

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@traviscountytexas.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 Hoc 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.

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From: Jim M. Perdue Jr. <jperduejr@perdueandkidd.com>
Sent: Tuesday, September 14, 2021 4:14 PM
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Cc: Jaclyn Daumerie <Jaclyn.Daumerie@txcourts.gov>
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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.



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