agree to payment plans that waive exemption rights. Given that judgment debtors feel coerced into such plans to avoid destitution, they will often agree to make payments to judgment creditors from wholly exempt funds, such as Social Security, unemployment compensation and child support. If turnover receivers are to act as neutral officers of trial courts, though, they should not merely collect funds for judgment creditors but also act to protect the exemption rights of *pro se* judgment debtors by giving some notice of exemption rights and consideration of exemption rights before forcing a waiver of such rights.

C. Issues on which compromise is not possible

1. Whether more funds are exempt from turnover than the other forms of post-judgment collection

Issue summary: There is strong disagreement as to whether exemption law is different for turnover orders than for other forms of post-judgment enforcement.

Debtors' proposal: The Debtor Group proposes that the exemption notice and claim form recognize that some funds are exempt from turnover, even though they are not exempt from garnishment. Specifically, its proposed exemption notice and claim form for turnover receivers specifically states that wages and spendthrift trust proceeds are exempt from turnover. This reference to exemptions from turnover are based on subsection (f) of the turnover statute, CPRC § 31.002, which prohibits the turnover "of the proceeds of, or disbursement of, property exempt under any statute, including Section 42.0021, Property Code."

Through this provision, the Legislature ". . . intended to specifically exempt [from turnover] paychecks, retirement checks, individual retirement accounts and other such property exempt under the bankruptcy code. By prohibiting the turnover of the *proceeds* of property exempt under any statute, this section necessarily prohibits the turnover of the proceeds of current wages." *Caulley v. Caulley*, 806 S.W.2d 795, 798 (Tex. 1991)(overruling trial court order compelling judgment debtor to turnover his wages to a court-appointed receiver). The reasoning behind this decision has been followed by other courts. *Marrs v. Marrs*, 401 S.W.3d 122, 124-127 (Tex. App. – Houston [14th Dist.] 2011, no pet.)(wages paid to bankruptcy trustee and then paid to judgment debtor when bankruptcy was dismissed are exempt from turnover as proceeds or disbursements of exempt property); *Leibman v. Grand*, 981 S.W.2d 426, 435 (Tex. App. – El Paso 1998, no pet.)(paychecks received by debtor are exempt from turnover under subsection (f)); *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 323 (Tex. App. – Dallas 1997, writ denied)("This amendment was intended, in part, to prevent turnovers of paychecks … after a judgment debtor received them.").[1] Similarly, payments from a spendthrift trust received by a judgment debtor are exempt from turnover. *Id*. In other words, once wages or payments from a spendthrift trust are received by a judgment debtor, they become the proceeds or disbursements of exempt property and thereby not subject to turnover.[2]

Creditors' critique: The Debtor Group spends a great deal of time arguing this point because it is an attempt to create new law through the rule-making process, where they have failed to convince any courts or the Legislature to adopt their position. The legislative intent behind CPRC § 31.002(f) was to reverse *Cain v. Cain*, 746 S.W.2d 861, and prevent orders compelling the turnover of *checks* – specifically, checks representing

[1] At least two courts of appeal have assumed that taking the proceeds of a paycheck from a judgment debtor's bank account by way of a *turnover order* might violate section 31.002(f), but the more limited exemption for current wages did not preclude *garnishment* of those proceeds. *Guiberson v. Bohnefeld*, 1993 WL 175242, *1-2 (Tex. App. – Dallas 1993, no writ); *American Express Travel Related Services v. Harris*, 831 S.W.2d 531, 532-533 (Tex. App. – Houston [14th Dist.] 1992, no writ).

[2] One recent appellate court relied upon subsection (f) to find that a royalty payment constituted the proceeds from a homestead and was thereby exempt from turnover. *Fitzgerald v. Cadle Company*, 2017 WL 4675513, *1-3 (Tex. App. – Tyler 2017, no pet.).

retirement income – and was not addressing money held in a bank account.[3] Each case cited by the Debtor Group addresses exactly that situation, where a turnover order had been used to compel the turnover of an actual paycheck once received and before deposited, or to require turnover of a paycheck on a recurring basis.[4] The Debtor Group tries very hard to claim that money in a bank account is not subject to turnover if it is traceable to wages when there is no case law in support of that argument, and substantial case law speaking to the transformative nature of the wage deposit into a bank account, such that it becomes a debt owed by the bank to the depositor (and no longer current). *Sutherland v. Young*, 292 S.W. 581 (Tex.Civ.App. – Waco 1927, no writ); *Bandy v. First State Bank, Overton, Tex.*, 835 S.W.2d 609, 620 (Tex. 1992).

Creditors' proposal: This issue is outside the Legislative mandate, and the Debtor Group's insistence on it has been the primary reason behind the inability to agree on a simple approach and notice. The TXCBA proposed notice simply includes this exemption along with all other listed exemptions. If a defendant or defendant's attorney wants to argue this issue, they may do so along with any of the other listed exemptions. The TXCBA would prefer better clarification in the notice – clarification that wages deposited in the bank account are not exempt – because otherwise there will be a lot of unnecessary hearings over this subject.

Debtors' critique: The creditors' proposal renders subsection (f) of the turnover statute superfluous. There was an attempt in the 87th Legislative Session to change CPRC § 31.002(f) to limit its protections to "sales proceeds" of exempt property.[5] This effort was not successful. See above for a fuller explication of the Debtor Group's position. That said, if all exemptions are required to be listed in exemption notices under H.B. 3774, exemptions from turnover provided by subsection (f) of the turnover statute must be recognized. Otherwise, the statutory mandate to list all exemptions will be ignored.

2. One rule or multiple rule changes.

[3] The TXCBA will submit the bill analysis explaining the background of Tex. Civ. Prac. & Rem. Code § 31.002 with its separate proposal.

[4] The Texas Supreme Court in *Caulley* specifically references "paychecks", not money in the bank, and the 14th Court of Appeals in *Marrs* actually specifically states that it was undisputed that the debtor "did not receive the subject wages and did not deposit them into her bank account." *Marrs*, 401 S.W.3d at 125-126. The *Harris* case expressly holds that when wages are paid, they cease to be exempt, and simply states that the turnover statute didn't apply because it wasn't directed to the judgment debtor. The other cases cited by the Debtor Group all reference paychecks or situations where the wages have not yet been deposited. Every single case cited by the Debtors' Group does not reference money in a bank account or support the broad position they advocate.

[5] See H.B. 2918, regular session, 87th Legislature.

Issue summary: There is strong disagreement whether the mandated process can be accomplished with one rule change, or requires multiple rule changes.

Debtors' proposal: The Debtor Group proposes that the garnishment and execution rules be amended and that new rules be adopted for garnishment, turnover and execution. There are several advantages to this approach.

First, it reflects the fact that there already is an established rule regime for challenging writs of garnishment which only needs some tinkering to provide a simple, expedited procedure for judgment debtors to raise exemptions by claim form rather than by motion. By contrast, there are no rules governing procedures in turnover proceedings, and thus no rules providing notice and opportunity to be heard on exemptions. Similarly, while rules governing execution procedures exist, there are no such rules that provide any procedure for challenging seizures based on exemptions.

Second, the exemption rules can be found in the sections set aside for garnishment and execution, and that will make them easier for practitioners and courts to find. Likewise, the separate turnover rules will be placed in the same section of rules as garnishment with the title of section 4 being changed to "Garnishment and Turnover," thereby placing the two primary mechanisms for judgment collection in the same area of the rules.

Third, section 15 of H.B. 3774 which required rulemaking on exemption procedures is the result of Texas Judicial Council resolutions issued on September 24, 2020. Resolutions 7-9 provide the underlying basis for section 15, and resolutions 7 and 8 specifically call for amendments to two garnishment rules and resolution 9 calls for the issuance of rules for turnover. This is evidence that the Judicial Council contemplated that there would be multiple rules implementing the new exemption procedure.

Creditors' critique: The Debtor Group overreaches in its re-write of garnishment rules and implementation of entirely new rules for executions and receiverships. First, this proposal would apply the process of personal property exemptions universally, even when judgments are being enforced against non-individual defendants. This will result in constant delays and increased hearings even when personal property exemptions are not involved. Second, the Judicial Council resolutions were issued without any input from other stakeholders, and its recommendations were either specifically rejected in the legislative process, or were not referred to us by the committee.

Creditors' proposal: Rule 621 provides for execution on judgments, and Rule 621a provides for postjudgment discovery. Proposed Rule 621b could provide for an exemption process that works with all other post-judgment processes.

Debtors' critique: TXCBA's proposed single rule has a number of serious defects. First, it fails to recognize that the three mechanisms for post-judgment collection --- garnishment, turnover, and execution --- operate differently and require different notices.

For example, certain exemptions are available in turnover that are unavailable in garnishment, and, unlike turnover and garnishment, execution typically raises exemption issues relating to tangible personal property and not to fungible money. Likewise, the procedures for garnishment and execution already are well-established and only require amendment, whereas turnover currently has no procedural requirements.

Second, by imposing a process for raising exemptions that is slower than that for motions to dissolve writs of garnishment, an existing mechanism for raising exemptions, the TXCBA proposal has the effect of giving well-funded judgment debtors an advantage over judgment debtors who cannot afford counsel who will be utilizing an exemption procedure that is slower and full of traps.

Third, TXCBA's proposal refers to warrants, presumably a reference to distress warrants, in its single rule, but distress warrants are only a pre-judgment remedy. Tex.R.Civ.P. 610 (can seek a distress warrant "[e]ither at the commencement of a suit or at any time during its progress …."). As such, it refers to a remedy that is not encompassed by the post-judgment mandate of H.B. 3774.

3. One set or multiple sets of exemption forms

Issue summary: Although progress was made on adapting each sides' form to be more thorough or use more plain-English language, we were unable to reach agreement on whether one form or multiple forms were needed.

Debtors' proposal: The Debtor Group proposes that there be three exemption notice and claim forms --- one for garnishment, one for turnover, and one for execution. This approach has several advantages over a single exemption notice and claim form being suggested by TCBA.

First, the information needed to assert exemptions in garnishment, turnover and execution varies considerably. For example, wages and spendthrift trust funds are exempt from turnover but not from garnishment, see above, so the information provided must address this difference in protections. Moreover, execution procedures where exemption issues might arise typically involve the seizure of tangible personal property, so information about funds exemptions is not relevant and could be confusing.

Second, it is easier to write an exemption claim form that is both relatively short and yet written in plain language when there are different forms for different forms of judgment collection. Given that H.B. 3774 mandates that the notice of exemption must be simple and written in plain language, there is no effective way to meet that obligation without multiple forms.

Third, parties, process, and terminology associated with each proceeding are different. In order to ensure a clear and easy to navigate process for a pro se judgment debtor, it is essential to have three separate forms. Otherwise, each different proceeding

would need to be described in the instructions in order for the judgment debtor to understand the proceeding at issue and who the different parties are.

Creditors' critique: The Debtor Group's scheme to create new law on turnover receiverships is the primary driver of their complicated proposal, and it is evident in their creation of three separate forms. If the Committee does not adopt their view of the law, then the need for multiple forms disappears.

This proposal does not address common situations where a receiver or writ of execution levies against mixed assets at the same time – like funds in a bank account plus jewelry in a safe deposit box, or a sole proprietor with cash in the till but also inventory. There are also situations where a creditor is using two concurrent judgment enforcement processes. These scenarios would require two or more separate notices and forms to be sent at the same time, further confusing the situation.

Creditors' proposal: The notice and exemption form should be short, simple, informative, and generally applicable, because situations often arise where both funds and personal property are seized at the same time. The creditors' proposal has a 2-page notice and 2-page claim form that are simple and designed to accomplish the Legislative mandate in all situations.

Debtors' critique: TXCBA's proposed single notice of exemptions has several defects. First, it is not simple nor is stated in plain language. By acknowledging that separate notices should be sent depending on the remedy being utilized, as proposed by the Debtor Group, the notices can be both simpler and in plain language. In sum, the TXCBA notice is far less accessible than the three different notices being proposed by the Debtor Group. Second, it fails to recognize that at least two types of funds, wages and spendthrift trust payments received by a judgment debtor, are exempt from turnover, but not garnishment. By so doing, it effectively denies notice to judgment debtors of their exemption rights under CPRC § 31.002(f). In fact, it treats subsection (f) as if it did not exist.

D. TJCTC Proposal

The Texas Justice Court Training Center proposed the adoption of rules that would advise an individual defendant at judgment of the availability of exemptions. This proposal was offered based on comments during the meetings about how the other proposals don't impact collection pre-seizure. The proposal is set forth below, with commentary from each group.

Rule 306a (3):

When the final judgment or other appealable order is signed, the clerk of the court shall immediately give notice to the parties or their attorneys of record by first-class mail advising that the judgment or order was signed. If a judgment is rendered against an individual defendant, the court must provide to the defendant written notice of the judgment. The notice must contain the following language: "You may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. If you would like to talk with a lawyer, you can find free and low-cost legal information at https://www.txcourts.gov/programs-services/legal-aid." The notice may be delivered by any method authorized by Rule 21a. Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).

To add for Justice Courts:

DEFAULT JUDGMENT

RULE 503.1(d) Notice. The plaintiff requesting a default judgment must provide to the clerk in writing the last known mailing address of the defendant at or before the time the judgment is signed. When a default judgment is signed, the clerk must immediately mail written notice of the judgment to the defendant at the address provided by the plaintiff, and note the fact of such mailing on the docket.

The notice must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date the judgment was signed, and contain the following language: "You may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. If you would like to talk with a lawyer, you can find free and low-cost legal information at https://www.txcourts.gov/programs-services/legal-aid." Failure to comply with the provisions of this rule does not affect the finality of the judgment.

SUMMARY DISPOSITION

RULE 503.2(d) Order. The judge may enter judgment as to the entire case or may specify the facts that are established and direct such further proceedings in the case as are just. Any judgment entered must comply with the requirements of Rule 505.1.

JUDGMENT

RULE 505.1(c) Form. A judgment must:

(1) clearly state the determination of the rights of the parties in the case;

(2) state who must pay the costs;

(3) be signed by the judge; and

(4) be dated the date of the judge's signature; ~~and~~

(5) contain the following language: "You may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. If you would like to talk with a lawyer, you can find free and low-cost legal information at https://www.txcourts.gov/programs-services/legal-aid."

ENFORCEMENT OF JUDGMENTS

RULE 505.2.

Justice court judgments are enforceable in the same method as in county and district court, including the requirements imposed by Rule XXX, except as provided by law. When the judgment is for personal property, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such cases, enforce its judgment by attachment or fine.

DEBT CLAIM CASES

RULE 508.3(a) Generally. If the defendant does not file an answer to a claim by the answer date or otherwise appear in the case, the judge must promptly render a default judgment upon the plaintiff's proof of the amount of damages. Notice of any default judgment, as required by Rule 503.1(d), must be sent to the defendant.

REPAIR AND REMEDY

RULE 509.6. (5) If the judge awards monetary damages, the judgment must contain the following language: "You may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. If you would like to talk with a lawyer, you can find free and low-cost legal information at https://www.txcourts.gov/programs-services/legal-aid."

EVICTION

RULE 510.6(b) Default Judgment. If the defendant fails to appear at trial and fails to file an answer before the case is called for trial, and proof of service has been filed in accordance with Rule 510.4, the allegations of the complaint must be taken as admitted and judgment by default rendered accordingly. If a defendant who has answered fails to appear for trial, the court may proceed to hear evidence and render judgment accordingly. Notice of any default judgment, as required by Rule 503.1(d), must be sent to the defendant.

RULE 510.8(b) Judgment for Plaintiff. If the judgment is in favor of the plaintiff, the judge must render judgment for plaintiff for possession of the premises, costs, delinquent rent as of the date of entry of judgment, if any, and attorney fees if recoverable by law. If the judge awards monetary damages, the judgment must contain the following language:

"You may have a right to claim exemptions to protect your property against seizure for satisfaction of this judgment. If you would like to talk with a lawyer, you can find free and low-cost legal information at https://www.txcourts.gov/programs-services/legal-aid."

Debtors' position: The Debtor Group support the TJCTC proposal, because it would provide additional information to unsophisticated judgment debtors about their exemption rights.

Creditors' position: Although the creditors are not completely opposed to the concept, these proposed rules are not within the legislative mandate, and would require input from other significant stakeholders such as courts and clerks. Additionally, the proposed language would result in the inclusion of property exemption language in all judgments, even in judgments against corporate defendants where no exemptions are available. Finally, if the Committee is interested in modifying judgments to reference exemption rights, then additional consideration should be given to the concept of allowing creditors to provide the notice and form at the time of judgment in satisfaction of the legislative mandate, rather than during the judgment enforcement process.

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Tab 4

PROPOSAL BY TEXAS CREDITORS BAR ASSOCIATION ("TXCBA") AND TEXAS ASSOCIATION OF TURNOVER RECEIVERS ("TATR") TO EFFECTUATE HOUSE BILL 3774 RELATING TO EXEMPTIONS

Summary

HB 3774 requires a simple and expedited procedure for a judgment debtor to assert an exemption to the procedure of personal property, a process to stay a proceeding for a reasonable period to allow for the assertion and consideration of the exemption, and a form notice to be provided in clear and readable language.

The TXCBA and TATR organizations have contemplated this Legislative mandate, and believe that this bill impacts many post-judgment procedures outlined in the Texas Rules of Civil Procedure. Postjudgment writs of execution, writs of garnishment, turnover receiverships, attachments and turnover orders are all affected by this process. Rather than attempt a massive re-write of each section of Part VI of the Texas Rules of Civil Procedure, we recommend the creation of a new Rule 621b in Section 3 of Part VI that can be applied to the appropriate ancillary proceedings. This Section already applies to the general execution and enforcement process of judgments of the district, county, and justice courts.

The proposed exemption notice claim form must similarly work in many situations, and in all forms of courts, including justice courts. It must also take into account the legislative mandate that the hearing occur promptly and the burden of the defendant to prove their entitlement to the exemption[1], so the form should walk an unsophisticated defendant through the relevant potential exemptions, prompt them to attach relevant proof, ask them to attest to their claim, and provide notice to all relevant parties. Additional prompts for notification by email and participation in remote proceedings if available can help a hearing occur quickly if needed.

A request was made for a form turnover receivership order and language addressing the exemption process. TATR believes that a form receivership order would be difficult to implement, as the facts of each judgment enforcement are different, requiring different receiver powers and scope to address the situation. Additionally, many judges have unique opinions about the scope and control they wish to exert over their appointed receivers, resulting in very different orders used throughout Texas. TATR believes that any such consideration of a form order should be limited to justice court cases only. Proposed language has been provided below, but should be simple and straightforward, as receivers will be required to follow whatever rule is implemented.

Proposed New Rule

PART VI. RULES RELATING TO ANCILLARY PROCEEDINGS

SECTION 3. EXECUTIONS

TRCP 621b. PERSONAL PROPERTY EXEMPTIONS IN POSTJUDGMENT PROCEEDINGS

Whenever a postjudgment warrant, turnover order, writ of garnishment, execution, attachment or other like writ is levied upon personal property of an individual defendant, the plaintiff or receiver

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[1] *Beaumont Bank, N.A. v. Buller,* 806 S.W.2d 223, 226 (Tex.1991); *Roosth v. Roosth*, 889 S.W.2d 445, 459 (Tex.App.-Houston [14th Dist.] 1994, writ denied).

making the levy shall, as soon as practicable following notice that the property has been seized, serve a notice to the defendant regarding their right to assert an exemption. The notice shall be in the form promulgated by the Texas Supreme Court, and shall include a form for asserting an exemption with the appropriate style, cause number, and addresses for the court and parties. The notice and form may be served pursuant to Rule 21a or Rule 501.4 as applicable in conjunction with other notices required by these rules.

A court, receiver or officer having the property in possession shall not cause or order the disposition or delivery of personal property to the plaintiff for fourteen days after the notice and form are served, to allow for the assertion of an exemption by the defendant, but a receiver or officer may notice property for sale if the date is after the expiration of the exemption period. If the defendant fails to assert an exemption within fourteen days after the levy and notice, the officer or receiver having the property in possession may at any time thereafter dispose of the property or deliver the same to plaintiff.

A defendant must file and serve on all parties a form asserting an exemption at least seven days prior to sale or distribution. Upon the defendant's timely claim of exemption, on reasonable notice to all parties (which may be less than three days), the court shall promptly set a hearing on the exemption. The court, receiver or officer having the property in their possession shall not cause or order the disposition or delivery of personal property to the plaintiff until the hearing is held. The court's determination may be made upon the basis of affidavits, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court shall forthwith enter its order allowing or denying the exemption, or may defer ruling on the exemption if additional evidence or discovery is required. The court may extend any time period under this rule for good cause shown.

Commentary on the Proposed Rule:

Reference is made to an "individual defendant" because corporate defendants do not have personal property exemptions. See Tex. Prop. Code. §42.001 et seq. This process should not be required for post-judgment proceedings against corporate defendants without personal property exemptions.

The notice regarding exemptions should be able to be sent at the same time as other notices to the judgment debtor, such as Rules 663a & 700a regarding the right of replevy for execution and garnishment. When a notice can be sent after a seizure or levy changes depending on the property seized and the process by which the seizure occurs. While a notice may be promptly sent when funds are seized and a bank is prompt in notifying the creditor or receiver, a deputy seizing a vehicle under a writ of execution over a weekend may not notify a creditor for several days. Additionally, a notice should not be sent that funds or property has been frozen if no funds were frozen or property captured.

The fourteen-day period allowing for the assertion of an exemption is designed to match up with other reasonable periods, such as the answer due date period for justice court cases, and the exemption deadline periods in other states.[2]

[2] The TXCBA conducted an informal survey of exemption periods in approximately 30 states. For those states that provided for exemption periods, the average was 10-20 days. California, Kentucky, and Nebraska had a ten-day period. Alaska, Colorado, Connecticut, Minnesota, Ohio, and Utah had a 14- or 15-day period. Florida, Georgia, Missouri, New York, North Carolina, and Wisconsin had a 20-day period.

Language for the first paragraph was modelled after Tex. R. Civ. P. 717 and 700a. Language for the second paragraph was pulled from the statute itself and Tex. R. Civ. P. 708. Language for the third paragraph was modeled on the prompt review language of Tex. R. Civ. P. 701.

The rule has been modified from the initial proposal to require the creditor or receiver to "pre-fill" the notice with the court information. This eliminates any concerns that an unsophisticated defendant will not know how to complete the form, or send to the wrong court or party.

Proposed Receivership Order Language

The Texas Supreme Court, to the extent it believes necessary, could issue a miscellaneous order directing all Texas courts to include the following language in any order appointing a turnover receiver under Tex. Civ. Prac. & Rem. Code § 31.002:

> "**Personal Property Exemptions of Debtor:** Receiver shall comply with Texas Rule of Civil Procedure 621b regarding the procedures for notifying the Judgment Defendant of their rights to assert personal property exemptions."

Commentary on the Proposed Language:

Court-appointed turnover receivers are experienced creditors' attorneys, with an existing obligation to abide by the Texas Rules of Civil Procedure and enforce the Court's judgment. The Debtor Group's proposal would try to expand the receiver's rule into a "master in chancery" role where the receiver would have to independently evaluate the possibility of exemptions, even if a debtor does not asset them[3], or provide additional notice before even discussing a possible payment plan on the judgment, even if the judgment debtor wants immediate resolution. These obligations are not appropriate given the receiver's role.

Proposed Exemption Notice and Claim Form

The proposed forms are included on the next page, formatted to demonstrated that each could be fitted onto a 2-page, front-and-back format in 11-point font.

Because the Debtor Group form notices emphasize their belief that paychecks deposited in bank accounts are exempt in turnover orders but not in garnishments – thereby creating their need for multiple forms and rules – we have attached the original bill analysis for HB 1029, which passed in 1989 and created Tex. Civ. Prac. & Rem. Code §31.002(f). It makes it abundantly clear that the statute protects exempt paychecks, not deposited funds.

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[3] The Texas Supreme Court has held that the effect of the turnover statute was to require the burden of production of property subject to execution to shift to the debtor; once the asset is traced to the debtor, the debtor must account for the asset. *Beaumont Bank, N.A.*, 806 S.W.2d at 226. The general rule in Texas is that a party asserting a property exemption must bear the burden of establishing entitlement to it. *Rucker v. Rucker*, 810 S.W.2d 793, 795-96 (Tex.App.-Houston [14th Dist.] 1991, writ denied)(summarizing cases).

PERSONAL PROPERTY SEIZURE
EXEMPTION NOTICE

To the Judgment Defendant:

You are receiving this notice because certain personal property and/or funds that may be owned by you was seized pursuant to a judgment. **YOU MAY BE ABLE TO GET YOUR PROPERTY AND/OR FUNDS BACK, SO READ THIS NOTICE CAREFULLY.**

The following is a list of personal property that may be exempt from judgment enforcement. **IF YOU BELIEVE THE PROPERTY AND/OR FUNDS THAT ARE BEING SEIZED ARE EXEMPT, FILE THE CLAIM OF EXEMPTION FORM THAT YOU RECEIVED WITH THIS NOTICE AND FOLLOW THE INSTRUCTIONS IN THIS NOTICE.**

NO ACTION WILL BE TAKEN TO DISPOSE OF YOUR FUNDS OR PROPERTY FOR FOURTEEN DAYS AFTER SERVICE OF THIS NOTICE. IF YOU DO NOT TIMELY FILE YOUR CLAIM, PROCEEDINGS WILL RESUME AGAINST THE PROPERTY AND/OR FUNDS.

Exemptions are found in the United States Code (USC) and in the Texas Property Codes, primarily Chapter 42 of the Texas Property Code. Because of periodic changes in the law, the list may not include all exemptions that apply in your case. The exemptions may not apply in full or under all circumstances. Some exemptions are not available after a certain period of time. You or your attorney should read the statutes. You should assert your property exemptions in court, or they may be waived.

FEDERAL EXEMPTIONS

Social Security benefits
Veterans Administration benefits
Railroad Retirement Board benefits
Office of Personnel Management retirement benefits
FEMA payments

TEXAS EXEMPTIONS

Current wages for personal services
Funds from Temporary Assistance for Needy Families
Proceeds from the sale of a homestead
Individual Retirement Account distributions (IRAs)
401k account distributions
Workers' compensation benefits
Unemployment benefits (not comingled with other funds)
Professionally prescribed health aids
Alimony, support, or separate maintenance
Religious bible or other sacred religious book
Life insurance or annuity benefits
Education savings accounts (ESA)
Health savings accounts (HSA)

The following property exemptions are subject to a combined cap of $100,000 (for a family) or $50,000 (for an individual) of its aggregate fair market value, exclusive of any liens, security interests, or other charges:

Home furnishings, including family heirlooms
Provisions for consumption
Farming or ranching vehicles and implements
Tools & equipment used in a trade or profession
Jewelry not exceeding 25% of the limit
Two firearms
Athletic & sporting equipment
Motor vehicle for each member of the family
Two horses, mules or donkeys with forage and saddlery
12 head of cattle with forage on hand
60 head of other livestock with forage on hand
120 fowl with forage on hand
Household pets
Unpaid commissions not exceeding 25% of the limit

Exemption Claim Form Instructions

If you wish to file an exemption claim form, follow the below instructions:

1. Fill in your name and contact information in Section 1.
2. Identify the property or funds you claim as exempt in Section 2. For example, you can identify the name of the bank where funds were frozen. **DO NOT INCLUDE YOUR FULL BANK ACCOUNT NUMBER OR FULL VEHICLE IDENTIFICATION NUMBER.**
3. Identify the exemption that you believe applies to your property in Section 2. You can copy any relevant exemption from the list in this notice, or describe it in your own words.
4. Write any facts that support your claim of exemption in Section 2. This may help the Court, creditor or receiver evaluate your claim in advance of your hearing.
5. If you are attaching any documentation in support of your exemption claim, describe it in Section 2. You do not need to attach documentation; you may bring it to your hearing. However, sending documentation in advance may help resolve your exemption claim. **DO NOT SUBMIT BANK STATEMENTS OR COPIES OF VEHICLE TITLES THAT IDENTIFY YOUR PERSONAL INFORMATION, SUCH AS FULL BANK ACCOUNT NUMBERS OR VIN NUMBERS, WITHOUT REDACTING THOSE NUMBERS ON YOUR COPIES.**
6. In Section 3, choose whether you would like to receive future court communications by email or mail, whether you are willing to participate in a remote hearing (such as by telephone, Zoom, Webex, etc.), and whether you are willing to be contacted about resolution of your matter by the plaintiff or receiver.
7. Sign and date the form in Section 4. Make as many copies of the form as you need for everyone in the Notified Parties section. **Keep a copy of the form for yourself.**
8. **Take the original form to the clerk of the court** at the address indicated, or mail it to them. Send copies to everyone else listed in the Notified Parties section. You can email it to them if an email address is provided.

The court will schedule a hearing once your claim form has been received, and notify you of the time and date of the hearing. Make sure to attend the hearing. If you do not attend, the court is likely to rule against you. You can attend with or without an attorney.

At the hearing, tell the court why your property is protected. Bring any supporting documents or other items to the hearing, such as:

- Proof of the source of exempt funds, such as Social Security;
- A divorce decree for alimony, child support, or spousal support;
- Certificates of title for any vehicle that has been seized; and
- Any other information or document(s) that shows that your property or funds are protected.

Information on free and low-cost legal services can be found at https://www.txcourts.gov/programs-services/legal-aid, or by contacting your local bar organization. Legal aid offices in Texas include Texas Rio Grande Legal Aid (800-369-0574), Lone Star Legal Aid (800-733-8394) and Legal Aid of Northwest Texas (800-955-3959.

CAUSE NO. _____

[PLAINTIFF NAME], PLAINTIFF	§ § §	IN THE _____ COURT
v.	§ § § §	_____
[DEFENDANT NAME], DEFENDANT	§ §	_____ COUNTY, TEXAS

PERSONAL PROPERTY EXEMPTION CLAIM

I HEREBY ASSERT ONE OR MORE PERSONAL PROPERTY EXEMPTIONS AS SET FORTH BELOW.

Section 1. Identification

My current contact information is as follows:

Name: _____
Address: _____
_____
_____
Phone: _____
Email: _____

Section 2. Exemption Claim

The property and/or funds I claim to be exempt is (describe):

_____
_____
_____

The exemption(s) that I claim is applicable is (specify):

_____
_____
_____

The facts which support this claim are (describe):

_____
_____
_____

I can bring documentation in support of my exemption claim to my hearing. If I am attaching them to my claim form, they are (describe):

_____
_____

Section 3. Options for Further Proceedings

(Please select Yes or No for each option)

___ - Yes, I am willing to receive court notices and correspondence via email.
___ - No, I am not willing to receive court notices and correspondence via email. All notices should be sent to me by mail.

___ - Yes, I am willing and able to participate in a hearing remotely via telephone, video or other technological means if available.
___ - No, I am not willing or able to participate in a hearing remotely. I will attend in person.

___ - Yes, I would like the plaintiff or receiver to contact me to discuss resolving this matter using the contact information provided above.
___ - No, I would not like the plaintiff or receiver to contact me to discuss resolving this matter.

Section 4. Verification and Signature.

I hereby declare under penalty of perjury that the above is true and correct, and request that the Court set a hearing on my exemption claim as set forth above. I further declare that I sent copies of this exemption form with any accompanying documentation to the Court and the parties below.

_____ _____

Date Signature of Claimant

NOTIFIED PARTIES

Court (send original form)

[completed by creditor/receiver]

Plaintiff or Plaintiff's Attorney

[completed by creditor/receiver]

Receiver/Levying Officer:

[completed by creditor/receiver]

Commentary:

The overall structure is modelled after the California exemption list and form, which has a two-page notice form and a one-page exemption form. With the legislative mandate to translate this form into Spanish, detail all exemptions, and retain clear language, it is imperative that the defendant not be overwhelmed with paper. This form fits the notice and claim form onto what can be one-page, front-and-back forms that can be replicated in Spanish.

Summarizing all personal property exemptions in one document is a daunting task, especially given the mandate that the notice be in plain language. The exemptions are most easily organized by listing first federal exemptions, then state exemptions, then state exemptions subject to an aggregate monetary cap. All property exemptions subject to the personal property value limits of Tex. Prop. Code § 42.001(a) were grouped together so that a judgment debtor would understand that the subsections were governed by those limitations.

Care must be taken between an exemption to garnishment of a *right* to a benefit, versus the benefit after it has been paid and deposited into a bank account.[4] This form sidesteps the issue pressed by the proposal from Texas Appleseed and TRGLA about the "proceeds of current wages". The notice references the exemption, and allows anyone to assert it if they so choose. The courts are left to interpret the law on the issue; deciding it is outside the scope of the legislative mandate.

Given the need for a speedy hearing, an option should be provided for the judgment debtor to elect to receive notices electronically, to participate remotely in a hearing, to indicate a desire to discuss resolution with the judgment plaintiff or court-appointed receiver, and to attach evidence supporting their claim. This can prompt the parties to resolve the property seizure sooner than the court can schedule a hearing, and avoid clogging the dockets of already backlogged and overwhelmed courts. Most people want to work things out.

The claim form should be signed under penalty of perjury by the claimant. Because the rule provides for a potential expedited hearing with less than three days' notice, there may not be time for a judgment plaintiff or receiver to investigate the facts raised in the claim. Additionally, the filing of the exemption claim may have the effect of cancelling a scheduled sale, which may cause the creditor or receiver to incur costs. Just as a defendant seeking to restrain a real estate foreclosure by temporary restraining order would be required to submit a verified petition or affidavit, a defendant should be required to at least swear to the alleged facts of the exemption, to discourage abuse.

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[4] For example, unpaid commissions for personal services are protected, but not once they are paid. Tex. Prop. Code § 42.001(d); *Mass. Mut. Life Ins. Co. v. Shoemaker*, 849 F. Supp. 30, 33 (S.D.Tex. 1994). Tex. Labor Code § 408.201 is in "Subchapter K. Protection of Rights to Benefits", and does not protect workers' compensations funds after deposit. Tex. Labor Code § 207.075 provides an absolute exemption for the right to unemployment benefits, but only protects received benefits if not commingled with other funds except in certain circumstances. "Current wages" have also long fallen into this category – they are protected from garnishment while in the hands of the employer or while in the form of a paycheck, but once deposited they are no longer "current" or exempt. Tex. Prop. Code § 42.001(b)(1); *Sutherland v. Young*, 292 S.W. 581 (Tex.Civ.App.--Waco 1927, no writ); *Bandy v. First State Bank, Overton, Tex.*, 835 S.W.2d 609, 620 (1992); *American Express Travel Related Services v. O.L. Harris*, 831 S.W.2d 531 (Tex.App.-- Houston [14th Dist.] 1992, no writ)

Tab 5

Memorandum

To: Jim M. Perdue Jr.

From: Ad Hoc Debtor Group

Re: Proposed garnishment, turnover and execution rules, notices, and forms in compliance with H.B. 3774

Date: October 5, 2021

Introduction

H.B. 3774, which was passed in the regular session of the 87th Texas Legislature, adds Tex. Gov't Code § 22.0042. The new section requires the adoption of rules by May 2022 to provide a clear, expedited, and user-friendly procedure for asserting exemptions from seizure of personal property by a judgment creditor or turnover receiver.

The following sections detail a proposal for changes to garnishment rules and for adding new rules related to turnover receivers to comply with the newly enacted law.

I. Proposed Changes to Garnishment Rules

A. Background

Rule changes are needed to address the inadequacies of the current garnishment procedures. The current process for judgment debtors to raise exemptions is cumbersome, not user-friendly for the unrepresented judgment debtor, and rarely used without the benefit of counsel. For example, current Rule 663a only provides that judgment debtors are entitled to a post-execution notice that they may file a bond or a motion to dissolve, concepts that make no sense to anyone other than lawyers.

Rule 663a also makes no explicit mention of exemptions, an important substantive right that might be raised to protect judgment debtors from seizure. In fact, exemptions cannot practically be raised at this time without the assistance of an attorney who drafts and files a motion to dissolve the writ of garnishment under Rule 664a, hardly a procedure that could be navigated by a pro se judgment debtor. The failure to give explicit notice of the right to assert exemptions in post-judgment garnishment proceedings and provide a simple pro se friendly procedure for asserting such exemptions has been found to violate fundamental tenets of due process. See *Strickland v. Alexander*, 772 F.3d 876 (11th Cir. 2014); 2015 WL 5256836 (N.D. Ga. 2015) (entry of judgment on remand); 2015 WL 5916003 (N.D. Ga. 2015) (amending judgment);

2015 WL 103221498 (N.D. Ga. 2015)(amending judgment again). In short, current garnishment rules are subject to constitutional attack unless they are amended to address these deficiencies.

Partly in response to *Strickland*, a subcommittee of the Supreme Court Advisory Committee considered garnishment rule changes back in 2016, but no amended rules were issued at that time. HB 3774 requires rules to be issued no later than May 1, 2022, highlighting the urgent need to amend Texas rules.

B. Proposed Rule Changes to Rules 663a and 664a

The proposed changes to Rules 663a and 664a are attached to this memo. Recognizing that the garnishment rules are well established, these amendments only revise the rules to the extent necessary to address the mandate of H.B. 3774. Otherwise, the proposal retains the current language of the rules.

1. Revised notice of rights to be given to judgment debtors (Rule 663a)

Rule 663a is substantially changed to comply with Tex. Gov't. Code §22.0042(b). First, the amended language requires that notice of garnishment be given to a defendant or a judgment debtor. The reference to a notice given to a "defendant" relates to pre-judgment garnishment, while the reference to a notice given to a "judgment debtor" relates to post-judgment garnishment.

Second, the form of the notice given to defendants in pre-judgment garnishments and to judgment debtors in post-judgment garnishment is totally redone and placed in new subsections (a) and (b). The current notice (placed on the face of the writ of garnishment to be delivered to defendants) only advises defendants or judgment debtors that they can regain possession of their garnished property by filing a replevy bond or by filing a motion to dissolve the writ of garnishment. This notice is difficult for lawyers to understand, let alone a pro se litigant. It also does not tell defendants and judgment debtors about their exemption rights, which is now required under the new law.

In accordance with the standards set forth in Tex. Gov't Code §22.0042(b), the proposed rules provide that a notice of garnishment includes the giving of the writ of garnishment, the application for the writ, and three Supreme Court-approved forms (one explaining exemption rights, an exemption claim form, and instructions on how to fill out that form). This change ensures that defendants, and particularly judgment debtors, will have notice about exemption rights and a form for asserting such rights. This approach addresses what H.B. 3774 and *Strickland* require.

Third, a new subsection (d) requires that notice be given by the plaintiff or judgment creditor to the defendant or judgment debtor within three days after service of the writ of garnishment (usually on a financial institution). The current rule requires such notice to be given "as soon as practicable" which has been construed to mean within 14 days. *Arriaga v. Jess Enterprises*, 2014 WL 1875917, *2 (N.D. Tex. 2014)(applying Texas law); *Lease Finance Group, LLC*

v. Childers, 310 S.W.3d 120, 127 (Tex. App. – Fort Worth 2010, no pet.); *Requena v. Salomon Smith Barney, Inc*., 2002 WL 356696, *3-4 (Tex. App. – Houston [1st Dist.] 2002, no pet.). Fourteen days, however, is an unconscionably long time, given that judgment debtors often learn about the garnishment when they are refused access to their accounts (as service of the writ of garnishment freezes accounts at financial institutions) – for example, when they're attempting to pay for groceries. Because the information being provided is all form-based, it is not difficult for plaintiffs and judgment creditors to give more prompt notice. By giving faster notice, defendants and judgment debtors will then be given notice of how to exercise their exemption rights more quickly.

When a judgment debtor lives on exempt income, such as social security, and the entire amount on deposit is frozen by a writ of garnishment, those parties are entitled to prompt notice of how they can quickly seek access to their exempt funds. The exemptions have no real meaning if parties cannot exercise them promptly, which turns on giving prompt notice. This faster notice standard complies with Tex. Gov't Code §22.0042(a)(1), which requires the Court to adopt rules that, "establish a simple and expedited procedure," for a judgment debtor to assert exemptions in the garnishment process.

Fourth, a new subsection (d) prescribes the order of documents to be sent to a defendant or judgment debtor to make sure the garnishment notice is on top, promptly followed by an exemption claim form. That way, notice of exemption rights is prioritized. This approach aligns with the current rule that requires essential information for the judgment debtor to be included, "on the face of the copy of the writ served on the defendant." (TCRP Rule 663a). It also comports with the requirement in statute for a simple procedure and one that provides information in plain language. (Tex. Gov't Code §§22.0042(a)(1) and (b))

The manner of service, i.e. either by service or notice under Rule 21a, is set out in a new subsection (c), and the language is unchanged from the current rule.

2. Simpler procedure for raising exemption claims

Current Rule 664a provides for the procedures associated with motions to dissolve writs of garnishment. Like Rule 663a, this rule is substantially changed to comply with the provisions in H.B. 3774. First, the language of the rule applicable only to pre-judgment garnishment has been placed in subsection (a) and been labeled as "General Rule for Pre-Judgment Garnishment." The first two sentences of the current rule are the source of the language for this subsection.

Second, a new subsection (b) sets forth a "General Rule for Post-Judgment Garnishment" and it provides that a judgment debtor and interested third parties can file a motion to dissolve writ of garnishment or an exemption claim form (or its substantial equivalent). This new subsection retains the current language on who can file a challenge to a garnishment writ, but it provides basically two ways in which to challenge a garnishment writ – through either an exemption claim form or a motion to dissolve or modify the writ. The exemption claim form

is intended as a pro se friendly way to challenge the garnishment, unlike the motion which would likely need a lawyer to be effectively drafted and filed.

Third, the current language on when to conduct the hearing was placed in a new subsection (b). The only change was a reference to the hearing being on a motion under subsection (a) or a motion or claim under subsection (b).

Fourth, a new subsection (d) entitled "Motion for Dissolution of the Writ" is created to contain mostly the existing language about how the hearing should be conducted. On the need for an affidavit, this subsection offers a declaration as an alternative as permitted by CPRC § 132.001.

Fifth, a new subsection (e) entitled "Claim to Exemption" is added to set forth what should occur at a hearing on an exemption claim raised by an exemption claim form or its substantial equivalent. In essence, the trial court is supposed to decide whether any of the personal property, including funds, are exempt and if so, order its return within 3 days. In short, this subsection provides for a simple and expedited procedure that a pro se judgment debtor could navigate.

3. Proposed Notice, Instructions, and Form

HB 3774 requires three plain language items to be sent out with the writ to defendants in pre-judgment garnishment and to judgment debtors in post-judgment garnishment. One is a notice of garnishment generally describing the recipient's rights. According to Tex. Gov't Code § 22.0042(b)1-5, the notice must be in plain language, in English with an integrated Spanish translation that can be easily read and understood by the public, list all exemptions under state and federal law, and provide information for accessing free and low-cost legal assistance. The proposed notice form includes all of the requirements, with the exception that it must still be translated into Spanish. The list of exempt personal property that is included in the notice is the same as the list included in the proposed exemption claim form. The statutory basis for each included exemption is presented in the form discussion.

In addition to the notice, the packet served on the defendant or judgment debtor must also include an exemption claim form, which list exemptions, and instructions to fill out the form. The proposed form and instructions are designed to be easy to use and understand. The proposed form allows the recipient to mark a box for each applicable exemption and to file the form (and serve the plaintiff or judgment creditor) to start the process of challenging the writ of garnishment.

H.B. 3774 requires the form to include all existing exemptions. The proposed form provides a full list of exemptions and the statutory citation that covers most personal property exemptions under state law. The legal source for most of these exemptions is set forth below:

1. Social Security Retirement income --- 42 U.S.C. § 407(a) and *Philpot v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973);

2. Social Security Disability income --- 42 U.S.C. § 407(a); *Philpot v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973);
3. SSI or Supplemental Security Income --- 42 U.S.C. § 407(a); *Philpot v. Essex County Welfare Board*, 409 U.S. 413, 417 (1973);
4. Alimony, child or spousal support --- Tex. Prop. Code 42.001(b)(3);
5. Veterans' benefits --- 38 U.S.C. § 5301(a) and *Ruby v. Ryan*, 2016 WL 11448151, *8 (S.D. Calif. 2016);
6. Unemployment compensation --- Tex. Labor Code § 207.079(c);

7. Workers' compensation --- Tex. Labor Code § 408.201;
8. FEMA benefits --- 44 C.F.R. § 206.110(g);
9. Railroad retirement benefits --- 45 U.S.C. § 231m(a);
10. Pension and retirement benefits --- 29 U.S.C. § 1056(d) and Tex. Prop. Code § 42.0021(a) and (g);
11. Money belonging to a joint account holder --- Tex. Estates Code § 113.004(2), *Bechem v. Reliant Energy Retail Services, LLC*, 441 S.W.3d 839, 845 (Tex. App. – Houston [14th Dist.] 2014, no pet.) and *In re Marriage of McNelly*, 2014 WL 2039855, *7 (Tex. App. – Houston [14th Dist.] 2014, pet. denied);
12. Money from the sale of a homestead for a period of six --- months after the sale --- Tex. Prop. Code § 41.001(5)(c);
13. Tax-deferred accounts like a 401(k) or an IRA account --- 29 U.S.C. § 1056(d) and Tex. Prop. Code § 42.0021(a) and (g);
14. Education and health savings accounts such as 529 accounts or other qualified accounts --- 29 U.S.C. § 1056(d) and Tex. Prop. Code § 42.0021(a) and (g); and
15. Proceeds of a life, health or accident insurance policy, including related annuities --- Tex. Ins. Code § 1108.051 and *Rotella v. Cutting*, 2011 WL 3836456, *2-3 (Tex. App. – Fort Worth 2011, no pet.).
16. Temporary Assistance for Needy Families (TANF)--- Tex. Human Res. Code § 31.040.

II. Proposed Turnover Rules and Forms

A. Background

Unlike garnishment proceedings that are heavily regulated by statutes and rules, turnover proceedings are far less regulated, largely because there are no procedural rules governing how they are conducted. Currently, there is no recognized procedure in turnover proceedings for asserting exemption rights. Some attorneys have filed motions to return exempt funds in those proceedings, but there is no procedure for giving judgment debtors notice of their exemption rights in turnover proceedings and there are no directions by which they could easily assert such rights.

Like garnishment procedures, the failure to give explicit notice of the right to assert exemptions in post-judgment turnover proceedings and provide a simple pro se friendly procedure for asserting such exemptions could well be found to violate fundamental tenets of due process. See *Strickland v. Alexander*, 772 F.3d 876 (11th Cir. 2014); 2015 WL 5256836 (N.D.

Ga. 2015) (entry of judgment on remand); 2015 WL 5916003 (N.D. Ga. 2015)(amending judgment); 2015 WL 103221498 (N.D. Ga. 2015)(amending judgment again). In short, the absence of any rules makes turnover proceedings ripe for constitutional attack. H.B. 3774 now requires that rules be adopted to address these concerns.

B. Proposed New Rules

Given that the issues relating to the procedure for raising exemption rights is similar in garnishment and turnover proceedings, the proposed new turnover procedural rules mimic the revised rules that are proposed for garnishment proceedings. (Note: Rule 660 is used as the rule number in this proposal, because the prior rule using that number was repealed, leaving that number available. Using 660 as the rule number is also helpful, as it would put these rules in the vicinity of the garnishment rules.)

1. New Rule 660

Rule 660 provides that all funds seized by a turnover receiver are kept for 30 days before distribution to the judgment creditor and the turnover receiver for her fees. It also provides that such funds should be remain in escrow if a claim to exemption or motion for return exempt funds is filed until such time as the claim or motion is decided. By holding the funds in escrow, they can be more easily refunded promptly to a judgment debtor if a court finds any of the seized funds are exempt.

This proposal for Rule 660 is consistent with Tex. Gov't Code § 22.0042(a)(1), which requires "a simple and expedited procedure to assert an exemption to the seizure of personal property by a judgment creditor." Once the seized funds have been distributed, it likely would be difficult to retrieve exempt funds as they could be in the hands of multiple parties. In addition, it is unclear if funds taken as fees for the turnover receiver could be easily retrieved. Therefore, holding the funds in escrow for a period of time is necessary for an expedited process. Thirty days was selected to ensure enough time for the judgment debtor to receive service of the notice and forms, to engage with the legal process, and to complete a hearing.

2. New Rule 660a

Rule 660a provides for the same type of notice that is required by the revised Rule 663a that is being proposed, except that turnover receivers are required to give the notice (whereas judgment creditors are required to do so in post-judgment garnishment proceedings). Like the proposal for revised Rule 663a, this new rule provides for 3 forms to be approved by the Texas Supreme Court: (a) a turnover notice, (b) a turnover exemption claim form, and (c) directions on how to fill out and file the claim form. See subsections (a) and (b) of both Rule 660b and revised Rule 663a. Rule 660b also adopts the same language as revised Rule 663a on the manner and timing of service as well as the order of documents.

This reference to court-approved forms is similar to Rule 145(b) which calls for the use of

Supreme Court-approved statements of inability to afford court costs or their equivalent.

3. New Rule 660b

This new rule is substantially similar to revised Rule 664a. Like revised Rule 664a, it establishes a process for the judgment debtor to raise exemption claims, provides for an expedited hearing process, specifies the nature of the hearing for motions to return exempt funds, and details the basis of the court determination.

C. Proposed Notice, Instructions, and Form

The notice, instructions, and form for turnover are almost identical to those proposed for garnishment with only a few major substantive differences. There are differences because there are more exemptions to turnover than to garnishment.

Specifically, CPRC § 31.002(f) provides an exemption from turnover of "the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code." Through this provision, the Legislature ". . . intended to specifically exempt [from the turnover statute] paychecks, retirement checks, individual retirement accounts and other such property exempt under the bankruptcy code." *Caulley v. Caulley*, 806 S.W.2d 795, 798 (Tex. 1991). Accord: *Goebel v. Brandley*, 174 S.W.3d 359, 364-365 (Tex. App. – Houston [14th Dist.] 2005, pet. denied); *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 323 (Tex. App. – Dallas 1997, writ denied)(holding disbursements from spendthrift trusts to be exempt from turnover). In other words, once wages are paid to a judgment debtor, they become the proceeds of exempt property and thereby not subject to turnover. *Marrs v. Marrs*, 401 S.W.3d 122, 124-127 (Tex. App. – Houston [14th Dist.] 2011, no pet.). In addition, at least two courts of appeal have assumed that taking the proceeds of a paycheck from a judgment debtor's bank account by way of a *turnover order* might violate section 31.002(f), but the more limited exemption for current wages did not preclude *garnishment* of those proceeds. *Guiberson v. Bohnefeld*, 1993 WL 175242, *1-2 (Tex. App. – Dallas 1993, no writ); *American Express Travel Related Services v. Harris*, 831 S.W.2d 531, 532-533 (Tex. App. – Houston [14th Dist.] 1992, no writ).

Normally, "current wages" in the hands of employers are exempt from seizure under Tex. Prop. Code § 42.001(b)(1) but are subject to garnishment once they are received by the judgment debtor. *American Express Travel Related Services v. Harris*, 831 S.W.2d 531, 532-533 (Tex. App. – Houston [14th Dist.] 1992, no writ). Likewise, spendthrift trust funds remaining in the trust are exempt from seizure under Tex. Trusts Code § 112.035. The use of the terms "proceeds" and "disbursements" in section 31.002(f) means the funds are distributed to a judgment debtor and they remain exempt from turnover even though they are subject to seizure by garnishment.

In short, wages and spendthrift trust proceeds are subject to garnishment after receipt by a judgment debtor, but not by turnover. This standard is established in statute, because turnover is a far more imposing remedy and one that is largely unregulated. As a result, wages and proceeds from spendthrift trusts are included as exemptions on the turnover forms.

III. Proposed Execution Rules and Forms

The current execution rules do not discuss exemptions whatsoever. As a result, the Debtor Group is proposing 3 new rules ---- Rules 621b, 621c and 621d. In substance, they are very similar to the turnover rules. The exemption notice and claim form are different in that they only list exemptions for tangible personal property which should be the only form of property that might be exempt in the exemption process.

Tab 5a

ATTACHMENT A

RULE 663a. NOTICE TO DEFENDANT OR JUDGMENT DEBTOR

(a) *General Rule.* The defendant or judgment debtor shall be served with the following documents by the plaintiff or judgment creditor:

(1) The Garnishment Notice in Plain Language;
(2) Instructions to fill out the Garnishment Exemption Claim Form;
(3) Two copies of the Garnishment Exemption Claim Form;
(4) The writ of garnishment;
(5) The application for the writ of garnishment; and
(6) Accompanying affidavits and orders of the court.

(b) *Supreme Court Form*; *Clerk to Provide*. The plaintiff or judgment creditor must serve the Garnishment Notice in Plain Language form in at least eleven-point type, the Garnishment Exemption Claim Form, and the related instructions approved by the Supreme Court. In asserting an exemption or exemptions, the defendant or judgment debtor must use the Garnishment Exemption Claim Form approved by the Supreme Court or any document claiming an exemption that substantially provides the information required by the Court-approved form. The clerk must make the Court-approved forms available to all persons without charge or request.

(c) *Manner of Service.* The documents referenced in subsection (a) shall be served by service of citation or as provided in Rule 21a.

(d) *Timing of Service.* Service under Subsection (a) by the plaintiff or judgment creditor must occur not later than 3 business days after the plaintiff or judgment debtor receives actual notice of the writ of garnishment on the garnishee.

(e) *Order of Required Documents.* Any service of the documents in Subsection (a) shall be in the specific order designated in Subsection (a).

Commentary: The 2022 amendments to this rule are intended to give notice to individual judgment debtors of their exemption claims and to advise them that said claims may be made by filing a form. The additional notice about exemptions is required by Tex. Gov't Code § 22.0042, enacted as part of H.B. 3774 (§ 15.01) in the regular session of the 87th Legislature.

RULE 664a. CLAIM TO EXEMPTION; DISSOLUTION OF WRIT

(a) *General Rule for Pre-Judgment Garnishment.* A defendant whose property or account has been garnished pre-judgment or any intervening party who claims an interest in such property or account, may by sworn written motion, seek to vacate, dissolve or modify the writ of garnishment, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic. Such motion shall admit or deny each finding of the order directing the issuance of the writ except where the movant is unable to admit or deny the finding, in which case movant shall set forth the reasons why he cannot admit or deny.

(b) *General Rule for Post-Judgment Garnishment.* A judgment debtor whose property or account has been frozen under a writ of garnishment after judgment or any intervening party who claims an interest in such property or account may seek to vacate, dissolve or modify the writ of garnishment, and the order directing its issuance, for any grounds or cause, extrinsic or intrinsic by filing one or more of the following documents:

(1) The Garnishment Exemption Claim Form;
(2) A substantial equivalent to the Garnishment Exemption Claim Form; or
(3) A sworn motion to dissolve or modify the writ of garnishment.

(c) *Hearing.* Unless the parties agree to an extension of time, a hearing on the motion under Subsection (a) or on the motion and/or claim to exemption filed under Subsection (b) shall be heard promptly, after reasonable notice to the plaintiff or judgment creditor (which may be less than three days), and a hearing shall be scheduled and the issue determined not later than ten days after the motion or exemption claim is filed. The filing of the motion or exemption claim shall stay any further proceedings under the writ, except for any orders concerning the care, preservation or sale of any perishable property, until a hearing is had, and the issue is determined.

(d) *Motion for Dissolution of the Writ.*
(1) The writ shall be dissolved unless, at such hearing, the plaintiff or judgment creditor shall prove the grounds relied upon for its issuance and that all required procedures have been followed, but the court may modify its previous order granting the writ and the writ issued pursuant thereto.

(2) The movant shall, however, have the burden to prove that:

(i) All or part of the value of the personal property is exempt;
(ii) The reasonable value of the property garnished exceeds the amount necessary to secure the debt, interest for one year, and probable costs; and/or
(iii) Justification for the substitution of property.

(3) The court's determination may be made upon the basis of affidavits or declarations, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. The court may make all such orders including orders concerning the care, preservation or disposition of the property (or the proceeds therefrom if the same has been sold), as justice may require. If the movant has given a replevy bond, an order to vacate or dissolve the writ shall vacate the replevy bond and discharge the sureties thereon, and if the court modifies its order or the writ issued pursuant thereto, it shall make such further orders with respect to the bond as may be consistent with its modification.

(e) *Claim to Exemption.* On a hearing of a claim to exemption or a claim by an intervening party, the court shall determine whether the defendant or judgment debtor has an applicable exemption to all or part of the personal property being garnished. Any personal property found to be exempt shall be ordered to be returned to the defendant or judgment debtor within no more than three business days.

Commentary: The 2022 amendments to this rule clarify what language applies to pre-judgment and post-judgment proceedings, keep the current motion and hearing procedure in place, and allow judgment debtors to raise exemption claims by filing a claim form. The additional procedure for asserting exemption rights through a claim form is required by Tex. Gov't Code § 22.0042, enacted as part of H.B. 3774 (§ 15.01) in the regular session of the 87th Legislature.

Tab 5b

NOTICE REGARDING: [Case Number]

[Name of Garnishor]	§	Name of court
Garnishor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email	§	
v.	§	
[Name of Garnishee]	§	
Garnishee	§	
Address	§	
City, State, Zip Code	§	
email	§	
	§	
[Name of Defendant or Judgment Debtor]	§	
Defendant or Judgment Debtor	§	Name of County, Texas

NOTICE TO [Name of Judgment Debtor], DEFENDANT OR JUDGMENT DEBTOR, OF YOUR RIGHTS TO GET BACK MONEY IN YOUR ACCOUNT OR PROPERTY THAT HAS BEEN FROZEN

You are receiving this notice because your money or property held at [name of garnishee] has been frozen by [name of garnishor] and may be seized to pay a debt judgment against you. This means that you cannot use the money or property in this account right now and it could be used to pay the debt judgment. **BUT, YOU MAY BE ABLE TO KEEP YOUR MONEY OR PROPERTY, SO READ THIS NOTICE CAREFULLY.**

State and federal law protects certain money and property from garnishment. **If your money or property held at [name of garnishee] was any of the following, it may be protected and you may be able to get the money or property back.**

Money that is Protected from Debt Collection:

1. Social Security Retirement income,
2. Social Security Disability Income (SSDI),
3. Supplemental Security Income (SSI),
4. Alimony, child support, or spousal support,
5. Veterans benefits,
6. Unemployment compensation benefits,
7. Workers' compensation benefits,
8. FEMA disaster benefits,
9. Railroad Retirement benefits,
10. Pension and retirement benefits,
11. Proceeds from the sale of a homestead (but only for six months after the sale),
12. Tax-deferred retirement accounts, like a 401(k) or an IRA account,
13. Education and health savings accounts, such as 529 accounts, an education savings account (ESA), or other qualified accounts,
14. Proceeds of a life, health, or accidental death insurance policy, including related annuities, or
15. Temporary Assistance for Needy Families (TANF).

Other Personal Property that is Protected from Debt Collection:

During garnishment, property other than money can be seized (for example: property placed in a safe deposit box). The list below of protected property is in addition to any protected money you may have from the list above of protected money. Personal property that is worth a total of $50,000 for a single person or $100,000 for a family is protected if it includes any combination of the following items:

1. One motor vehicle (whether two, three or four-wheeled) for each member of a family household or a single adult who holds a driver's license (or does not hold a license but relies on another person to drive the vehicle for the unlicensed person),
2. Home furnishings, including family heirlooms,
3. Food and other items to be consumed by you and your family,
4. Farming/ranching vehicles and implements,
5. Tools, equipment, books, apparatus, boats and motor vehicles used in a trade or profession,
6. Clothes,
7. Jewelry worth up to $25,000 for a family and $12,500 for a single person,
8. Two firearms,
9. Athletic and sporting equipment, including bicycles,
10. Two horses, mules or donkeys, together with a saddle, blanket and bridle for each (as well as food on hand for such animals),
11. Twelve (12) head of cattle (as well as food on hand for such cattle),
12. Sixty (60) head of other livestock (as well as food on hand for such livestock),
13. One-hundred and twenty (120) fowl, including chickens and turkeys (as well as food on hand for such birds),
14. Household pets and any food on hand to feed them,
15. Any bible or other book of sacred writings.

TO GET PROTECTED MONEY OR PROPERTY BACK, YOU MUST:

- Fill out the exemption claim form that is included with this notice, and
- File the form immediately with the court at the address listed on the first page of this notice, and
- Mail the form (or email it, if the email address is listed) to the garnishor, and the garnishee listed in the heading of this notice immediately after you file it with the court.

If you would like to talk with a lawyer, visit https://www.txcourts.gov/programs-services/legal-aid for information on free and low-cost services, or call the legal aid office that serves your area: Texas RioGrande Legal Aid at (800) 369-0574, Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (800) 955-3959.

REMEMBER: FILE YOUR COMPLETED EXEMPTION CLAIM FORM IMMEDIATELY.

Garnishment Exemption Claim Form Instructions

The Garnishment Exemption Claim Form is a form that you can fill out and deliver to the court to get back protected money in your account that has been frozen. It is best to take the form to the court to make sure it is filed quickly and doesn't get lost in the mail. If you mail it to the court, it is best to send it certified mail with return receipt requested. **You are called the "Defendant or Judgment Debtor" on the form.**

To fill out the Garnishment Exemption Claim Form:

1. If the top of the form is not already filled out, copy the information from the top of the notice you received that told you of your rights to get back any protected money that was frozen and might be taken from you.
2. Check all the boxes of protected income that apply to you. If you check the "other" box, write your explanation down in the space provided.
3. Write your address (address, city, state, and zip code), your phone number, and your email address in the space provided.
4. Sign the form in the space marked "Your Signature," and print your name and the date in the spaces provided. **Keep a copy of the form.**
5. Fill out the **Certificate of Service** at the end of the form.
6. **Take the original form to the clerk of the court** at address listed at the top of the notice that you received with this form.
7. Mail copies of the form by first class mail (or email, if an email address is provided on the notice) to the garnishor and garnishee. Their addresses are also at the top of the notice that you received with this form.
8. You can call the clerk of the court for more information at [insert phone number of court clerk].

The court will hold a hearing within 10 days from the date it receives your claim form to decide if the money in your account is protected. The court will mail you the time and date of the hearing at the address that you provide on your claim form. Make sure to attend the hearing. If you do not attend, the court is likely to rule against you. You can attend with or without an attorney.

At the hearing, tell the court why your money is protected. Bring any supporting documents to the hearing, such as:

- A copy of pay stubs and account statements showing deposits of protected money
- A letter from a government agency awarding benefits such as social security or other protected benefit
- A divorce decree for alimony, child support, or spousal support
- Any other information or document(s) that shows that your money is protected.

CASE NUMBER: [Case Number]

[Name of Garnishor]	§	Name of court
Garnishor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email	§	
v.	§	
[Name of Garnishee]	§	
Garnishee	§	
Address	§	
City, State, Zip Code	§	
email	§	
	§	
[Name of Defendant or Judgment Debtor]	§	
Defendant or Judgment Debtor	§	Name of County, Texas

GARNISHMENT EXEMPTION CLAIM FORM FOR DEFENDANT OR JUDGMENT DEBTOR

I CLAIM PROTECTION from garnishment. Some of my money or property held in my name at [name of garnishee] is protected and should be returned to me, because it is:

Money that is Protected from Debt Collection (check all that apply)

- Social Security Retirement income
- Social Security Disability income (SSDI)
- Supplemental Security Income (SSI)
- Alimony, child support, or spousal support
- Veterans' benefits
- Unemployment compensation benefits
- Workers' compensation
- FEMA disaster benefits
- Pension and retirement benefits
- Railroad Retirement benefits
- Money from the sale of a homestead less than six months ago
- Tax-deferred retirement accounts, like a 401(k) or an IRA account
- Education and health savings accounts, such as 529 accounts, educational savings accounts (ESA), or other qualified accounts
- Proceeds of a life, health, or accident insurance policy, including related annuities
- Temporary Assistance for Needy Families (TANF)

Other Property that is Protected from Debt Collection

You can find the list of other property that is protected from debt collection in the notice that you received along with this form.

Check the "Other property" box below ONLY if protected personal property is frozen because of THIS debt. *For Example: check the box if you have a safe deposit box at a bank with jewelry or other protected personal property and you can't get it because it was frozen by [name of garnishor].*

☐ Other property

Explain. If you checked the "Other property" box above, list the specific protected property that was seized or frozen by [name of garnishor]. You can also share other information or concerns. *(Attach extra sheets if needed)*

_____

_____

Send the notice of any hearing on my claim to me at:

Address: _____

Phone Number: _____

E-mail Address: _____

The statements made in this claim form are true to the best of my knowledge and belief.

_____	_____	_____
Your Signature	Print Your Name	Date

CERTIFICATE OF SERVICE

I certify that on this day, I have: (check all that apply)

- ☐ mailed
- ☐ emailed

the garnishor and the garnishee with a copy of this form.

_____	_____
Your Signature	Today's Date

Tab 5c

ATTACHMENT C

Part VI, Section 4. Garnishment and Turnover

RULE 660. FUNDS SEIZED BY TURNOVER RECEIVER

After a turnover receiver seizes funds belonging to a judgment debtor, such funds shall be held in escrow and not disbursed for a period of 30 days after service of notice to judgment debtor under Rule 660b. If a judgment debtor files a Turnover Exemption Claim Form, similar instrument, or a motion to return exempt funds, the funds shall remain in escrow until such time as the court has ruled on the judgment debtor's claim of exemption.

RULE 660a. NOTICE TO JUDGMENT DEBTOR

(a) *General Rule.* The judgment debtor shall be served with the following documents by the turnover receiver:

(1) The Turnover Notice in Plain Language;
(2) Instructions to fill out the Turnover Exemption Claim Form;
(3) Two copies of the Turnover Exemption Claim Form;
(4) A copy of any letter, with accompanying attachments, sent by the turnover receiver to the financial institution.

(b) *Supreme Court Form*; *Clerk to Provide*. The turnover receiver must serve the Turnover Notice in Plain Language form in at least eleven-point type, the Turnover Exemption Claim Form, and the related instructions approved by the Supreme Court. In asserting an exemption or exemptions, the judgment debtor must use the Turnover Exemption Claim Form approved by the Supreme Court, or any document claiming an exemption that substantially provides the information required by the Court-approved form. The clerk must make the Court-approved forms available to all persons without charge or request.

(c) *Manner of Service.* The documents referenced in Subsection (a) shall be served by service of citation or as provided in Rule 21a.

(d) *Timing of Service.* Service under Subsection (a) by the turnover receiver must occur within 3 business days after the receiver receives actual notice of the freezing or receipt of any of a judgment debtor's funds or personal property at a financial institution, whichever occurs at an earlier date.

(e) *Order of Required Documents.* Any service of the documents in Subsection (a) shall be in the specific order designated in Subsection (a).

RULE 660b. CLAIM TO EXEMPTION; RETURN OF EXEMPT FUNDS

(a) *General Rule for Post-Judgment Turnover Receivership.* A judgment debtor whose property or account has been seized post-judgment or any intervening party who claims an interest in such property or account may file one or more of the following documents:

(1) The Turnover Exemption Claim Form;
(2) A substantial equivalent to the Turnover Exemption Claim form; or
(3) A motion to return exempt funds or funds owned by a third party.

(b) *Hearing.* Unless the parties agree to an extension of time, a hearing on the motion and/or claim to exemption filed under Subsection (a) shall be heard promptly, after reasonable notice to the judgment creditor and the turnover receiver (which may be less than three days), and a hearing shall be scheduled and the issue determined not later than ten days after the motion or exemption claim is filed. The filing of the motion or exemption claim shall stay any disbursement of seized funds until a hearing is held and the issue is determined.

(c) *Motion for Return of Exempt Funds or Funds Owned by a Third Party.*

(1) Any funds seized by a turnover receiver shall be returned to the judgment debtor unless, at such hearing, the turnover receiver shall prove that all required procedures have been followed.

(2) The movant shall, however, have the burden to prove that all or part of the value of the personal property is exempt.

(3) The court's determination may be made upon the basis of affidavits or declarations, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence.

(e) *Claim to Exemption.* On a hearing of a claim to exemption, the court shall determine whether the judgment debtor has an applicable exemption to all or part of the personal property being seized by the turnover receiver. Any personal property found to be exempt shall be ordered to be returned to the judgment debtor within no more than three business days. In addition, the court may determine that certain personal property seized by a turnover receiver belongs to a third party or third parties and order its return within no more than three business days.

Tab 5d

NOTICE REGARDING: [Case Number]

[Name of Judgment Creditor]	§	Name of Court
Judgment Creditor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email (optional)	§	
v.	§	
[Name of Judgment Debtor]	§	
Judgment Debtor	§	
	§	
[Name of Turnover Receiver]	§	
Turnover Receiver	§	
Address	§	
City, State, Zip Code	§	
email (optional)	§	Name of County, Texas

NOTICE TO [name of judgment debtor], JUDGMENT DEBTOR, OF YOUR RIGHTS TO GET BACK MONEY OR PROPERTY THAT WAS FROZEN OR TAKEN BY A TURNOVER RECEIVER

You are receiving this notice because your money or property [at name of financial institution or other holder of property if applicable] has been frozen or taken by [name of turnover receiver] to pay a debt judgment against you. The court appointed [name of turnover receiver] to help [name of judgment creditor] collect this debt judgment. **YOU MAY BE ABLE TO GET YOUR MONEY OR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.**

State and federal law protects certain money and property from being taken by a turnover receiver. **If your money or property has been frozen in your account or taken by the turnover receiver, it may be protected and you may be able to get the money or property back.**

Money that is Protected from Debt Collection in Turnover:

1. Wages deposited in an account,
2. Social Security Retirement income,
3. Social Security Disability Income (SSDI),
4. Supplemental Security Income (SSI),
5. Alimony, child support, or spousal support,
6. Veterans benefits,
7. Unemployment compensation benefits,
8. Workers' compensation benefits,
9. FEMA disaster benefits,
10. Railroad Retirement benefits,
11. Pension and retirement benefits,
12. Proceeds from the sale of a homestead (but only for six months after the sale),
13. Tax-deferred retirement accounts, like a 401(k) or an IRA account,
14. Education and health savings accounts, such as 529 accounts, an education savings account (ESA), or other qualified accounts,
15. Proceeds of a life, health, or accidental death insurance policy, including related annuities,
16. Temporary Assistance for Needy Families (TANF), and
17. Proceeds from a spendthrift trust.

Other Personal Property that is Protected from Debt Collection:

The list below of protected property is in addition to any protected funds you may have from the above list. Personal property that is worth a total of $50,000 for a single person or $100,000 for a family is protected if it includes any combination of the following items:

1. One motor vehicle (whether two, three or four-wheeled) for each member of a family household or a single adult who holds a driver's license (or does not hold a license but relies on another person to drive the vehicle for the unlicensed person),
2. Home furnishings, including family heirlooms,
3. Food and other items to be consumed by you and your family,
4. Farming/ranching vehicles and implements,
5. Tools, equipment, books, apparatus, boats and motor vehicles used in a trade or profession,
6. Clothes,
7. Jewelry worth up to $25,000 for a family and $12,500 for a single person,
8. Two firearms,
9. Athletic and sporting equipment, including bicycles,
10. Two horses, mules or donkeys, together with a saddle, blanket and bridle for each (as well as food on hand for such animals),
11. Twelve (12) head of cattle (as well as food on hand for such cattle),
12. Sixty (60) head of other livestock (as well as food on hand for such livestock),
13. One-hundred and twenty (120) fowl, including chickens and turkeys (as well as food on hand for such birds),
14. Household pets and any food on hand to feed them,
15. Any bible or other book of sacred writings.

TO GET PROTECTED MONEY OR PROPERTY BACK, YOU MUST:

- Fill out the exemption claim form that is included with this notice, and
- File the form immediately with the court at the address listed on the first page of this notice, and
- Mail the form (or email it, if the email address is listed) to the turnover receiver and the plaintiff listed in the heading of this notice immediately after you file it with the court.

If you would like to talk with a lawyer, visit https://www.txcourts.gov/programs-services/legal-aid for information on free and low-cost services, or call the legal aid office that serves your area: Texas RioGrande Legal Aid at (800) 369-0574, Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (800) 955-3959.

REMEMBER: FILE YOUR COMPLETED EXEMPTION CLAIM FORM IMMEDIATELY.

Turnover Exemption Claim Form Instructions

The Turnover Exemption Claim Form is a form that you can fill out and deliver to the court to get back the protected money that has been taken from you. It is best to take the form to the court to make sure it is filed quickly and doesn't get lost in the mail. If you mail it to the court, it is best to send it certified mail with return receipt requested. **You are called the "Judgment Debtor" on the form.**

To fill out the Turnover Exemption Claim Form:

1. If the top of the form is not filled out, copy the information from the top of the notice you received that told you of your rights to get back protected money or property that was taken from you.
2. Check all the boxes of protected income that apply to you. If you check the "other" box, write your explanation down in the space provided.
3. Write your address (address, city, state, and zip code), your phone number, and your email address in the space provided.
4. Sign the form in the space marked "Your Signature," and print your name and the date in the spaces provided. **Keep a copy of the form.**
5. Fill out the **Certificate of Service** at the end of the form.
6. **Take the original form to the clerk of the court** at address listed at the top of the notice that you received with this form.
7. Mail copies of the form by first class mail (or email, if an email address is provided on the notice) to the turnover receiver and the judgment creditor). Their addresses are at the top of the notice that you received with this form.
8. You can call the clerk of the court for more information at [insert phone number of court clerk].

The court will hold a hearing within 10 days from the date it receives your claim form to decide if the money in your account is protected. The court will mail you the time and date of the hearing at the address that you provide on your claim form. Make sure to attend the hearing. If you do not attend, the court is likely to rule against you. You can attend with or without an attorney.

At the hearing, tell the court why your money is protected. Bring any supporting documents to the hearing, such as:

- A copy of pay stubs and account statements showing deposits of protected money
- A letter from a government agency awarding benefits, such as social security or other protected benefit
- A divorce decree for alimony, child support, or spousal support
- Any other information or document(s) that shows that your money or other property is protected.

CASE NUMBER: [Case Number]

[Name of Judgment Creditor]	§	Name of court
Judgment Creditor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email (optional)	§	
v.	§	
[Name of Judgment Debtor]	§	
Judgment Debtor	§	
	§	
[Name of Turnover Receiver]	§	
Turnover Receiver	§	
Address	§	
City, State, Zip Code	§	
email (optional)	§	Name of County, Texas

TURNOVER EXEMPTION CLAIM FORM
FOR JUDGMENT DEBTOR

I CLAIM PROTECTION from seizure. Some of my money or property frozen or taken by the turnover receiver is protected and should be returned to me because it is:

Money that is Protected from Debt Collection in Turnover (check all that apply)

- Wages
- Social Security Retirement income
- Social Security Disability income (SSDI)
- Supplemental Security Income (SSI)
- Alimony, child support, or spousal support
- Veterans' benefits
- Unemployment compensation benefits
- Workers' compensation
- FEMA disaster benefits
- Railroad Retirement benefits
- Pension and retirement benefits
- Money from the sale of a homestead less than six months ago
- Tax-deferred retirement accounts, like a 401(k) or an IRA account
- Education and health savings accounts, such as 529 accounts, educational savings accounts (ESA), or other qualified accounts
- Proceeds of a life, health, or accident insurance policy, including related annuities
- Temporary Assistance for Needy Families (TANF)
- Proceeds from a spendthrift trust

Other Property that is Protected from Debt Collection

You can find the list of other property that is protected from debt collection in the notice that you received along with this form.

Check the "Other property" box below ONLY if protected personal property is frozen or was seized because of THIS debt. *For Example: check the box if you have a safe deposit box at a bank with jewelry or other protected personal property and you can't get it because it was seized or frozen by [name of turnover receiver].*

☐ Other property

Explain. If you checked the "Other property" box above, list the specific protected property that was seized or frozen by [name of turnover receiver]. You can also share other information or concerns. *(Attach extra sheets if needed)*

_____

_____

Send the notice of the hearing on my claim to me at:

Address: _____

Phone Number: _____

E-mail Address: _____

The statements I made in this claim form are true to the best of my knowledge and belief.

_____ _____ _____

Your Signature Print Your Name Date

CERTIFICATE OF SERVICE

I certify that on this day, I have: (check all that apply)

☐ mailed
☐ emailed

the turnover receiver and the judgment creditor a copy of this form.

_____ _____

Your Signature Today's Date

Tab 5e

ATTACHMENT E

RULE 621b. PROPERTY SEIZED BY WRIT OF EXECUTION

Once tangible personal property is seized by writ of execution, such property shall be held in escrow and not sold for a period of 30 days after service of notice to judgment debtor under Rule 621c. If a judgment debtor files an Execution Exemption Claim Form, similar instrument, the property shall remain in escrow until such time as the court has ruled on the judgment debtor's claim of exemption.

RULE 621c. NOTICE TO JUDGMENT DEBTOR

(a) *General Rule.* The judgment debtor shall be served with the following documents by the judgment creditor:

(1) The Execution Exemption Notice in Plain Language;

(2) Instructions to fill out the Execution Exemption Claim Form; and

(3) Two copies of the Execution Exemption Claim Form.

(b) *Supreme Court Form*; *Clerk to Provide*. The judgment creditor must serve the Execution Notice in Plain Language form, the Execution Exemption Claim Form, and the related instructions approved by the Supreme Court. In asserting an exemption or exemptions, the judgment debtor must use the Execution Exemption Claim Form approved by the Supreme Court, or any document claiming an exemption that substantially provides the information required by the Court-approved form. The clerk must make the Court-approved forms available to all persons without charge or request.

(c) *Manner of Service.* The documents referenced in Subsection (a) shall be served by service of citation or as provided in Rule 21a.

(d) *Timing of Service.* Service under Subsection (a) by the judgment creditor must occur within 3 business days after the seizure of tangible personal property from a judgment debtor.

RULE 621d. CLAIM TO EXEMPTION; RETURN OF EXEMPT PROPERTY

(a) *General Rule.* A judgment debtor whose tangible personal property has been seized post-judgment or any intervening party who claims an interest in such property may file one or more of the following documents:

(1) The Execution Exemption Claim Form; or

(2) A substantial equivalent to the Turnover Exemption Claim form.

(b) *Hearing.* Unless the parties agree to an extension of time, a hearing on claim to exemption filed under Subsection (a) shall be heard promptly, after reasonable notice to the judgment creditor (which may be less than three days), and a hearing shall be scheduled and the issue determined not later than ten days after the exemption claim is filed. The filing of the exemption claim shall stay any sale of seized personal property until a hearing is held and the issue is determined.

(c) *Claim to Exemption.* On a hearing of a claim to exemption, the court shall determine whether the judgment debtor has an applicable exemption to all or part of the tangible personal property seized by writ of execution. The movant shall, however, have the burden to prove that all or part of the value of the personal property is exempt. The court's determination may be made upon the basis of the claim form, affidavits or declarations, if uncontroverted, setting forth such facts as would be admissible in evidence; otherwise, the parties shall submit evidence. Any tangible personal property found to be exempt shall be ordered to be returned to the judgment debtor within no more than three business days. In addition, the court may determine that certain personal property seized by a turnover receiver belongs to a third party or third parties and order its return within no more than three business days.

Tab 5f

NOTICE REGARDING: [Case Number]

[Name of Judgment Creditor]	§	Name of Court
Judgment Creditor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email (optional)	§	
v.	§	
[Name of Judgment Debtor]	§	
Judgment Debtor	§	
	§	
	§	Name of County, Texas

NOTICE TO [name of judgment debtor], JUDGMENT DEBTOR, OF YOUR RIGHTS TO GET YOUR PROPERTY BACK THAT WAS TAKEN BY A WRIT OF EXECUTION

You are receiving this notice because some of your personal property was seized to be sold to pay a debt judgment against you. **YOU MAY BE ABLE TO GET YOUR PROPERTY BACK, SO READ THIS NOTICE CAREFULLY.**

State law protects certain property from being taken to pay off a judgment. **If the property seized by the writ of execution is listed below, it may be protected and you may be able to get it back:**

1. One motor vehicle (two, three or four-wheeled) for each member of a family household or a single adult who holds a driver's license (or does not hold a license but relies on another person to drive the vehicle for the unlicensed person),
2. Home furnishings, including family heirlooms,
3. Food and other items to be consumed by you and your family,
4. Farming/ranching vehicles and implements,
5. Tools, equipment, books, apparatus, boats and motor vehicles used in a trade or profession,
6. Clothes,
7. Jewelry worth up to $25,000 for a family and $12,500 for a single person,
8. Two firearms,
9. Athletic and sporting equipment, including bicycles,
10. Two horses, mules or donkeys, together with a saddle, blanket and bridle for each (as well as food on hand for such animals),
11. Twelve (12) head of cattle (as well as food on hand for such cattle),
12. Sixty (60) head of other livestock (as well as food on hand for such livestock),
13. One-hundred and twenty (120) fowl, including chickens and turkeys (as well as food on hand for such birds),
14. Household pets and any food on hand to feed them,
15. Any bible or other book of sacred writings.

Any combination of the items on the list above is protected if the items are worth a total of $50,000 for a single person or $100,000 for a family.

TO GET THE PROTECTED PROPERTY BACK, YOU MUST:

- Fill out the exemption claim form that is included with this notice, and
- File the form immediately with the court at the address listed on the first page of this notice, and
- Mail the form (or email it, if the email address is listed) to the judgment creditor listed in the heading of this notice immediately after you file it with the court.

If you would like to talk with a lawyer, visit https://www.txcourts.gov/programs-services/legal-aid for information on free and low-cost services, or call the legal aid office that serves your area: Texas RioGrande Legal Aid at (800) 369-0574, Lone Star Legal Aid at (800) 733-8394, and Legal Aid of Northwest Texas at (800) 955-3959.

REMEMBER: FILE YOUR COMPLETED EXEMPTION CLAIM FORM IMMEDIATELY.

Execution Exemption Claim Form Instructions

The Turnover Exemption Claim Form is a form that you can fill out and deliver to the court to get back the protected money that has been taken from you. It is best to take the form to the court to make sure it is filed quickly and doesn't get lost in the mail. If you mail it to the court, it is best to send it certified mail with return receipt requested. **You are called the "Judgment Debtor" on the form.**

To fill out the Execution Exemption Claim Form:

1. If the top of the form is not already filled out, copy the information from the top of the notice you received that told you of your rights to get back any protected money that was taken from you.
2. Check all the boxes of protected income that apply to you. If you check the "other" box, write your explanation down in the space provided.
3. Write your address (address, city, state, and zip code), your phone number, and your email address in the space provided.
4. Sign the form in the space marked "Your Signature," and print your name and the date in the spaces provided. **Keep a copy of the form.**
5. Fill out the **Certificate of Service** at the end of the form.
6. **Take the original form to the clerk of the court** at address listed at the top of the notice that you received with this form.
7. Mail copies of the form by first class mail (or email, if an email address is provided on the notice) to the judgment creditor. Their addresses are at the top of the notice that you received with this form.
8. You can call the clerk of the court for more information at [insert phone number of court clerk].

The court will hold a hearing within 10 days from the date it receives your claim form to decide if your property is protected. The court will mail you the time and date of the hearing at the address that you provide on your claim form. Make sure to attend the hearing. If you do not attend, the court is likely to rule against you. You can attend with or without an attorney.

At the hearing, tell the court why your property is protected. Bring any supporting documents or other items to the hearing, such as:

- Certificates of title for any vehicle that has been seized,
- Any other information or document(s) that shows that your money is protected.

CASE NUMBER: [Case Number]

[Name of Judgment Creditor]	§	Name of court
Judgment Creditor	§	**Address**
Address	§	City, State, Zip Code
City, State, Zip Code	§	
email (optional)	§	
v.	§	
[Name of Judgment Debtor]	§	
Judgment Debtor	§	
	§	
	§	Name of County, Texas

EXECUTION EXEMPTION CLAIM FORM
FOR JUDGMENT DEBTOR

I CLAIM PROTECTION from seizure. Some of my property taken writ of execution is protected and should be returned to me, because it is: (check all that apply)

- Motor vehicle for each person with a driver's license or person without one who relies on another to drive the vehicle
- Home furnishings, including furniture and family heirlooms
- Food and other consumable goods
- Tools, equipment, books, apparatus, boats and motor vehicles used in a trade or profession
- Household pets
- Fowl, including chickens and turkeys (up to 120)
- Clothes
- Jewelry worth up to $25,000 for a family and $12,500 for a single person
- Firearms (up to 2)
- Sporting goods, including bicycles
- Horses, mules and donkeys (up to 2)
- Cattle (up to 12 head)
- Other livestock (up to 60)
- Other (explain below)

Explain, if needed: *(attach extra sheets if needed)*

_____

_____

_____

_____

Send the notice of the hearing on my claim to me at:

Address: _____

Phone Number: _____

E-mail Address: _____

The statements I made in this claim form are true to the best of my knowledge and belief.

_____ _____ _____
Your Signature Print Your Name Date

CERTIFICATE OF SERVICE

I certify that on this day, I have: (check all that apply)

☐ mailed
☐ emailed

the judgment creditor a copy of this form.

_____ _____
Your Signature Today's Date

Tab 6

Zamen, Shiva

Subject: FW: [EXTERNAL] - RE: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774
Attachments: Sample LIMITED ORDER - with Exemption language.pdf

---

From: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>
Sent: Wednesday, October 6, 2021 1:00 PM
To: Jim Perdue Jr. <jperduejr@perdueandkidd.com>; Zamen, Shiva <szamen@jw.com>
Cc: Pauline Easley <Pauline.Easley@txcourts.gov>
Subject: Fw: [EXTERNAL] - RE: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Jim and Shiva,

I just spoke with Justice Bland, and we think that we should go ahead and include the below email chain and the attached order at the end of the other seizure exemption materials. Legal Aid is, of course, welcome to comment at the meeting, and they will have time to submit something more formally after the meeting. But SCAC doesn't meet again until December, and that's too late if the Court wants to adopt the order as part of seizure exemption package.

Jackie

From: Richard Tomlinson <RTomlinson@lonestarlegal.org>
Sent: Wednesday, October 6, 2021 12:20 PM
To: 'Craig Noack' <craig@noacklawfirm.com>; Jim M. Perdue Jr. <jperduejr@perdueandkidd.com>; Nicholas Chu <nicholas.chu@traviscountytx.gov>; Whalen, Theadora <td24@txstate.edu>; Sarosdy, Randall L <rsarosdy@txstate.edu>; Ann Baddour <abaddour@texasappleseed.org>
Cc: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>; 'Tucker, Bronson T' <bt16@txstate.edu>; 'Tom Kolker' <tom@greensteinandkolker.com>
Subject: RE: [EXTERNAL] - RE: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774

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DO NOT click links or open attachments unless you expect them from the sender and know the content is safe.

Jim,

I received this proposal late yesterday, and I saw it for the first time this morning. Craig told me on Monday that this proposal was coming, and I appreciate the heads-up that he gave. Given the time crunch we were in on the rules and forms (and a deadline tomorrow to file a brief in the Texas Supreme Court), though, I simply lack the time to review this proposal and to run it by other counsel who represent debtors. I urge the Committee to provide my ad hoc group time to respond to this late proposal before it is considered.

Rich

From: Craig Noack <craig@noacklawfirm.com>
Sent: Wednesday, October 6, 2021 11:57 AM
To: Jim M. Perdue Jr. <jperduejr@perdueandkidd.com>; Nicholas Chu <Nicholas.Chu@traviscountytx.gov>; Whalen, Theadora <td24@txstate.edu>; Sarosdy, Randall L <rsarosdy@txstate.edu>; Richard Tomlinson <RTomlinson@lonestarlegal.org>; Ann Baddour <abaddour@texasappleseed.org>
Cc: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>; 'Tucker, Bronson T' <bt16@txstate.edu>; 'Tom Kolker' <tom@greensteinandkolker.com>
Subject: [EXTERNAL] - RE: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774

Jim –

I'm writing separately, and **not** on behalf of the Texas Association of Turnover Receivers or the Texas Creditors Bar Association, to address the request in your email – based on Justice Bland's comments at the last Committee meeting – to work on a form order for turnover receivers. I have attached a form I have worked on, along with others, in response to that request.

I had responded to Justice Bland's comments that I thought a form turnover receivership order for lower balance judgments in justice courts, perhaps incorporating debtor exemption language, would be an excellent idea. Over the last few weeks, I have not been able to reach a consensus with my colleagues over whether such an idea was worth official support.

The biggest concerns expressed by TATR members were that, while the idea has merit in justice court on consumer debt cases, the form order might bleed over to commercial cases, or to district and county court at law cases, where a receiver wants the ability to have a carefully crafted order, particular to their practice and the uniqueness of the case, to create the best possibility of success. Another concern was that the form order was outside the legislative mandate contained in HB 3774.

That said, some TXCBA members and those turnover receivers who regularly practice in justice court see a lot of merit to a form turnover receivership order. The sheer number of justice courts, the lack of uniformity in the orders, the fact that many justice court judges are not licensed attorneys, and the reality that most regulated judgment creditors only want to pursue non-controversial assets like bank funds and financial records (not cars or real property) all argue in favor of a useful, straightforward, limited receivership order. I've attached a version of that order; one that is very similar to what is currently used.

As I said above, this form order is not provided on behalf of TXCBA or TATR, and was not the subject of negotiations by the stakeholders in our ad hoc group. However, I did share this form and my decision to provide it to you with all stakeholders in advance. You may hear from others with other form orders that they'd prefer or other issues that might be raised, and Bronson Tucker with the TJCTC undoubtedly has many examples of justice court orders he can provide.

At the end of the day, I was on record as being supportive of Justice Bland's idea, and given that your email had a request for a form order that referenced the idea, I did not want to completely disregard it. So please consider the above as a private submission to the Committee.

Thanks,

Craig Noack
Managing Member
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From: Jim M. Perdue Jr. <jperduejr@perdueandkidd.com>
Sent: Tuesday, September 14, 2021 4:14 PM
To: Nicholas Chu <Nicholas.Chu@traviscountytx.gov>; Craig Noack <craig@noacklawfirm.com>; Whalen, Theadora <td24@txstate.edu>; Sarosdy, Randall L <rsarosdy@txstate.edu>; Richard Tomlinson <RTomlinson@lonestarlegal.org>; Ann Baddour <abaddour@texasappleseed.org>
Cc: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>
Subject: New Rules and Forms for Debtor Seizure Exemption required to be enacted per HB 3774

Dear folks:
First, thank you for being involved in this project. The presentations by Rich and Craig were very informative and helpful to the Court and the committee. You are now collectively un-officially the ad hoc working group of stakeholders on this HB 3774 Debtor's Exemptions issue.

Let me deliver a couple messages/takeaways from the Supreme Court Rules Advisory meeting, some mine, some from others, that I hope will offer you guidance going forward.

First, the Court's Committee would really like to have this project in a near complete, if not complete stage, to consider and vote on for the Court by the October 8 meeting.
Second, if the Creditor's Bar and Debtor's Advocates want to maintain role as leading stakeholders in this process, they are going to have to co-ordinate an actual dialogue, and include input from the judges and others versed in these issues toward a proposal that is closer to an agreement. For every issue that a line in the sand is drawn, there is a Sword of Damocles overhead that will make the decision for you.
Last, some guidance based on the discussion:

- The rule amendments should go where the trial courts will look. This probably requires a change to more than one rule, but if it could be captured all in one new rule, it should be in the 600's series proximal to the rules on these issues. The issue of garnishment and receivership being in two sets of rules is well taken and complicates this project. Nevertheless, this needs to be user friendly and thus the less engineered the solution, the better.
- I am not sure there was broad appetite to take statute stated purpose to want as an easier means for debtor to claim exemption as a legislative policy enactment mandating the Court to make receivership on par with garnishment. The words of the statute generally will be the touchstone for the Court's committee.
- The conversation of receivers did raise another step in the process that needs to be addressed. Based on Justice Bland's comments, you should consider that Committee requests that stakeholders should work on a form order for appointing a receiver, which would contain both the rights and obligations of the receiver (e.g., to notify the debtor about exemptions, and specific language the receiver must use).
- For the exemption form for the debtor (the meat of the project), the Debtors form is closer to plain language, but the Creditor form is accurately complete. Shorter form, user friendly would be better but there should be a middle ground of translation to plain language and what the list includes.

I am simply a facilitator at this point. Court will be ultimate arbiter, so its not for me to mediate your two perspectives (I don't think I could). I have been told to see if the stakeholders, with the help of the judges, could agree on a draft of the two items above (or give us the places where they disagree, but using one form) and any necessary rule amendments to provide for this exemption form by the October 8 meeting.

You are obviously free to include respected colleagues who I have not copied here. You all just happened to be the resource names provided to me.

Jim M. Perdue Jr.

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Tab 7

This order is meant to serve as a guide on consumer cases in Justice Courts only. Judgments in higher courts, or judgments based on commercial debt claims, should use a broader, non-limited order granting the receiver more powers and not limited in scope.

ORDER APPOINTING POST-JUDGMENT RECEIVER PURSUANT TO CPRC 31.002
(JUSTICE COURT LIMITED RECEIVERSHIP)

On this day came on to be considered Judgment Plaintiff ***Motion to Appoint a Post-Judgment Receiver Pursuant to CPRC 31.002 (Justice Court Limited Receivership)***. After reviewing the evidence and the Court's file, the Court finds that the Judgment in this case is valid, final and fully payable, but remains unsatisfied, and that Judgment Plaintiff is entitled to aid from this Court in order to reach nonexempt property of Judgment Defendant(s) _____ (hereinafter referred to at times as "Judgment Defendant") to obtain satisfaction on of the Judgment. The Court further finds that a receiver should be appointed to take possession of and sell the nonexempt assets of Judgment Defendant. Notwithstanding any language to the contrary, this Order does not compel turnover of the homestead, checks for current wages, or other exempt property of Judgment Defendant.

IT IS THEREFORE, ORDERED, that the following is appointed Receiver pursuant to the Texas Turnover Statute, with authority to take possession of and sell the nonexempt assets of the Judgment Defendant:

Receiver's Name: _____
State Bar No. _____
Address: _____
_____
Phone: _____
Email: _____

Receiver's Limited Powers: The Receiver shall have the power and authority to take possession of all nonexempt property of Judgment Defendant, including, but not limited to the following nonexempt property: (a) all financial accounts (bank accounts), certificates of deposit, and money-market accounts held by any third party; and (b) all financial records related to such property that is in the actual or constructive possession or control of Judgment Defendant; and that all such property shall be held in *custodia legis* of said Receiver as of the date of this Order.

Personal Property Exemptions of Debtor: Receiver shall comply with Texas Rule of Civil Procedure 621b regarding the procedures for notifying the Judgment Defendant of their rights to assert personal property exemptions.

Additional Powers: The Receiver shall have the following additional rights, authority, and powers with respect to the Judgment Defendant's nonexempt property, to: (a) obtain Judgment Defendant's credit information and credit reports; (b) obtain from any third party any financial records belonging to or pertaining to the Judgment Defendant; (c) certify copies of this Order; (d) to negotiate and obtain installment payment agreements with Judgment Defendant, if the Receiver reasonably believes that a payment agreement is the best option to satisfy the Judgment

and receiver fee, and the Receiver does not compromise any amounts awarded in the Judgment without Plaintiff's authorization; and (e) to serve discovery requests to Judgment Defendant and any third party believed to have knowledge of Judgment Defendant's nonexempt assets.

Turnover: Judgment Defendant is ORDERED to turnover to the Receiver within five (5) days of being served with a copy of this Order all nonexempt checks, cash, securities (stocks and bonds), promissory notes, documents of title, and contracts owned by Judgment Defendant and to continue to turnover to the Receiver all such nonexempt property within three (3) days of receipt of such property until the Judgment in this cause and receiver fee are fully paid.

Receiver's Bond, Fee, and Oath: Because this is a post-judgment receivership, no Receiver Bond is required. The Court finds that the customary and usual post-judgment turnover receiver fee is 25% of the funds recovered during the receivership, **subject to a later determination as to reasonableness by the Court or Judgment Defendant's written agreement for the fee to be paid**. The Receiver's fee and reasonable expenses incurred in carrying out the terms of this Order shall be taxed as costs of court against Judgment Defendant and shall be in addition to the amounts provided for in the judgment. The Receiver is further ordered to take the oath of his office.

Receiver's Expenses: Any costs reasonably incurred in carrying out the terms of this Order shall be taxed as costs of court against Judgment Defendant and collected by Receiver from the Judgment Defendant.

Receiver to Hold Property: Receiver shall not disburse to Judgment Plaintiff funds recovered by Receiver without Judgment Defendant's written consent, or court order.

Order May be Amended: This Order may be amended by further order of this Court upon request by Receiver, Plaintiff, or Judgment Defendant.

SIGNED this _____ day of _____, 2021.

_____
JUDGE PRESIDING

Tab 8

SUBJECT: Prohibiting court-ordered seizure of retirement income

COMMITTEE: Judiciary: favorable, without amendment

VOTE: 5 ayes--S. Thompson, Conley, Dutton, D. Hudson, Thomas

0 nays

4 absent--Seidlits, Hinojosa, S. Hudson, Perez

WITNESSES: None

BACKGROUND: The Property Code exempts from execution to satisfy court judgments certain amounts and types of personal property. Since 1987 this exempt property has included assets in, and the right to receive payments from, qualifying retirement plans.

DIGEST: HB 1029 would forbid a court to order a person owing a judgment to turn over either disbursements or proceeds of property that is statutorily exempt from seizure and execution, including qualifying retirement plans described in the Property Code.

The bill would apply to orders already entered, as well as to judgments rendered on or after its effective date.

SUPPORTERS SAY: HB 1029 would make clear to the courts that they cannot order judgment debtors to turn over their retirement checks to satisfy judgments. The Property Code exempts all qualifying retirement funds from attachment, execution and seizure, yet some courts still allow creditors to collect payments made out of these accounts. Last year, the El Paso Court of Appeals held that current law protects only the funds actually on deposit in a retirement account. It ruled that checks paid out of these accounts are equivalent to cash, which is not exempt from seizure, and that judgment debtors can be ordered to turn over the retirement checks they receive, before those checks are cashed.

The court's decision has the effect of a prospective order; it means that all of a retiree's future income is committed to the creditor. It is an overly harsh remedy to exact payment from someone dependent on a

retirement fund, and the Legislature tried to prevent such actions last session. Allowing disbursements from those funds to be seized is very similar to garnishment, which involves ordering an employer to turn over a debtor's wages before they are paid. Garnishment has long been prohibited by the Texas Constitution (with a narrow exception for child support payments), and the Legislature should unequivocally prohibit this similar practice as well.

HB 1029 would reverse the El Paso court's 1988 decision in Cain v. Cain (746 SW 2nd. 861), and all other past court orders based on this incorrect interpretation of the law that have required retirement fund recipients to turn over their checks.

OPPONENTS SAY:

HB 1029 effectively would excuse some debtors from ever paying their debts. Cash is not exempt property except under very limited circumstances relating to the real estate homestead. Creditors should be able to seize a bank account into which a debtor has deposited retirement checks. If the law permits the creditor to seize the account, why should the type of check deposited into the account make any difference?

The law exempts retirement plans from creditor collection only because the debtor also cannot reach these funds before they are drawn from the account. Once the debtor draws out these funds and starts spending them, that money should be eligible for paying judgment debts as well.

Tab 9

MEMORANDUM

TO: **Supreme Court Advisory Committee**

FROM: **Appellate Rules Subcommittee**

RE: **Appeals in Parental Termination Cases**

DATE: **October 5, 2021**

I. Matter Referred to Subcommittee

The Court's May 31, 2019 letter and Chairman Babcock's June 3, 2019 letter refer the following matter to the Appellate Rules Subcommittee:

> **Out-of-Time Appeals in Parental Rights Termination Cases.** A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:
>
> - a narrow late-appeal procedure;
> - an abate-and-remand procedure like the one proposed in the Phase II Report;
> - a habeas- or bill-of-review-style procedure; and
> - prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.
>
> **Suits Affecting the Parent-Child Relationship.** In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

The HB 7 Phase II Report recommends four changes that affect the appellate rules and also have some bearing on the out-of-time appeal assignment: (1) right to counsel, showing authority to appeal, and frivolous appeals; (2) a procedure in the court of appeals to consider ineffective-

assistance-of-counsel claims discovered by appellate counsel; (3) a rule standardizing the currently unwritten understanding on *Anders* briefs; and (4) opinion templates for use in parental termination cases.

II. Background

The subcommittee and SCAC previously have discussed and approved TRAP amendments relating to out-of-time petitions for review. The subcommittee has not considered or discussed a similar procedure in the courts of appeals, nor has the subcommittee addressed a procedure for bringing late claims of ineffective assistance of counsel, *Anders* briefs, or frivolous appeals.

The Texas Supreme Court has indicated that it will consider the July 2017 proposals regarding late-filed petitions for review in conjunction with any additional recommendations on parental-termination topics identified in the May 31, 2019 referral letter.

III. Issues for Discussion

The subcommittee has broken down the referral topics into two stages to be addressed in the following order.

1. Stage One: Out-of-time appeals and related issues
    a. HB7 Phase II recommendations: indigent parent's right to counsel on appeal; notice of right to appeal; showing authority to appeal
    b. Assessing proposals for addressing untimely appeals and ineffective claims
        i. HB7 Phase II recommendation: abate and remand for evidentiary hearing in support of IAC claim
        ii. "narrow late-appeal procedure"
        iii. "habeas- or bill-of-review-style procedure" for a collateral attack
        iv. other possible procedures such as a requirement that counsel continue the representation until a notice of appeal has been filed.
2. Stage Two: Briefing and Opinions
    a. Frivolous appeals; *Anders* procedures in the courts of appeals as discussed by the HB7 task force; "Parental Termination Brief Checklist"
    b. Opinion templates as created by the HB7 task force

The full committee already has voted on recommendations regarding form of citation to provide notice of the right to appeal, and showing authority to appeal.

This memo moves on to Stage One, topic 1(b) with respect to proposals for addressing untimely appeals and ineffective assistance claims. The subcommittee will address Stage Two in later meetings.

IV. Discussion

A. Notice of Right to Appeal and Right to Representation by Counsel

In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of a conservator for the child is requested, an indigent parent is entitled by statute to representation by counsel until the case is dismissed; all appeals relating to any final order terminating parental rights are exhausted or waived; or the attorney is relieved or replaced. *See* Tex. Fam. Code §§ 107.013(a), 107.016(3). In termination cases, this right extends to the filing of a petition for review in the Texas Supreme Court. *In the Interest of P.M.*, 520 S.W.3d 24, 27 (Tex. 2016) (per curiam).[1]

The full committee has voted in favor of the following citation language to provide notice of the right to appeal and the right to representation by counsel.

> "You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you at no cost to you."
>
> "You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you."

B. Showing Authority to Appeal

To clarify (1) whether there is a desire on the terminated parent's part to appeal, and (2) who is responsible for prosecuting the appeal, the full committee voted in favor of a recommendation to amend TRCP 306 to read as follows.

<u>[Current] Rule 306 Recitation of Judgment</u>

> The entry of the judgment shall contain the full names of the parties, as stated in the pleadings, for and against whom the judgment is

[1] The Supreme Court has not addressed whether there is a constitutional or statutory right to appointed counsel in private parental termination suits, or whether such a right extends to a non-indigent parent. The Court also has not addressed whether appointed counsel must be provided for an indigent parent at the petition for review stage in cases in which a governmental entity seeks the appointment of a conservator for a child.

rendered. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator.

[Proposed] Rule 306 Judgment in Suit Affecting the Parent-Child Relationship

1. In a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator. **[Same as the current rule.]**

2. The following provisions apply in a suit filed by a governmental entity that seeks the termination of the parent-child relationship or appointment of the entity as a child's conservator. The attorney ad litem will continue the representation for appellate proceedings unless the judgment contains one of the following express statements:

a. The attorney ad litem is replaced by another attorney who will continue the representation for appellate proceedings; or

b. The attorney ad litem is discharged without continuing the representation for appellate proceedings based upon a finding of good cause. For purposes of this subpart, "good cause" means the following:

i. The parent or alleged father failed to appear after service under Texas Rule of Civil Procedure 106(a); or

ii. The attorney ad litem appointed for the parent or alleged father was unable despite diligent efforts to locate the parent or alleged father; or

iii. After being located by the attorney ad litem, the parent or alleged father failed to appear at the trial on the merits; or

iv. After being located by the attorney ad litem, the parent or alleged father never expressed to the attorney ad litem a desire to exercise the right to appeal the judgment to the court of appeals or to the Supreme Court of Texas.

Explanation of changes:

1. The first sentence of TRCP 306 is moved to TRCP 301.

2. Under Family Code §107.013 the court must appoint an attorney ad litem for:

    i. An indigent parent who responds to oppose the termination or appointment;
    ii. A parent served by publication;
    iii. An alleged father who failed to register his parenthood under Chap. 160 and whose location is unknown; and,
    iv. A registered alleged father who cannot be located for service.

    The attorney ad litem must investigate what the petitioner has done to locate an alleged father and do an independent investigation to find him. Tex. Fam. Code §107.0132(a). If the attorney locates him, he must report the address and locating information to the court and each party. Tex. Fam. Code §107.0132(b). If the attorney ad litem cannot locate him, he shall report his efforts to the court; on receipt of the report, the court must discharge the attorney. Tex. Fam. Code §107.0132(d). If the alleged father is adjudicated the parent and is determined to be indigent, the court may continue the appointment on the same basis as an indigent parent. Tex. Fam. Code §107.0132(c). This suggests that after the alleged father appears, he is entitled to continued representation only upon proof of indigency.

3. The attorney ad litem serves until the earliest of:

    i. The date the suit is dismissed;
    ii. The date appeals of a final order are exhausted or waived; or
    iii. The date the attorney is relieved of duties or replaced by another attorney after a finding of good caused rendered on the record.

    Tex. Fam. Code §107.016(3). The Supreme Court has held that once appointed, counsel may withdraw only for good cause, which did not include client disagreement or belief the appeal is meritless. *In the Interest of P.M.*, 520 S.W.3d at 27. Courts have a duty to see that withdrawal not result in foreseeable prejudice to the client; if the court permits withdrawal, it must provide for new counsel. *Id*. However, this was a case where the parent had appeared and actively pursued an appeal. This leaves unresolved whether the court may relieve the attorney ad litem if the parent/alleged father never appeared after personal service or service by publication.

Section 107.0132(d) mandates discharging counsel if the alleged father cannot be located. Section 107.0132(c) suggests the alleged father who is served is entitled to continued representation on the same basis as a parent who appears. Arguably the *P.M.* decision would permit discharging the attorney ad litem if:

i. The alleged father cannot be located;
ii. The alleged father is served, responds, but fails to prove he is indigent;
iii. The parent is served, responds, but fails to prove indigency.

4. This rule text avoids the difficulty of trying to determine whether a party who has never appeared (or has disappeared) wishes to waive the appeal. It focused on determining what is good cause under Texas Family Code section 107.016(3) to relieve the appointed attorney ad litem when the final judgment is signed. It does not address discharging or relieving an appointment prior to a final judgment.

5. The text in paragraph 2 makes clear what the default outcome is and seeks to avoid difficulty in determining finality or other consequences if the judgment does not contain one of the express statements.

Additional areas for consideration include (1) is Rule 306 the best place to put such a rule; (2) are there other rules that could be more readily adapted for this purpose, such as Rule 308a; (3) should all rules of civil procedure governing the parent-child relationship be assembled in one place as part of "Rules Relating to Special Proceedings" in Part VII of the Texas Rules of Civil Procedure.

C. Motions for Extension of Time and Conformity With Revisions to TRAP 4.7

At this juncture, the subcommittee recommends that any standards or procedures adopted for earlier appellate proceedings be compatible with those ultimately adopted with respect to petitions for review in the Texas Supreme Court. As noted earlier, the subcommittee and SCAC previously have discussed and approved TRAP amendments relating to out-of-time petitions for review.

D. Ineffective Assistance of Counsel

"[T]he statutory right to counsel in parental-rights termination cases embodies the right to effective counsel." *In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003).[2] The standard for determining

[2] The right to effective assistance of counsel also applies when parents in government-initiated suits to terminate the parent-child relationship retain counsel of their choosing. *In the Interest of D.T.*, 625 S.W.3d 62, 66 (Tex. 2021).

whether counsel is effective in this context is the same as the standard applied in the criminal context pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984). *See In re M.S.*, 115 S.W.3d at 545; *see also In the Interest of D.T.*, 625 S.W.3d at 73-74.

Under *Strickland*, a defendant seeking to establish ineffective assistance must establish both prongs of a two-prong inquiry by showing that (1) "counsel's performance was deficient" by showing "errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment; and (2) "the deficient performance prejudiced the defense" by showing that "counsel's errors were so serious as to deprive the defendant of a fair trial whose result is reliable." *Strickland*, 466 U.S at 687; *see also In re M.S.*, 115 S.W.3d at 545.

"With respect to whether counsel's performance in a particular case is deficient, we must take into account all of the circumstances surrounding the case, and must primarily focus on whether counsel performed in a 'reasonably effective' manner." *In re M.S.*, 115 S.W.3d at 545 (quoting *Strickland*, 466 U.S. at 687). "In this process, we must give great deference to counsel's performance, indulging 'a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance,' including the possibility that counsel's actions are strategic." *Id.* (quoting *Strickland*, 466 U.S. at 689). Ineffective assistance claims generally must be supported by evidence beyond the bare record of the underlying proceeding.

The HB7 Task Force noted an important distinction between the operation of ineffective assistance claims in the criminal context versus the parental termination context. In the criminal context, it is difficult for a defendant to effectively assert an ineffective assistance claim on direct appeal; the preferred avenue for raising this claim is a post-conviction habeas corpus proceeding. *See, e.g., Mata v State*, 226 S.W.3d 425, 430 n.1 (Tex. Crim. App. 2007). The HB7 Task Force observed: "By contrast, the exhaustion of a direct appeal in a parental-termination case is essentially the end of the procedural road, at least to the extent a parent has no other procedural opportunity to collaterally attack a final order of termination."

The HB7 Task Force recommended a proposed rule to provide an opportunity for the limited abatement of an appeal to hold an evidentiary hearing in support of an ineffective assistance claim. The proposed rule would be part of Texas Rule of Appellate Procedure 28.4 and provide as follows:

> (d) *Remand for Evidentiary Hearing*. For good cause shown by written motion filed no later than 20 days after the later of the date the clerk's record was filed or the date the reporter's record was filed, the appellate court may order a remand for the limited purpose of holding an evidentiary hearing concerning an allegation of ineffective assistance of counsel. The appellate court must rule on the motion for remand within three days; otherwise, it will be denied by operation of law. The trial court shall begin the evidentiary hearing no later than the seventh day after the abatement order. The hearing shall be recorded by a court reporter and the trial court shall make findings of fact as to whether any counsel rendered deficient performance on behalf of appellant and whether appellant was prejudiced as a result. No later than 20 days from the date of the abatement order the court reporter shall file a supplemental court reporter's record of the hearing and the district clerk shall file a supplemental clerk's record, including the trial court's findings of fact,

> and the appeal shall be reinstated. The deadline in Rule 6.2(a) of the Rules of Judicial Administration shall be tolled for no more than 20 days pending an abatement ordered under this rule.

The subcommittee is in general agreement with the Task Force's proposed approach via rule to address ineffective assistance claims in the parental termination context. Prior to the September 3, 2021 meeting, the subcommittee identified the following points for consideration in connection with the operation of such a rule in practical terms.

- The subcommittee discussed whether any further effort to define the parameters of "good cause" is warranted, and concluded that the better course is to leave the phrase undefined given the difficulty of formulating a fair and reasonable written standard that will capture the many possible scenarios that could lead to invocation of this rule.

- The proposed rule contemplates that, if a remand is ordered, the appeal will be abated while trial proceedings are undertaken to address the ineffective assistance claim. Consideration should be given to requiring the party seeking remand/abatement to establish a prima facie case of ineffective assistance before a remand and abatement is authorized. This requirement would act as a brake on this mechanism so that the interests of the affected children in obtaining a prompt resolution of the issues are not unduly compromised.

- The proposed rule contemplates that a direct appeal will be the vehicle for asserting an ineffective assistance of counsel claim in the parental termination context. This is a feasible approach when new appellate counsel enters the case. *See, e.g., Interest of D.T.*, 625 S.W.3d at 68 (claim of IAC by trial counsel pursued on direct appeal by subsequently appointed appellate counsel). However, if trial counsel remains on the case through the appeal, then this approach potentially puts trial counsel in the untenable position of asserting counsel's own ineffectiveness at the same time the direct appeal is underway on the merits. For this reason, consideration should be given to recognizing a vehicle with a short time limit for collaterally attacking a termination determination, through an equitable bill of review procedure or similar means, in circumstances in which the same attorney represents the terminated parent in the trial court and on appeal. A vehicle allowing collateral attack also would address situations involving allegations of ineffective assistance on appeal by newly appointed appellate counsel.

Discussion and recommendations from the September 3, 2021 full committee meeting focused on the following points.

- The comment to the proposed rule should say that *Strickland* is the standard, and the motion must address both prongs of the standard.

- "Good cause" and an allegation of IAC are two different things. There was some sentiment for using a lower standard, such as a prima facie standard, to trigger further IAC proceedings in the trial court.

- The HB 7 proposed rule is problematic because three days is not enough time to decide whether to remand; seven days is not enough time for a hearing.

- There was some sentiment in favor of a "dual track" procedure under which an appeal on the merits of the termination decision would proceed simultaneously with an IAC challenge.

    - Under this approach, the terminated parent could file a motion for new trial to assert IAC; and then, pursue an IAC claim separately from the direct appeal but simultaneously with the direct appeal.

    - If dual-track is allowed, what is the timing? Does the merits appeal need to be decided before IAC?

    - There was some sentiment for requiring IAC to be pursued in conjunction with the direct appeal, and not as part of a collateral attack.

        - If trial counsel remains with the case on appeal, how could that trial counsel simultaneously pursue the merits appeal and attack his/her own performance in the trial court as being ineffective?

        - If a collateral attack is allowed, Texas Family Code section 161.211 could be the vehicle for a collateral attack on termination order based upon IAC. This section sets a 6-month time limit.

- Concern was expressed about allowing an IAC claim to be denied by operation of law as opposed to an explicit order.

The subcommittee reconvened to discuss these approaches. The subcommittee discussion focused on the following points.

- **Terminology.** As a threshold matter, the subcommittee notes the possibility of confusion arising from referring in shorthand version to a "dual track," which could refer to either (1) IAC claims that are pursued simultaneously with the merits appeal; or (2) IAC claims that are pursued only after the merits appeal is decided as part of an allowed collateral attack mechanism. For this reason, further subcommittee discussions and recommendations will focus on a "simultaneous" mechanism vs. a "post-appeal" mechanism.

- **The conundrum of the *Strickland* harm showing.** A recurring question that arises in connection with a simultaneous mechanism is this: How can *Strickland*'s second prong, which requires a showing of prejudice from the assertedly ineffective representation, be satisfied before a merits appeal of the termination order has been decided? If the termination decision is reversed on the merits, then it may be difficult or impossible to show that any asserted deficiencies in the representation prejudiced the parent whose rights were terminated. By analogy, the statute of limitations on a legal malpractice claim is equitably tolled until all appeals on the underlying claim are exhausted. *See Hughes v. Mahaney & Higgins*, 821 S.W.2d 154, 157 (Tex. 1991).

- **Templates for simultaneous mechanism.** Existing procedures in the Texas Rules of Appellate Procedure provide examples of circumstances under which a merits appeal

continues ***without abatement*** while the trial court simultaneously addresses a discrete inquiry related to the pending appeal; these examples potentially can be adapted for use in termination appeals under Texas Rule of Appellate Procedure 28.4. One example is found in Texas Rules of Appellate Procedure 24.3 and 24.4(d), which provide that (1) the trial court has continuing jurisdiction to address the sufficiency of security required to supersede a judgment, and (2) the court of appeals can remand for findings/conclusions or the taking of evidence related to the sufficiency of security on appeal. Another example is Texas Rule of Appellate Procedure 29.4 addressing orders pending interlocutory appeals in civil cases, which allows an appellate court to "refer" an enforcement proceeding to the trial court with instructions to hear evidence, and to make findings and recommendations to be reported to the appellate court.

The subcommittee concluded that the simultaneous mechanism could work with adjustments to the HB 7 Task Force proposed addition of Texas Rule of Civil Procedure 28.4(d)

> (d) ~~*Remand*~~ *Referral for Evidentiary Hearing*. For good cause shown by written motion filed no later than ~~20~~ __ days after the later of the date the clerk's record was filed or the date the reporter's record was filed, the appellate court may refer an allegation of ineffective assistance of counsel to the trial court with instructions make findings and recommendations and report them to the appellate court.~~order a remand for the limited purpose of holding an evidentiary hearing concerning an allegation of ineffective assistance of counsel~~. The appellate court must **[rule on]** the motion ~~for remand~~ within ~~three~~ __ days; **[otherwise, it will be denied by operation of law]**. The trial court shall begin the evidentiary hearing no later than the ~~seventh~~ **[ ]** day after the ~~abatement~~ order is signed. The hearing shall be recorded by a court reporter and the trial court shall make findings of fact as to whether any counsel rendered deficient performance on behalf of appellant and whether appellant was prejudiced as a result. No later than ~~20~~ ___ days from the date of the ~~abatement~~ order the court reporter shall file a supplemental court reporter's record of the hearing and the district clerk shall file a supplemental clerk's record, including the trial court's findings of fact and recommendation.~~, and the appeal shall be reinstated.~~ [**The deadline in Rule 6.2(a) of the Rules of Judicial Administration shall be tolled for no more than 20 days pending an abatement ordered under this rule**.]

Under this approach, the merits appeal would proceed; the trial court would make findings and recommendations to the appellate court; and then the appellate court would address both the merits and, if necessary, the IAC claim at one time. The merits appeal would not be abated. The rule could provide for abatement if the court of appeals deemed it necessary after receiving the trial court's input on ineffective counsel.

Subcommittee member Evan Young offers the following views on this approach and the proposed rule revisions.

- **Vehicle for collateral attack.** The analysis above says: "If a collateral attack is allowed, Texas Family Code section 161.211 could be the vehicle for a collateral attack on termination order based upon IAC. This section sets a 6-month time limit." I don't see

how §161.211 could be a "vehicle" for anything—it seems to me to be framed as a kind of statute of repose and a restriction on the basis of some claims, but not the affirmative authorization of any such attack. If it is saying nothing more than that, an attack, *if any*, may not come more than 6 months after entry of the termination order, it wouldn't necessarily take any position about whether any such attack is available at all, much less *authorize* or supply a vehicle for the attack. It's not like it creates a cause of action, for example. I would think that there would have to be some other procedural mechanism required—such as, most obviously, a direct appeal. Keeping IAC as part of the appeal whenever possible (and it could be as early as simply an included issue in the first brief or as late as well into the appellate process, as I discuss below) has the virtue of avoiding the need to figure out what other vehicle would be available.

- **"The conundrum of the *Strickland* harm showing."** The analysis above identifies the conundrum as how one could satisfy the "prejudice" showing until we know what the court of appeals does with any separate issues. I do not regard this as a conundrum. The "prejudice" is the trial court's judgment that terminates parental rights. As with any number of appeals where issues may be interlocking, resolving one issue may either moot or activate another issue—that is, some issues are contingent. I don't see why that's any more troubling for a "simultaneous" mechanism than if IAC were part either of a single appeal from the beginning OR if it were totally collateral and raised only after the appeal was final:

    - Suppose that new counsel appears for the appeal. That counsel *might* discover the IAC immediately and could simply include it as an appellate point. If the basis for IAC is conclusively established, the court of appeals could reverse the judgment using IAC. Or, if not, it could vacate and remand for the kind of hearing and resulting findings that we have discussed (and the trial court, on a limited remand, would be expected to assume that its own judgment on the merits is valid; that assumption supplies the prejudice in that context). Or it could abate the appeal and order a limited remand for that purpose. Or any other combination. Once armed with whatever data the court of appeals needs, it could proceed to resolve the appeal in one fell swoop. It could, if it wished, address the merits issues first; assuming there was any reversible error, there would be no need to further address IAC (although nothing would prohibit an alternative holding, in which the court assumed for argument's sake that there was no reversible error, then proceeded to address IAC, particularly if it previously ordered a remand). Or, I would think, that "alternative" holding could be how the court *starts*—assuming arguendo no other error, if IAC is apparent, then the court could simply reverse on that basis, although, again, it might be useful to address any merits issues that would likely recur on retrial.

    - Likewise, suppose that new counsel appears but doesn't discover the IAC until later in the appeal. The process we are discussing amounts, in my view, to authorization to add a late appellate point; depending on how soon or how late, the court of appeals might abate the appeal (e.g., if the discovery comes pretty soon), or it might require "simultaneous" proceedings. It could even be an authorized ground for rehearing, in which the sole rehearing point is "wait, looks like there may have been

IAC—please give the trial court a limited remand to conduct its hearing." Regardless, the goal would simply be to aggregate the appellate points for the court of appeals, such that the court could decide IAC if necessary.

- Or suppose IAC was presented as a purely collateral matter. In that instance, the prejudice is especially obvious—the termination order has just been affirmed. But rather than come up with some new collateral vehicle, why not authorize a late filing of a motion for rehearing in the court of appeals on showing of good cause and a prima facie case of IAC, thus formally keeping the whole thing within the same appeal and before the same panel? It would have to be within 6 months, given Family Code §161.211, I take it, in either event.

- The bottom line to me is that I don't see any particular conundrum. The specific problem identified above is: "If the termination decision is reversed on the merits, then it may be difficult or impossible to show that any asserted deficiencies in the representation prejudiced the parent whose rights were terminated." Yes, exactly—and who cares? If the termination decision is reversed on the merits, then IAC is just mooted out (unless it is made the subject of an alternative holding per the discussion above, of course). That's no big deal, is it? The purpose of proceeding expeditiously is to ensure that finality for all parties is generated as quickly as possible while respecting parental rights as rigorously as possible. If mooting out an IAC claim happens now and then, that seems like small potatoes, and certainly not a good reason to avoid simultaneous proceedings if the IAC claim is presented comparatively late in the process.

- **Encouraging rapid identification of IAC—how to choose between abatement and "simultaneous proceedings."** If I am right that the real problem is simultaneously (a) generating finality as quickly as possible so that children's futures do not remain clouded with uncertainty any longer than necessary while (b) ensuring that no parental relationship is terminated unless the law clearly requires it, then incentivizing the identification and development of IAC as quickly and efficiently as possible is the overriding goal. When new counsel is appointed, it is possible that IAC will be instantly apparent (e.g., it appears from the face of the record, or from discussion with the client or prior counsel, that the prior counsel did not conduct even a cursory investigation, ignored potential witnesses who volunteered information, failed to review materials supplied to him or her, etc.). Or such things might be available with a certain amount of time invested at the front end. To encourage that initial investment, I would favor requiring an abatement of the appeal if a prima facie case is presented to the court of appeals within a reasonably early period; abatement, rather than simultaneous proceedings, is a benefit that would warrant acting expeditiously. For IAC identified after that early period, I would favor a default presumption (subject to the court of appeals' discretion to modify) that there would *not* be any abatement. Some IAC won't emerge until late despite a good early effort, *but incentivizing an early effort* will probably be sensible both as a matter of judicial efficiency AND as a matter of accelerating a final resolution. Incentivizing scrutiny of IAC early on will also help remove some clouds—the analysis by the new counsel is likely to *clear* prior counsel far more often, and thus eliminate the specter of a later attack.

- **The appellate court's job in a "simultaneous proceedings" case**. I would think that, if the appellate court does not abate the proceedings but orders a partial remand, the appellate court should still instantly reverse (even if the lower court's IAC proceedings have not concluded) if it reaches a conclusion that there is other reversible error. No need to wait, although it could still allow the lower court to assess IAC (e.g., if the state intends to seek a PFR, thus making it possible that IAC will again become a live issue). By contrast, the limited remand would presumably be sufficiently expeditious that, if the court of appeals concludes that there is no reversible error on the merits, it should hold back its judgment pending receipt of the IAC proceedings, but then resolve them as soon as possible once the FOF/COL—*and possibly simultaneous supplemental briefs*—have been received.

- **What about when there *isn't* new counsel?** If we are correct that §161.211 imposes a six-month limit, it seems to me that the parent/alleged father needs to be told in no uncertain terms that, if the lawyer's performance has been deficient in any material way, the client will have only 6 months to alert the court to it, either pro se or with separate counsel. This is deeply unsatisfactory for incarcerated or impoverished litigants—"let them eat cake," almost. But it is still much better than *not* telling them that, if the statute honestly does have that consequence. It at least encourages divulging anything relevant, and perhaps could generate pro bono help. If the client manages to get another lawyer (or proceeds pro se on IAC), I still think there's virtue in essentially deeming it another authorized appellate issue in the same direct appeal. The rule can provide flexibility on timing. This late appellate issue—brought by different counsel—would then essentially be folded into the same process described above. It would just be IAC against continuing counsel rather than the less awkward situation of IAC against prior counsel.

- **Appellate IAC, etc.** We have occasionally discussed the possibility of IAC of the new counsel on appeal, or the IAC of the new Supreme Court counsel, or the IAC of the IAC counsel, etc. I think we should address that to the committee, and my own skepticism has deepened about second or third-order IAC (or beyond). Balancing speed for the kids and due process for the parent cannot be infinitely weighted toward the latter with a Russian doll of embedded IAC claims. This is the "turtles all the way down problem." The legislature's 6-month limit—if it really means that—also suggests that a line must be drawn, whether or not totally fair. If greater protection than allowing claims of *trial* counsel's IAC to be available to disturb an otherwise final judgment is required, I think that the Legislature would need to authorize some sort of additional services, or create an ombudsman, or something along those lines to provide rapid assessment of IAC early on. (For "turtles all the way down," I quote Justice Scalia: "In our favored version, an Eastern guru affirms that the earth is supported on the back of a tiger. When asked what supports the tiger, he says it stands upon an elephant; and when asked what supports the elephant he says it is a giant turtle. When asked, finally, what supports the giant turtle, he is briefly taken aback, but quickly replies 'Ah, after that it is turtles all the way down.'" *Rapanos v. United States*, 547 U.S. 715, 754 n.14 (2006) (plurality op.).).

Tab 10

V.T.C.A., Family Code § 161.211

§ 161.211. Direct or Collateral Attack on Termination Order

Currentness

(a) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who has been personally served or who has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in a child or whose rights have been terminated under Section 161.002(b) is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(b) Notwithstanding Rule 329, Texas Rules of Civil Procedure, the validity of an order terminating the parental rights of a person who is served by citation by publication is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(c) A direct or collateral attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child is limited to issues relating to fraud, duress, or coercion in the execution of the affidavit.

Credits

Added by Acts 1997, 75th Leg., ch. 600, § 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 601, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1390, § 19, eff. Sept. 1, 1999.

Notes of Decisions (59)

O'CONNOR'S ANNOTATIONS

In re D.S., 602 S.W.3d 504, 509 (Tex.2020). "We hold §161.211(c)'s plain language forecloses a collateral attack premised on an erroneous home-state determination even if that determination implicates a trial court's subject-matter jurisdiction. ... By enacting §161.211(c), our Legislature made a clear policy choice: when parents choose to relinquish their parental rights in accordance with the 'exacting' and 'detailed' statutory requirements for doing so, a collateral attack is limited to specific

grounds relating to whether the relinquishment was knowing and voluntary. Chapter 152 jurisdictional defects are not one of the enumerated grounds for challenging an order effectuating a voluntary termination of parental rights."

In re K.S.L., 538 S.W.3d 107, 111 (Tex.2017). "The parents contend [Fam. Code] §161.211(c) should only apply to challenges to the *affidavit*, rather than all challenges to the *order* of termination. We cannot agree because the plain wording of the statute applies to attacks on any 'order terminating parental rights' and is not limited only to attacks on the affidavit on which the order is based. *At 113:* The parents, in signing the affidavits of relinquishment, voluntarily and knowingly waived their parental rights. We have recognized that '[w]hile a parental rights termination proceeding encumbers a value far more precious than any property right, this right may be waived through statutes such as … [Fam. Code] §161.103.' *At 115:* [T]here are many safeguards included in the statutory elements for an affidavit of relinquishment, and the affidavit is itself strong evidence that termination is in the child's best interest. In addition, the parent may appeal on grounds that the affidavit was secured by fraud, duress, or coercion as provided by §161.211(c), grounds directed at whether the parent's waiver of parental rights was knowing and voluntary. We cannot say that the Legislature, in setting out these detailed procedures that are intended to ensure that terminations are knowing and voluntary, while also addressing the need for finality and promptness in these proceedings, has imposed a procedure that violates federal due process."

In re E.R., 385 S.W.3d 552, 566 (Tex.2012). "A complete failure of service deprives a litigant of due process and a trial court of personal jurisdiction; the resulting judgment is void and may be challenged at any time. … Accordingly, [§161.211] cannot place a temporal limit on a challenge to a void judgment filed by a defendant who did not receive the type of notice to which she was constitutionally entitled. Despite the Legislature's intent to expedite termination proceedings, it cannot do so at the expense of a parent's constitutional right to notice."

In re J.H., 486 S.W.3d 190, 198 (Tex.App.--Dallas 2016, no pet.). Mother "challenges whether sufficient evidence supports the trial court's finding that terminating Mother's parental rights was in the children's best interest. [F]amily code §161.211(c) bars Mother's argument. [¶] The order terminating Mother's parental rights is based on her relinquishment affidavit. Accordingly, Mother cannot make any arguments on appeal except arguments relating to fraud, duress, or coercion in the execution of the affidavit. Mother's [argument] does not relate to fraud, duress, or coercion in the execution of the affidavit. Accordingly, §161.211(c) defeats her [argument] on appeal."

In re K.D., 471 S.W.3d 147, 160 (Tex.App.--Texarkana 2015, no pet.). "Mother … argues that the Affidavit [executed pursuant to Fam. Code §161.103] was obtained via constructive fraud…. [C]onstructive fraud requires proof of a fiduciary or confidential relationship between the parties. Neither the Department, nor its agents, nor the child's ad litem occupy a confidential or fiduciary relationship with a parent in a parental-rights termination case. While the Department may provide services to parents as part of a family service plan, the Department acts to secure the best interests of the child rather than the parent."

Moore v. Brown, 408 S.W.3d 423, 433 (Tex.App.--Austin 2013, pet. denied). Birth parents' "central contention … is that … they executed their affidavits relinquishing parental rights less than 48 hours after the child's birth, and contrary to the requirements of [Fam. Code] §161.103. [Birth parents] urge that this defect not only negates the sole statutory ground for the district court's termination order, but renders the affidavit a 'nullity' or 'void' for all purposes and effectively returns the parties to the status quo that existed before the affidavits were executed. *At 436:* Although [birth parents] insist that the phrase 'person who has executed an affidavit of relinquishment of parental rights' [under Fam. Code §161.211(a)] presumes and requires 'an affidavit of relinquishment of parental rights' that complies with each of the requirements of §161.103, subsection (a) does not actually say this…. *At 438:* [Further, §161.211(c)'s] limitation of … 'issues relating to fraud, duress, or coercion in the execution of the affidavit' proscribes challenges based solely on a complaint that the affidavit violated one of §161.103's requirements. Subsection (c) thus bars … claims seeking to invalidate or set aside the termination order on the ground that [the] affidavits of relinquishment were executed within the 48-hour waiting period. *At 439:* [Consequently,] we have concluded that [birth parents'] waivers of their parental rights to [child] must be given effect." *See also* ***In re C.O.G.***, No. 13-12-00577-CV, 2013 WL 6583971 (Tex.App.--Corpus Christi 2013, no pet.) (memo op.; 12-12-13) (termination order could not be challenged on the basis that it didn't comply with §161.103's two-credible-witnesses requirement).

In re Bullock, 146 S.W.3d 783, 790-91 (Tex.App.--Beaumont 2004, orig. proceeding). "Essentially, §161.211's six month limitation on attacks on termination rulings is an affirmative defense…. The defense of limitations does not bar a plaintiff from filing a lawsuit. As such, [mother] was required to plead and present the affirmative defense of limitations, but failed to

do so. Coupled with our finding that §161.211 is not a jurisdictional prerequisite to suit, the procedural default by [mother] at the … bill of review hearing results in our concluding that [mother and stepfather] have failed to establish 'that the facts and law permit the trial court to make but one decision.'" *See also* ***In re M.Y.W.***, No. 14-06-00185-CV, 2006 WL 3360482 (Tex.App.--Houston [14th Dist.] 2006, pet. denied) (memo op.; 11-21-06). *But see* ***In re C.T.C.***, 365 S.W.3d 853, 858 (Tex.App.--Dallas 2012, pet. granted, judgment vacated w.r.m.) (six-month deadline in §161.211(a) is bar to or preclusion of challenge to termination order more than six months after termination order is signed; it is not plea in avoidance).

V. T. C. A., Family Code § 161.211, TX FAMILY § 161.211
Current through the end of the 2021 Regular Session and Chapters 1 to 6 of the Second Called Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

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