

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

CAUTION: This email originated from outside of the Texas Judicial Branch email system. 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

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

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

NOACK LAW FIRM, PLLC

24165 IH-10 West, Ste. 217-418

San Antonio, Texas 78257

Email: craig@noacklawfirm.com

Phone: (210) 963-5733

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, Theodora <td24@txstate.edu>; Sarosdy, Randall L <rsarosdy@txstate.edu>; Richard Tomlinson <RTomlinson@lonestarlegal.org>; Ann Baddour <abaddour@texasappleseed.org>

Cc: Jaelyn Daumerie <Jaelyn.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.](#)

777 Post Oak Blvd., Suite 450
Houston, Texas 77056
tel 713-520-2500 | 1-800-520-1749
fax 713-520-2525
Jperduejr@perdueandkidd.com
www.perdueandkidd.com



This e-mail and any attachments are confidential and may be protected by the attorney-client privilege and the attorney work product doctrine. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient or you believe this message has been sent to you in error, please notify the sender by reply e-mail of the error and delete this message without disclosing it.

This email has been scanned for spam and viruses. Click [here](#) to report this email as spam.