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Blake A. Hawthorne
Clerk of the Court
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78601

RE: AMENDMENTS TO THE TEXAS RULES OF CIVIL PROCEDURE

Dear Clerk, Supreme Court of Texas,

We appreciate the opportunity to submit public comment on the proposed amendments to the Texas Rules of Civil Procedure pursuant to Tex. Gov't Code § 22.0042 0042 "Rules Regarding Exemptions from Seizure of Property; Form" (effective September 1, 2021).

The Pew Charitable Trusts' civil legal system modernization project works to support efforts to deliver a more open, equitable, and efficient civil legal system. A modern civil court is open, with operations and procedures that are clear and understandable; equitable, so that all users can assert their rights and resolve disputes even without legal representation; and efficient, affording due process while ensuring that people's interactions with the courts feel reasonably easy and timely. We have conducted extensive [research](#) on debt collection lawsuits and are interested in the Texas Supreme Court's current efforts to improve aspects of the post-judgment process. We offer the following comment on how the Court can more effectively implement the statute's directive to "establish a simple and expedited procedure for a judgment debtor to assert an exemption to the seizure of personal property by a judgment creditor."

[Streamlining the Exemption Process](#)

Under current policy, the Court has no way of knowing whether a judgment creditor is attempting to seize exempt property unless the judgment debtor or garnishee raises the issue in response to a writ of garnishment and/or through a separate court process, such as a motion to dissolve or modify the writ, an action for replevy, or motion to substitute property. Based on our research, there are several paths that other states have taken to simplify and expedite the assertion of exemptions:

- Self-executing: Some states have adopted "self-executing" exemptions as a way to streamline this aspect of the post-judgment process.¹ "Self-executing" exemptions permit a judgment

¹ In New York, for example, a writ of garnishment is not applicable to funds in a bank account equal to the amount of wages protected from garnishment. N.Y. C.P.L.R. 5222(i).

debtor's bank to automatically withhold exempt amounts, without any additional process required by either a judgment debtor or garnishee.

- Shifting the process: Some states have shifted to require the judgment creditor to confirm that a judgment debtor has property that is not exempt from seizure prior to executing a writ of garnishment.² In Texas, such a shift can be implemented within current court processes: Before a court can issue a writ of garnishment, the judgment creditor must file an affidavit with the court stating that the judgment debtor does not possess property in Texas subject to execution sufficient to satisfy the judgment.³ In other words, the judgment creditor is already required to make representations about the judgment debtor's property prior to seeking garnishment. Requiring a judgment creditor or turnover receiver⁴ to affirm that the judgment debtor has property that is subject to garnishment is more efficient for all parties, including the courts, in cases where a judgment debtor does not have any property subject to either execution or garnishment.
- Providing notice earlier in the process: States that have reformed their post-judgment policies in recent years have tended to require that notice be provided to the judgment debtor at the time that a garnishment order is served on the garnishee.⁵ Some jurisdictions require that notice be served on the garnishee (e.g., the bank), while others require the notice be served on the defendant directly. Regardless of the recipient, by requiring notice at the earliest possible stage rather than the moment that assets are effectively seized, the court stands to gain efficiencies by avoiding subsequent efforts to replace exempt property after seizure.

Improving the Delivery of Court Notices

Research shows that many judgment debtors are unaware that a money judgment has been entered against them until a garnishment occurs, such as in cases where a judgment has been entered by default.⁶ While there are multiple potential underlying reasons, one significant reason is simply that the court papers were served to the wrong address.⁷ For these cases, sending notice of a judgment, including notice of the right to assert exemptions, to a judgment debtor's last known address is a less effective than sending it to a verified current address.

² In Illinois, for example, judgment creditors may serve a "Citation to Discover Assets" onto the debtor and provide them with an "Income and Asset Form." This triggers a hearing to be scheduled. If assets and income are not exempt the court may issue an order to compel the debtor to pay the judgment or allow liens on assets. 735 ILC 5/2-140. *See also* Massachusetts supplementary process, M.G.L. c. 246.

³ Tex. Civ. Prac. & Rem. Code § 63.001

⁴ Tex. Civ. Prac. & Rem. Code § 31.002(f).

⁵ E.g., Cal. Code Civ. Proc. 706; Co Rev. Stat. §§ 13-54.5-105, 107; N.Y. C.P.L.R. 5201; Wash. Rev. Code 6.27.

⁶ New York Appleseed and Jones Day, "Due Process and Consumer Debt: Eliminating Barriers to Justice in Consumer Credit Cases" (2010), *available at* https://www.ftc.gov/sites/default/files/documents/public_comments/protecting-consumers-debt-collection-litigation-and-arbitration-series-roundtable-discussions-august/545921-00031.pdf.

⁷ The Pew Charitable Trusts, "How Debt Collectors Are Transforming the Business of State Courts: Lawsuit Trends Highlight Need to Modernize Civil Legal Systems" 16 (2020), *available at* <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>.

In addition, Rule 663a (as amended) requires the plaintiff to serve the defendant with the writ of garnishment and related documents “as soon as practicable after service of the writ on the garnishee.” Other states have taken various approaches to the post-judgment process for asserting exemptions, including requiring a garnishee to furnish the judgment debtor with an exemption worksheet, allowing an additional period of time for the judgment debtor to respond after a garnishee has responded to a writ of garnishment, and requiring that a garnishee answer both the judgment creditor and the judgment debtor upon receipt of a writ of garnishment.⁸ The Court could take a novel approach, requiring that the judgment debtor receive notice of an imminent garnishment before the garnishee becomes involved.

Improving Notice Readability

The proposed letter to be sent to a defendant pursuant to Rule 663a (as amended), “Service of Writ and Other Documents on Defendant,” appears to be written in all capital letters. As the National Association of Court Management has shared, “The clearest lesson from the literature is to avoid ALL CAPS at all costs. Readers tend to skip words and sentences where all letters are capitalized, meaning that the most important information is the least likely to be read.”⁹

We have examined usability studies on court forms, finding that certain design features, such as white space, plain language, and clear, succinct “call to action” language, promote user engagement and comprehension of court forms.¹⁰ Toward that end, the notice would benefit from simplified language and clear process steps for the recipient to act on.

Measuring the Effectiveness of New Rules

We recommend that the Court evaluate the effectiveness of the amended rules using court docket data and stakeholder feedback. One measure of their effectiveness could come from comparing the volume of exemption-related filings by judgment debtors, including the new “Seizure Exemption Claim Form” as well as pre-existing processes, such as the replevy bond or motion to dissolve a writ of garnishment. If the Court were to adopt a rule requiring that a judgment creditor confirm that a judgment debtor has non-exempt assets prior to filing for a writ of garnishment or the appointment of a turnover receiver, the Court may look to whether there is a change in the volume of applications for a writ of garnishment and appointments of turnover receivers to collect judgments on consumer debt.

⁸ E.g., Connecticut (Conn. Gen. Stat. § 52-361b), Florida (Fl. Stat. 77.041), Washington (RCW 6.27).

⁹ NACM plain language guide (2019), available at <https://nacmnet.org/resources/publications/guides/plain-language-guide/>, citing Mark Kutner et al., *National Assessment of Adult Literacy (NAAL): A First Look at the Literacy of America’s Adults in the 21st Century*, Washington, D.C., National Center for Education Statistics (2005); J. Kimble, *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law* (Carolina Academic Press 2012); Ruth Anne Robbins, “Painting with Print: Incorporating Concepts of Typographic Layout and Design into the Text of Legal Writing Documents,” 2 *Journal of the Association of Legal Writing Directors*, 108, 115 (2004).

¹⁰ D. James Greiner et al., “Self-Help, Reimagined,” 92 *Indiana Law Journal* 1119 (2017); Margaret D. Hagan, “A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly,” 6 *Indiana Journal of Law and Social Equality* 199 (2018).

The Court could survey users of TexasLawHelp.org, perhaps in combination with a review of website analytics, to measure whether including the website URL in the notice language is helping judgment debtors find accurate information about the post-judgment process.

Once again, we appreciate the opportunity to submit public comment on the proposed rule changes and are available to provide assistance in support of Texas's efforts to create a more efficient, equitable, and open civil legal system.

Sincerely,

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Project Director

Civil Legal System Modernization

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