


Step by Step Civil Procedure: Appeals and Enforcement of Judgments



Hon. David Patronella
Justice of the Peace
Precinct 1, Place 2
Harris County

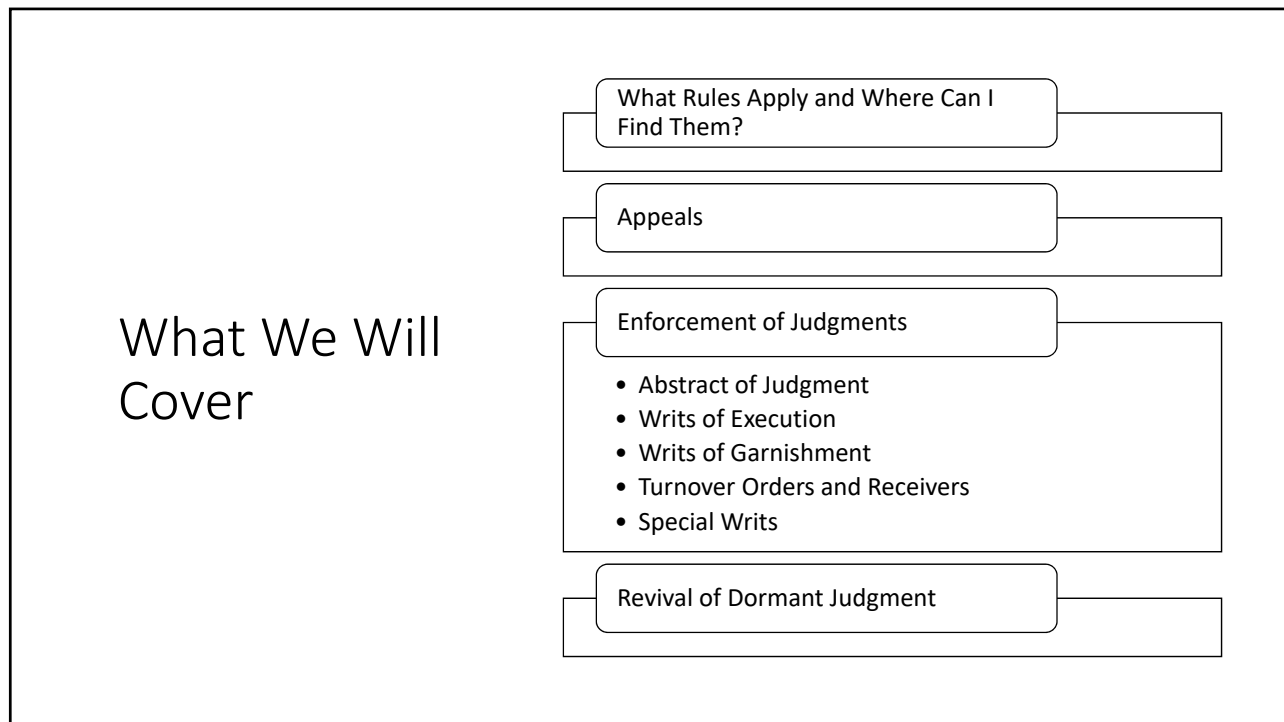
© Copyright 2019. All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd., Suite 530, Austin, TX, 78701.

1

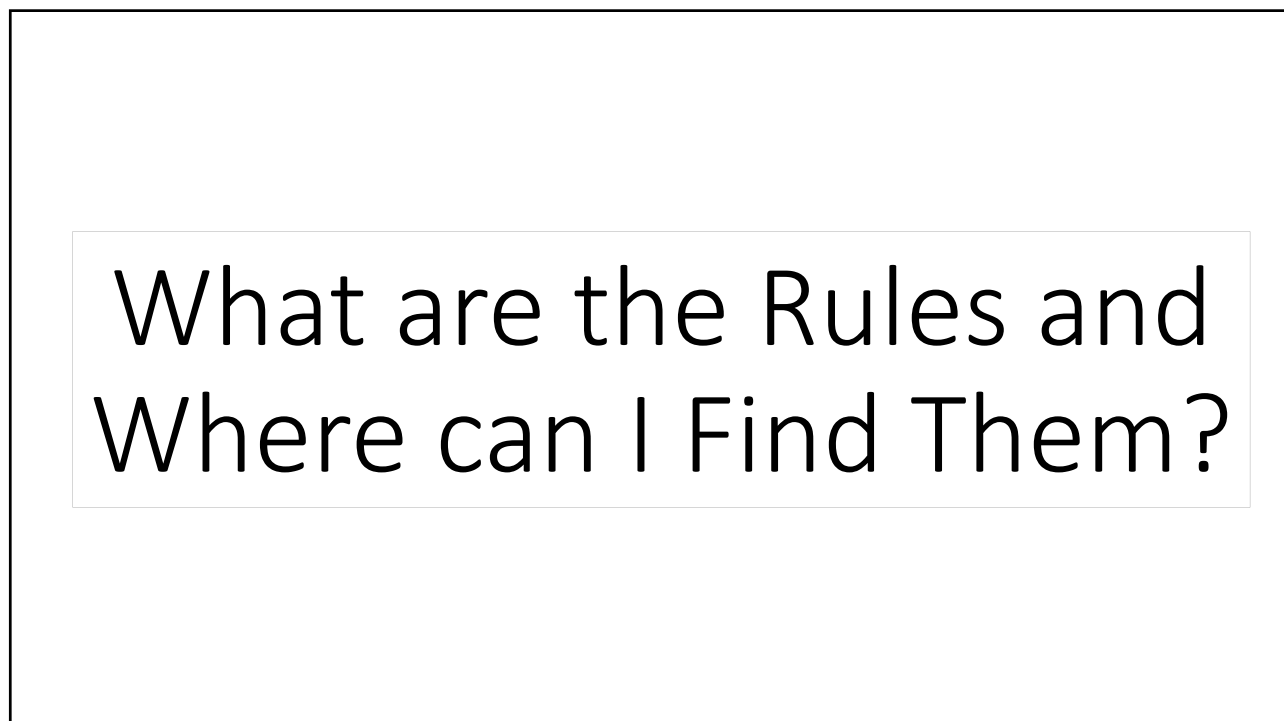
Resources

- www.tjctc.org
 - Civil Deskbook
 - Self-Represented Litigant Info Packets (tjctc.org/SRL)
 - Legal Question Board
- Civil Practice & Remedies Code
- Texas Rules of Civil Procedure

2



3



4

Texas
Supreme
Court

Create the Texas Rules of Civil Procedure

The rules are found on their
website:

[https://www.txcourts.gov/su
preme/](https://www.txcourts.gov/supreme/)

5

Texas Rules
of Civil
Procedure

Within the TRCP are “special” Justice Court Rules (500-510)

- Rule 506 is the rule for Appeals from civil cases in Justice Court.

Other rules apply to enforcement of judgments.

- Execution of Judgments: Rules 621 – 656
- Garnishment: Rules 657 – 679

6

'TEXAS RULES OF CIVIL PROCEDURE
PART V - RULES OF PRACTICE IN JUSTICE COURTS
[RULES 523 to 591. Repealed effective August 31, 2013]

RULE 500. GENERAL RULES

RULE 500.1. CONSTRUCTION OF RULES

Unless otherwise expressly provided, in Part V of these Rules of Civil Procedure:

- (a) the past, present, and future tense each includes the other;
- (b) the term "it" includes a person of either gender or an entity; and
- (c) the singular and plural each includes the other.

RULE 500.2. DEFINITIONS

In Part V of these Rules of Civil Procedure:

- (a) "Answer" is the written response that a party who is sued must file with the court after being served with a citation.

7

The Two Yutes

- Remember: Terms you use reflexively may NOT be familiar to others:

8

Civil Practice & Remedies Code

This code contains the statutes (the laws passed by the legislature) governing civil cases

- Turnover Orders and Appointment of a Receiver: Section 31.002
- Revival of Dormant Judgment: Section 31.006

9

Texas Constitution and Statutes
Home
FAQ | Contact

Home
Search
Download
Statutes By Date

The statutes available on this website are current through the 1st Called Session of the 85th Legislature, August 2017. The Texas Constitution is current through the amendments approved by voters in November 2017. In 2018 the section headings to the constitution, which are not officially part of the text of the constitution, have been revised to reflect amendments and to modernize the language.

Hide Quick Search

Code:

Article/Chapter:

Art./Sec.:

Quick Links

[Linking to Texas Constitution and Statutes](#)

[Texas Legislature Online](#)

[Index to Sections Affected](#)

[Texas Administrative Code](#)

[Texas Law Timeline](#)

[Amendments to the Texas Constitution Since 1876](#)

[Constitutional Amendments Search](#)

☐ TEXAS CONSTITUTION

☐ TEXAS STATUTES

10

CIVIL PRACTICE AND REMEDIES CODE
TITLE 2. TRIAL, JUDGMENT, AND APPEAL
SUBTITLE C. JUDGMENTS
CHAPTER 31. JUDGMENTS

Sec. 31.001. **PASSAGE OF TITLE.** A judgment for the conveyance of real property or the delivery of personal property may pass title to the property without additional action by the party against whom the judgment is rendered.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

The following section was amended by the 86th Legislature. Pending publication of the current statutes, see S.B. 2364, 86th Legislature, Regular Session, for amendments affecting the following section.

Sec. 31.002. **COLLECTION OF JUDGMENT THROUGH COURT PROCEEDING.** (a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

(b) The court may:

(1) order the judgment debtor to turn over nonexempt property that is in the debtor's possession or is subject to the debtor's control, together with all documents or records related to the property, to a designated sheriff or constable for execution;

(2) otherwise apply the property to the satisfaction of the judgment; or

(3) appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

(c) The court may enforce the order by contempt proceedings or by other appropriate means in the event of refusal or disobedience.

(d) The judgment creditor may move for the court's assistance under this section in the same proceeding in which the judgment is rendered or in an independent proceeding.

(e) The judgment creditor is entitled to recover reasonable costs, including attorney's fees.

(f) A court may not enter or enforce an order under this section that requires the turnover of the proceeds of, or the disbursement of, property exempt under any statute, including Section 42.0021, Property Code. This subsection does not apply to the enforcement of a child support obligation or a judgment for past due child support.

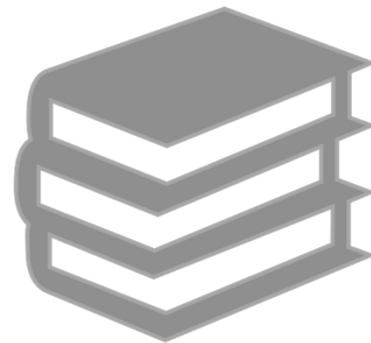
(g) With respect to turnover of property held by a financial institution in the name of or on behalf of the judgment debtor as customer of the financial institution, the rights of a receiver appointed under Subsection (b)(3) do not attach until the financial institution receives service of a certified copy of the order of receivership in the manner specified by Section 59.008, Finance Code.

(h) A court may enter or enforce an order under this section that requires the turnover of nonexempt property without identifying in the order the specific property subject to turnover.

11

Civil Deskbook

- TJCTC reference book
 - Includes the law, rules and helpful practice tips
 - Also links to additional resources
- Appeals and Enforcement of Judgments: pages 70 - 102



12

Appeals

13

What is an Appeal?

- Appeal is when a party wants another court to decide the case because they don't like the decision of the justice court.
- How long does a party have to file an appeal?
 - 21 days after the judgment is signed OR
 - 21 days after the justice court denies a motion for new trial (or a motion to set aside a default judgment or a motion to reinstate a case that has been dismissed).

-- Rules 506.1(a)

14

The Appeal

- May either side appeal?
 - Yes!
 - Even if they have an agreed judgment (unless they expressly waive any right to appeal)
- Where does the case go?
 - To the County Court (or a county court at law if your county has one)

15

The Appeal

- What happens?
 - The entire case is presented all over as if there had been no previous trial!
 - This is called “de novo” review.
 - It means “from the beginning” so the party gets a do-over!
 - Rule 506.3
- What happens after that?
 - From the County Court (or County Court at Law) they can appeal to the Texas Court of Appeals
 - From the Texas Court of Appeals they can appeal to the Texas Supreme Court

16

How Does Someone Appeal a Case?

- Three ways to appeal a case from justice court:
 - Appeal bond
 - Statement of Inability to Afford Payment of Court Costs
 - Cash Deposit
 - Rule 506.1(a)

17

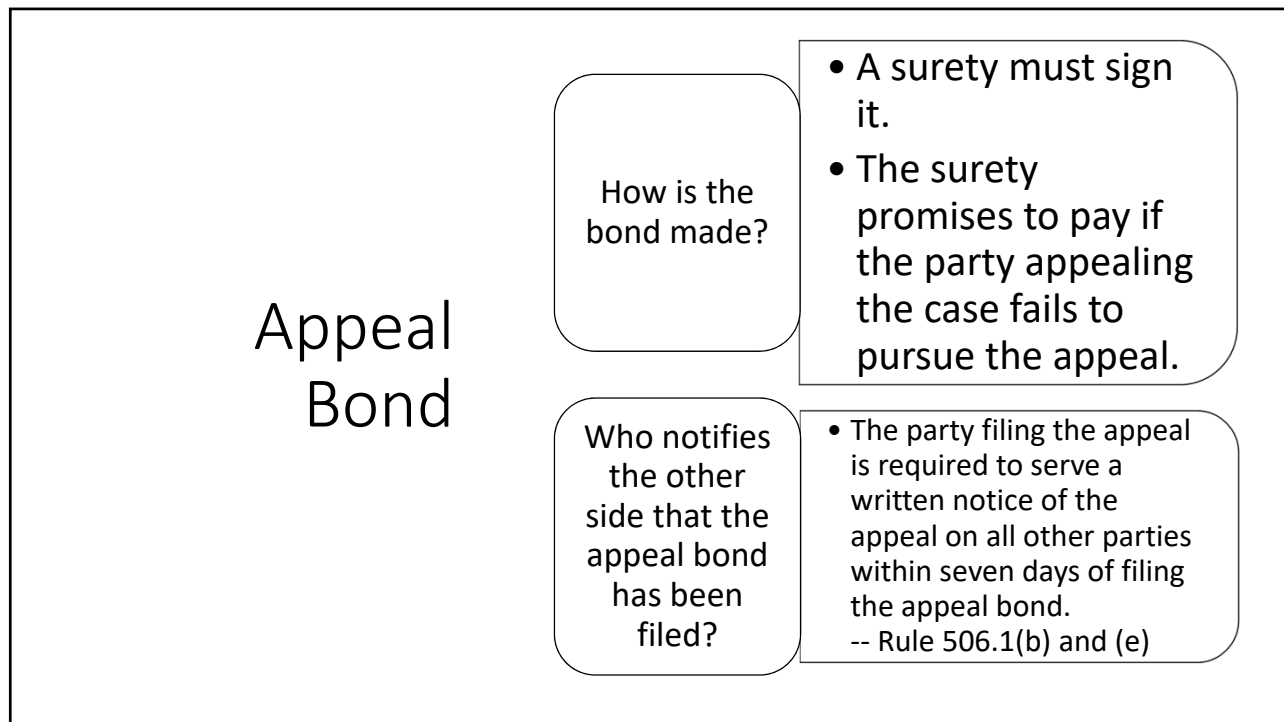
Appeal Bond

An appeal bond is a promise to see the appeal through and cover any damages if they don't pursue the appeal.

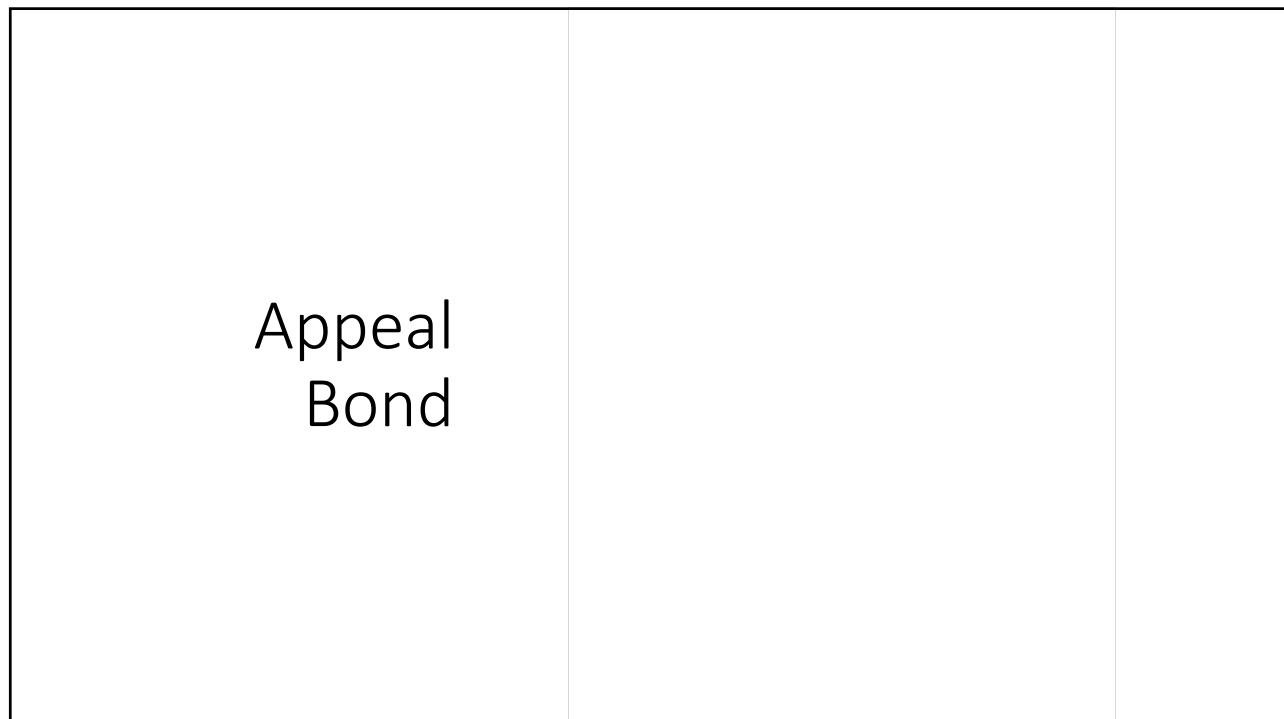
What is the amount of the bond?

- If the plaintiff appeals = \$500
- If the defendant appeals = double the amount of the judgment against the defendant
 - For example, if the judgment is for \$3,500, then the defendant's appeal bond would have to be for \$7,000.

18



19



20

Statement of Inability to Afford Payment of Court Costs

- What is this?
 - It is a statement that the party cannot afford the costs of filing an appeal.
 - It must be signed under oath before a notary or be signed under penalty of perjury.
 - It must contain complete information about the party's income and monthly expenses.

21

Statement of Inability to Afford Payment of Court Costs

- It must be on the form approved by the Supreme Court or contain the information in that form.
- The clerk must make this form available to everyone without charge or request.
- The statement may be the same one filed with the petition (if one was filed then).
 - Rule 506.1(d), Rule 502.3(b)

22

Statement of Inability to Afford Payment of Court Costs

- Notice of the Statement of Inability:
 - If a Statement of Inability is filed, the **court** must notify all other parties that the Statement was filed no later than the **next business day**.

23

Statement of Inability to Afford Payment of Court Costs

- These statements may be **contested** – one party can claim that the other does not qualify to have the appeal bond waived.
- A Contest has to be filed within seven days after the opposing party receives notice that the Statement of Inability was filed.
- Procedure for a Contest: see Handout 1.
 - Rule 506.1(d) and (e)

24

Cash Deposit

Instead of filing an appeal bond, the person who wants to appeal may deposit **cash** with the clerk of the court in the amount required for the appeal bond.

The cash deposit is payable to the appellee (the person who won in justice court) and is conditioned on the appellant (the person who lost and is appealing) pursuing the appeal and paying any judgment and costs rendered against them on appeal.

If the appellant files a cash deposit, then they (not the court) are required to send a written notice of the appeal to all other parties within seven days of filing the cash deposit.

-- Rule 506.1(c) and (e).

25

What Happens to the Case?

- When an appeal bond, a Statement of Inability or a cash deposit is properly filed with the justice court, then the appeal is **“perfected.”**
 - **Once that happens the judgment of the justice court is “null and void.”**
 - The case is sent to the county court which will hear it from scratch.

26

What Happens to the Case?

- To send the case to county court the clerk sends:
 - Certified copy of all docket entries.
 - A certified copy of the bill of costs.
 - The original papers in the case.
- And you collect a transcript fee of \$10.00 (unless the party appealed by filing a Statement of Inability)
 - Rule 506.1(h), 506.2, 506.3, Govt. Code § 101.151(2)(A)

27

But the Case Might Bounce Back!

- The party appealing the case must also pay a filing fee in county court!
 - Unless they file a Statement of Inability.
- If the party does not pay that filing fee, the county court will not consider the case to be **perfected** and will dismiss the case filed in county court and send it back to justice court.
- If that happens, the judgment of the justice court is valid and it may be enforced just as if an appeal had not been filed.
 - Rule 506.1(h) and (i), Rule 143a

28

Enforcement of Judgments

29

What are the parties called AFTER a judgment?

- If the plaintiff wins, they are now the “judgment creditor”
- The losing defendant is the “judgment debtor”



30

How Do You Enforce a Judgment?

- If the case is not appealed, the judgment remains in force, and the plaintiff may try to enforce the judgment (make the defendant pay) through the court.
- A justice court judgment can be enforced the same way that a county or district court judgment is enforced

-- Rule 505.2



31

Turn to your Neighbor

- One of you is the clerk and the other is a judgment creditor.
- The judgment creditor starts the conversation by saying: "Hey, your court gave me a judgment saying John Smith owes me \$7,000. What are you going to do to help me get paid?"
- Once you complete the conversation, switch roles.



32

What is the Court's Role?

- The court does not pursue payment of the judgment by the losing party
- Instead, the court simply processes requests made by the winning party to enforce the judgment
- The court is **ONLY** involved in response to a request from the winning party to sign an order or writ (an order directed to a constable or sheriff)



33

Ways to Enforce a Judgment

Abstract of Judgment

Writ of Execution

Writ of Garnishment

Turnover Order

Appointment of a Receiver

Special Writ for Seizure and Delivery of Personal Property



34

Abstract of Judgment

35

What is an Abstract of Judgment?

A summary of information about a judgment that creates a lien against the judgment debtor's real property once it is filed with the County Clerk

Lien: A hold put on the real property (like land) of the judgment debtor in the county.

- If the property is sold, the person with the lien gets paid first.
- Example: when you sell your house, the bank is paid first because they hold a lien – your mortgage!
- Or if you sell your car the bank gets paid first to pay off the loan; you get what's left!

36

Timing and Cost for Abstract of Judgment

When can a party get an abstract of judgment?

- Can be requested by judgment creditor as soon as the judgment is final.
- The abstract must be issued when requested.

There is a \$5 abstract fee per abstract

- The party can get multiple abstracts, since they will need to file one with the county clerk in each county where they want to create a lien on property of the judgment debtor.

37

How is the Abstract Prepared?

It is prepared by the court clerk.

The clerk fills it in with whatever information is provided to them.

The clerk does not research additional information.

Attorneys can create and file their own abstracts with the county clerk, without your court being involved.

38

What Information is in the Abstract?

If Available

- The defendant's birth date
- The last 3 numbers of their driver's license and social security number
- The number of the lawsuit
- The date and amount of the judgment
- The balance due on the judgment
- The rate of interest in the judgment

-- Property Code §52.003

39

Abstract of Judgment

CAUSE NO. _____
 § IN THE JUSTICE COURT
 §
 § PLAINTIFF
 §
 v. § PRECINCT NO. _____
 §
 §
 § DEFENDANT § _____ COUNTY, TEXAS

ABSTRACT OF JUDGMENT

The undersigned, Justice of the Peace of Precinct _____, _____ County, Texas, hereby certifies that, on the _____ day of _____, 20____, in the above-styled cause, a judgment was rendered against _____.
 The following is a true and correct Abstract of that judgment:

1. Defendant's birthdate (if available): _____;
2. Last three numbers of Defendant's driver's license (if available): _____;
3. Last three numbers of Defendant's social security number (if available): _____;
4. Defendant's address: _____; or
 Defendant's address is not shown in the suit. The Defendant was served by _____ on the _____ day of _____, 20____, in _____, County, Texas;
5. Judgment was rendered on the _____ day of _____, 20____;
6. The amount of the judgment rendered is: \$ _____, plus \$ _____ court costs;
7. The balance due on such judgment is: \$ _____;
8. The rate of interest specified in such judgment: _____% compounded annually;
9. The mailing address for the Plaintiff is: _____.

I further certify that _____ Plaintiff, the person in whose favor such judgment was rendered, applied for and hereby receives delivery of this Abstract of judgment from the court upon payment of the fee allowed by law.

ISSUED AND SIGNED this the _____ day of _____, 20____.

 JUSTICE OF THE PEACE, PRECINCT _____
 _____ COUNTY, TEXAS

40

How is this Completed?

By the court clerk.

The clerk fills in the information provided to them.

The clerk does not research additional information.

41

What happens with the Abstract?

The judgment creditor takes it and files it with ANY County Clerk in Texas where they believe the judgment debtor has real property

Multiple abstracts can be requested

Lawyers can file abstracts without asking for an abstract from the court where the judgment is held

The lien stays on the property for *10 years (or as long as the judgment is active)*

-- Property Code §52.002(b)

42

Writ of Execution

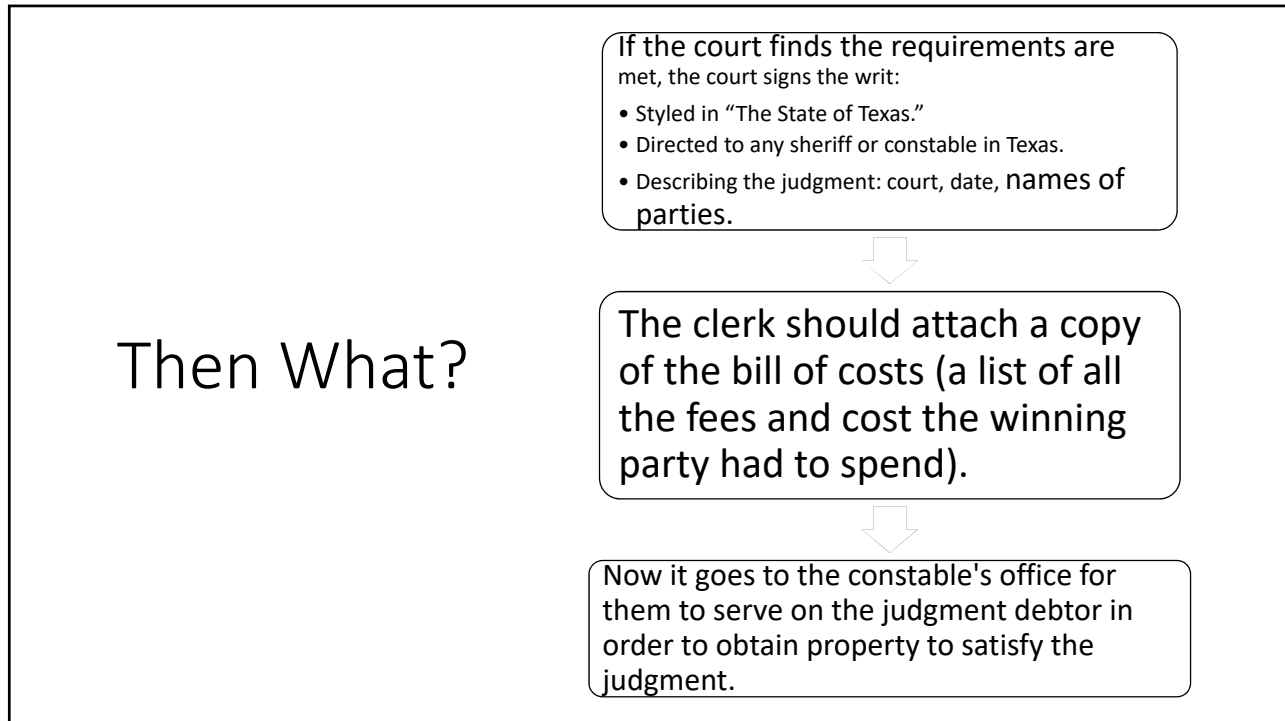
43

What is a Writ of Execution

It is an order from the court to a constable or sheriff directing them to take property from the judgment debtor (the person who lost) and sell it and give the money to the judgment creditor (the person who won) to satisfy the judgment!

-- Rules 505.2 and 621

44



47

Writ of Execution

CAUSE NO. _____

	§	IN THE JUSTICE COURT
PLAINTIFF	§	
v.	§	PRECINCT NO. _____
	§	
DEFENDANT	§	_____ COUNTY, TEXAS

WRIT OF EXECUTION

**THE STATE OF TEXAS
TO ANY SHERIFF OR ANY CONSTABLE WITHIN THE STATE OF TEXAS: GREETINGS**

WHEREAS, on the ____day of _____, 20____, in the Justice Court of Precinct _____, _____ County, Texas, the Plaintiff in the above styled cause recovered a judgment against Defendant as follows:

Judgment in the amount of \$ _____.

Costs in the amount of \$ _____. (A bill of costs is attached)

Interest at _____% compounded annually; therefore

YOU ARE COMMANDED:

To execute on the Defendant's property to satisfy the judgment amount of \$ _____, any other costs taxed against the Defendant, and any costs of executing this writ.

HEREIN FAIL NOT, and bring the money, together with this writ, showing how you executed the same, to this Court at the Courthouse of _____ County, Texas within 30 60 90 days.

ISSUED AND SIGNED this the _____ day of _____, 20____.

48

Execution Docket

– Rule 507.3

The clerk must enter in the docket:

- Time when the writ of execution was issued.
- To whom it was directed and delivered.
- The amount of the debt, damages and costs.
- When the writ is returned, the clerk must note the return in the docket and show the manner in which it was executed.

49

What Does the Constable do with the Writ?

They must document every action they take in serving the writ.

They must proceed “without delay” to seize “non-exempt” property of the judgment debtor found in the county.

They take physical possession of the property and sell it.

But there are some limits:

- They cannot take “exempt” property!
- Rules 633, 637, 639, 649; Property Code § 42.002

50

What is Exempt Property?

“Exempt property” is property that may **not** be seized to satisfy a judgment. For example:

Your home;

Personal property up to \$100,000 for a family or \$50,000 for an individual;

Current wages;

Alimony or child support;

Home furnishings, including heirlooms;

Two firearms;

Two horses, mules, or donkeys and a saddle, blanket, and bridle for each;

Household pets.

51

What Happens Next?

The constable or sheriff seizes Non-Exempt property and whatever proceeds they realize from the sale of that property goes to the judgment creditor to pay off the judgment.

The constable or sheriff will also receive a fee based on what is set by the commissioner’s court

-- Rules 633, 637, 639, 649; Property Code §42.002

52

For More
Information
See

53

Writ of Garnishment

54

Writ of Garnishment – Rule 658

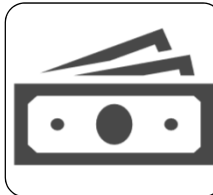
- What is a **writ of garnishment**?
 - An order from the court to a 3rd party who has some of the judgment debtor's assets to turn those assets over to the judgment creditor.
 - The assets must be **non-exempt**.
 - The 3rd party is called the **garnishee**, and is usually a bank.
- Note – garnishments are almost always filed post-judgment. For information on the limited situation where they are filed pre-judgment, see P. 88 of the Civil Deskbook

55

Important Note on “Garnishment”



Many people think of “garnishment” as something that happens with someone’s paycheck or wages.



In “wage garnishment,” a person’s wages are intercepted before they ever get delivered to the employee, and given to the person who is entitled to the garnishment.



In Texas, **you cannot garnish wages for civil judgments**. But once the paycheck is deposited into a bank account, that money is now subject to garnishment.

56

Garnishment Example

- Becky sues Ronda for \$7,500 and wins. Ronda doesn't pay the judgment.
- Satisfying a judgment by using writs of execution can be difficult because of how much property is "exempt," so Becky has been unable to get her judgment paid that way.
- Ronda doesn't own real property, so Becky has no real use for an abstract of judgment.
- But Becky discovers that Ronda has a bank account with \$10,000 in it.
- Becky can use a writ of garnishment to have the bank ordered to turn \$7,500 (plus any costs of the garnishment) over to her to satisfy the judgment.

57

Garnishment Step 1: Application for the Writ

The judgment creditor's application for a writ of garnishment **must** be supported by an affidavit.

- The affidavit must state that there is a judgment and that the defendant doesn't have enough assets subject to execution to satisfy the judgment.

The law is unclear, but TJCTC believes that the court would charge the standard civil filing fee for this filing. Check with your county auditor for your county's policy and be consistent.

58

Application for Writ of Garnishment

CAUSE NO. _____

PLAINTIFF _____ § IN THE JUSTICE COURT

v. _____ §

DEFENDANT _____ §

PRECINCT NO. _____

_____ COUNTY, TEXAS

APPLICATION FOR WRIT OF GARNISHMENT

The undersigned Applicant makes this Application for a Writ of Garnishment based on the following:

I have a suit for debt. The debt is just, due, and unpaid. To the best of my knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the debt. The garnishment is not sought to injure the defendant or the garnishee. I have posted a bond in accordance with Texas Rules of Civil Procedure 658a.

I have a valid, subsisting judgment. To the best of my knowledge, the defendant does not possess property in Texas subject to execution sufficient to satisfy the judgment.

The following facts support the above designation:

(Additional information or affidavits may be attached).

The Defendant in the original suit: _____

The cause number of the original suit: _____

The amount of judgment/debt owed as of the date of the application: \$ _____

The judgment date, if any: _____

The Garnishee's name: _____

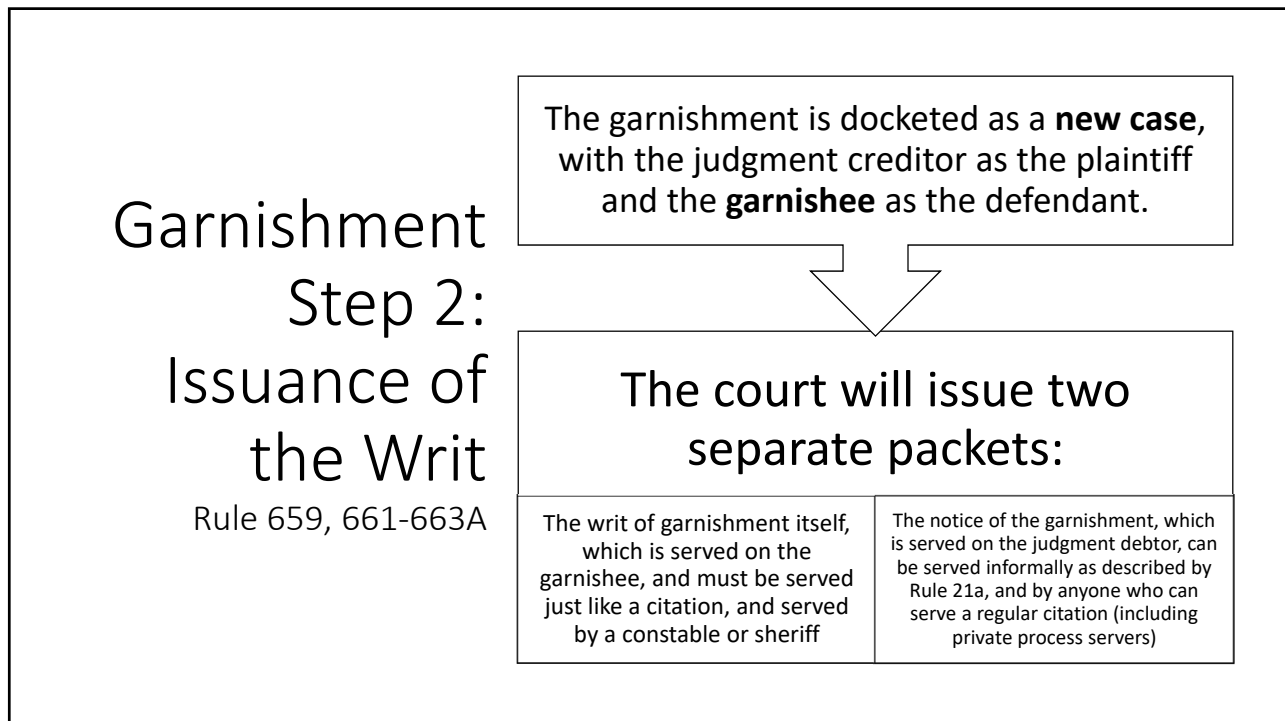
The Garnishee's address for service: _____

The Garnishee's officer for service purposes, if applicable: _____

Account name and number, if applicable: _____

WHEREFORE the applicant seeks assets held by a third party (Garnishee) and requests this court to issue a Writ of Garnishment directed to the above named Garnishee.

59



60

Garnishment Step 3 – Service on the Defendant

- Along with notice of the garnishment, the actual writ must be served on the defendant, and it must contain the warning listed in Rule 663a. Additionally, the application for the writ must be included, along with any affidavits filed, and any other orders of the court.

61

Service of the Writ – Rule 659, 661-663A

The writ orders the garnishee to hold any assets that they have belonging to the judgment debtor, and to file an answer stating what assets, if any, they have that belong to the judgment debtor.

The judgment debtor **must not** be served with the garnishment notice before the garnishee is served with the writ. **Why not?**

62

<h2 style="margin: 0;">Writ of Garnishment</h2>	<p style="text-align: center;">CAUSE NO. _____</p> <p>PLAINTIFF _____ § IN THE JUSTICE COURT v. _____ § PRECINCT NO. _____ GARNISHEE _____ § _____ COUNTY, TEXAS</p> <p style="text-align: center;">WRIT OF GARNISHMENT</p> <p>THE STATE OF TEXAS To _____, GARNISHEE NAMED ABOVE, GREETINGS</p> <p>WHEREAS the above named Plaintiff filed suit against _____ Defendant in the Justice Court, Precinct _____, of _____ County, Texas, in cause number _____. In that cause, Plaintiff alleges the Defendant owes a debt of \$ _____. Plaintiff has applied for a writ of garnishment against you, _____, as Garnishee; therefore you are hereby</p> <p>COMMANDED to appear before this court at or before 10 o'clock a.m. on the Monday next after the expiration of ten days from the date of service of this writ. You are to answer, under oath, if you are indebted to the Defendant and what effects of the Defendant you have in your possession. You also must state if you know any other person or entity that is indebted to the Defendant or have effects belonging to the Defendant in their possession.</p> <p>YOU ARE FURTHER COMMANDED not to pay to Defendant any debt or deliver to Defendant any effects, pending further order of this court.</p> <p>HEREIN FAIL NOT, and timely answer this writ as the law directs.</p> <p>To _____, DEFENDANT, GREETINGS:</p> <p>You are hereby notified that certain properties alleged to be owned by you have been garnished. If you claim any rights in such property, you are advised:</p> <p>YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.</p> <p>ISSUED AND SIGNED this the _____ day of _____, 20 ____.</p> <p style="text-align: right;">_____ JUSTICE OF THE PEACE, PRECINCT _____ COUNTY, TEXAS</p>
---	--

63

<h2 style="margin: 0;">Garnishment Step 4: Garnishee Answer or Default</h2> <p style="margin: 0;">- Rule 665-668</p>	<ul style="list-style-type: none"> • If the garnishee doesn't answer by the Monday after 10 days have expired, a default judgment may be entered against the garnishee! <ul style="list-style-type: none"> • Table exercise: Garnishee is served on Friday, March 15th. • When is the answer due?
--	--

64

Dispute of the Garnishee's Answer

– Rule 665-668

- If the garnishee does answer, either side may file an answer disputing their answer.
 - So if they say “we don’t have anything,” the judgment creditor can answer and say “yes, you do.”
 - Or if they say “we have these assets,” the judgment debtor could answer and say “those aren’t actually my assets.”

65

Garnishment Step 5: Judgment Based on Garnishee's Answer

- Rule 665-668

- If no one disputes the garnishee's answer, a judgment is rendered based on that answer.
 - This will either be a judgment ordering the assets turned over to the judgment creditor, or a judgment discharging the garnishee if they have no assets that belong to the judgment debtor.

66

<h1 style="margin: 0;">Judgment on Writ of Garnishment</h1>	CAUSE NO. _____				
	PLAINTIFF _____	§	IN THE JUSTICE COURT		
	v. _____	§	PRECINCT NO. _____		
	GARNISHEE _____	§	_____ COUNTY, TEXAS		
		§			
	JUDGMENT ON WRIT OF GARNISHMENT				
	On the ____ day of _____, 20____, the court reviewed the sworn answer of the Garnishee-Defendant to the writ of garnishment in the above-docketed cause number.				
	It appears to the court from the answer that the Garnishee-Defendant was indebted to _____ Defendant when the writ of garnishment was served on Garnishee-Defendant:				
	<input type="checkbox"/> in the amount of \$ _____; or <input type="checkbox"/> had in its possession the following described effects: _____; it is therefore _____				
	<input type="checkbox"/> ORDERED that the Plaintiff recover from Garnishee-Defendant \$ _____ with interest and all costs, including the costs in this proceeding.				
	<input type="checkbox"/> ORDERED that the Garnishee-Defendant deliver the above described effects to the proper officer for sale under execution.				
	IT IS FURTHER ORDERED that the collection of any such indebtedness due by the Garnishee-Defendant under this judgment will prohibit Defendant from recovering the above amount from the Garnishee-Defendant; and				
	IT IS FURTHER ORDERED that reasonable costs on behalf of Garnishee-Defendant in the amount of \$ _____, are taxed against Defendant.				
	ISSUED AND SIGNED this the ____ day of _____, 20____.				
	_____ JUSTICE OF THE PEACE, PRECINCT _____ COUNTY, TEXAS				

67

<h1 style="margin: 0;">Judgment Discharging Garnishee</h1>	CAUSE NO. _____				
	PLAINTIFF _____	§	IN THE JUSTICE COURT		
	v. _____	§	PRECINCT NO. _____		
	GARNISHEE _____	§	_____ COUNTY, TEXAS		
		§			
	JUDGMENT DISCHARGING GARNISHEE				
	On the ____ day of _____, 20____, the court reviewed the sworn answer of the Garnishee-Defendant to the writ of garnishment in the above docketed cause number.				
	It appears to the court from the answer that the Garnishee-Defendant was not indebted to _____ the Defendant when the writ of garnishment was served on Garnishee-Defendant. It further appears from the answer that the Garnishee-Defendant does not have any effects of the Defendant in its possession and did not have any effects in its possession when the writ was served. In its answer, the Garnishee-Defendant has denied having knowledge of any other persons who are indebted to Defendant or who have effects in their possession that belong to Defendant. Garnishee-Defendant's answer is satisfactory in all respects and has not been controverted by Plaintiff; it is therefore				
	ORDERED that _____, Garnishee-Defendant, is discharged from this writ;				
	IT IS FURTHER ORDERED that Garnishee-Defendant shall recover from Plaintiff its costs in the amount of \$ _____ for filing the answer;				
	ISSUED AND SIGNED this the ____ day of _____, 20____.				
	_____ JUSTICE OF THE PEACE, PRECINCT _____ COUNTY, TEXAS				

68

Writ of
Garnishment
Step 6 –
Trial After
Garnishee's
Answer
Disputed
– Rule 665-668

- If the garnishee's answer is disputed, a full trial must be held to determine what assets belonging to the judgment debtor, if any, the garnishee has.
 - All the normal trial rules would apply, such as ability to request a jury trial, etc.

69

Turnover Orders and Receivers

70

What is the Turnover Statue?

- CPRC 31.002: A court may “aid” a judgment creditor by:
 - Ordering a judgment debtor to “**turn over**” non-exempt property to a Constable or Sheriff to satisfy a judgment; or
 - **Appoint a receiver** with authority to take possession of non-exempt property, sell it, and pay the proceeds to the judgment creditor. – More on receivers coming up!

71

What Needs to be Shown for a Turnover Order?

1. The judgment debtor has non-exempt property that may be used to satisfy the judgment.

2. The court that the application was filed in is a court of jurisdiction, which means either:

- The court that issued the judgment, or
- A court where a foreign judgment has been domesticated (hardly ever happens)

72

Turnover Order - What Happens Next?

Up to the court whether to hold a hearing or notify the judgment debtor of the application.

- Why might you notify them?
- Why might you not notify them?

Court can order the defendant to turnover any non-exempt assets to the judgment creditor.

73

Appointing a Receiver - What Happens Next?

Up to the court what duties and obligations the receiver has

- Some proposed orders are VERY broad! Others just tell the receiver to take property and sell it to satisfy the judgment.


Cannot order receiver fees up front

- Could conditionally grant the fees, with a requirement to show they "earned" them afterward

74

Receiverships:
Broad vs.
Limited

- See Handouts 2 – 3 for examples of broad receivership appointments, and more limited appointments.
- At a recent workshop, there was a panel discussion among individuals involved in the collection industry, on both the creditor and debtor sides. The next slide covers some areas of consensus among most of the attorneys and judges involved regarding best practices for receiverships, especially in justice courts.



75

Receivership Panel: Areas of Consensus	Appointment of a Receiver	This is discretionary. The statute does say the judgment creditor is entitled to the aid of the court, but it goes on to say the court has three options (one of which is appointment of the receiver).
	Duties of Receiver	Should be limited and the bond should be nominal
	Allowing Receiver to Collect Cash on Hand	This is a bad idea.
	Opening Mail and Locking Defendant Out	This is a bad idea.
	Receiver's Fee	Should not be set automatically up front; but could be set at 25% conditionally and subject to later proof by the receiver that the work performed, and the results justify that fee.

76

For More
Info on
Turnover
Orders &
Appointing
Receivers

Civil Deskbook

- P. 90-94

Webinar on Turnovers/Receivers

- www.tjctc-resources.org/legal/webinar-archive/webinararchive.asp

77

Special Writ

78

Judgment for Personal Property

- A person may sue someone in justice court to get some item of personal property back (provided it is worth less than \$10,000).
 - For example, someone borrows your lawn mower and refuses to return it.
 - Or an angry ex-girlfriend takes her ex-boyfriend's fancy racing bike.
- A judgment in such a case must order that the plaintiff recover the specific articles of personal property, if they can be found, and if not then their value as assessed by the judge or jury.
 - Rule 505.1(e)

79

"Special Writ"

- When a judgment is for personal property, the court may award a "Special Writ" for the seizure and delivery of that property to the plaintiff.
 - Rule 505.2
- What is a "special writ?"
 - Some courts use a form called "writ of possession" – confusing because of eviction cases.
 - Others just use a form called "special writ for seizure and delivery of property."
 - Still others use a "writ of execution for specific articles."
 - The title isn't important as long as the writ directs the constable to do what Rule 505.2 says.

80

POP QUIZ TIME!

Fill out the
blanks with
the correct
answers.

- 1) Lincoln gets a judgment against Tom. He knows Tom has a lake house on Lake Travis. In order to be able to get money from the sale of the lake house to pay the judgment, Lincoln needs a
_____.
- 2) Seth wins a judgment against Bruce and finds out in post-judgment discovery that Bruce has money in the bank. If Seth wants to get that money, he needs a
_____.
- 3) Kevin wins a judgment against Daniel. Daniel owns valuable pieces of art. In order for that art to be seized and sold, and the money given to Kevin, he should get a
_____.
- 4) George wins a judgment against Al. Al has some property in a lockbox and won't allow the constable to look inside during execution. What kind of order could George get to force Al to let the constable take the property?
_____.

81

How Long
Can
Judgments
Be Enforced?

- A judgment is good for 10 years after it is issued.
- If the 10 year clock gets down to zero without a writ of execution being issued, the judgment cannot be enforced, and is called a “**dormant judgment.**”

82

How Long Can Judgments Be Enforced?

When a writ of execution is issued, it resets the clock, and the judgment is now good for 10 years from that date.

- This can happen over and over again!
- One recent case also says a writ of garnishment can reset the clock.

83

How Long Can Judgments Be Enforced?

A dormant judgment can be revived within 2 years of going dormant. The process to revive the dormant judgment is called a **scire facias**.

If the judgment remains dormant for 2 years, it is now **dead** and may not be revived.

84

Writ of Scire Facias

- A **writ of scire facias**, sometimes called scary faces, is an order by the court for the judgment debtor to come in and show good cause why the judgment should not be revived.
- The court doesn't issue this on its own, only on request by the judgment creditor.

85

"Good Cause"

"Good cause" to not revive it **would not** include things like "I can't afford to pay" or "Wow, this is pretty old!"

The only acceptable reasons to not revive the judgment would be if the court determines the judgment was actually dead rather than dormant, if the court didn't have jurisdiction over the judgment, or if the judgment debtor provided proof that they had already paid the judgment in full.

86

Judgment Deadline Calculation Table Exercise

A judgment is issued on October 29, 2015.

- If no writ of execution is ever issued, when would it go dormant?
- When would it die?

Now, say instead the judgment creditor gets a writ of execution on September 1, 2019 and an abstract of judgment on January 15, 2020.

- Assuming nothing else happens, when would it go dormant?
- When would it die?

87



Questions?

88