POST-JUDGMENT DISCOVERY (ETHICS)

JACKSON WALKER L.L.P.

Curt M. Langley, Partner
C. Larry Carbo, Associate

JACKSON WALKER, L.L.P.
1401 McKinney, Suite 1900
Houston, Texas 77010
713.752.4200 telephone
713.308.4138 facsimile
www.jw.com

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POST JUDGMENT DISCOVERY (ETHICS)

By Curt M. Langley

I. OVERVIEW OF THE ARTICLE

A. Scope of the Article

Upon entry of judgment in the trial court, the first step in enforcing a judgment is usually perfecting a judgment lien by filing an abstract of judgment in the real property records. However, the judgment creditor’s actions thereafter are dictated, in large part, by whether the judgment debtor suspends enforcement of the judgment by filing a supersedeas bond or posting other adequate security. When the judgment debtor perfects an appeal and suspends enforcement of the judgment by posting a supersedeas bond or other security to secure the judgment pending appeal, the judgment creditor is precluded from enforcing the judgment through execution. TEX. R. APP. P. 24. In such instance, the judgment creditor is also precluded from pursuing post-judgment discovery in aid of enforcing the judgment. TEX. R. CIV. P. 621a.

B. Post-Judgment Discovery Procedures

When the judgment debtor either does not perfect an appeal or, perfects an appeal but does not post adequate security to supersede enforcement of the judgment, the judgment debtor may proceed with post-judgment discovery in aid of enforcement of the judgment.

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1 The author wishes to acknowledge and thank Larry Carbo, Associate at Jackson Walker, L.L.P. for his assistance and contributions to this article.
2 See form of Request For Abstract of Judgment attached hereto as Exhibit A. See also form of filing letter for Abstract of Judgment attached hereto as Exhibit B.
See Tex. R. Civ. P. 621a and Fed. R. Civ. P. 69. Furthermore, the Texas Supreme Court has recently held that a trial court has an affirmative duty to enforce an unsuperseded judgment pursuant to Tex. R. Civ. P. 308. In re Crow-Billingsley Air Park, Ltd., 98 S.W.3d 178 (Tex. 2003) (granting mandamus relief and ordering trial court to enforce an unsuperseded judgment even if the final judgment has been appealed); Bridas Corp. v. Unocal Corp., 16 S.W.3d 887, 889 (Tex. App.-Houston [14th Dist.] 2000, pet. dism'd w.o.j.)

This article focuses upon the procedural and substantive methods to conduct post-judgment discovery in aid of enforcement and collection of a judgment in the State of Texas. As a general rule, the discovery procedures in the post-judgment setting are the same as those which are applicable during the pre-trial discovery phase. However, as a practical matter, post-judgment discovery has a much different focus and therefore requires more precision, investigation, and strategy in order to be effective.

C. The Internet As A Post-Judgment Discovery Tool

The availability of the Internet has truly revolutionized post-judgment discovery practice. Information which as previously available only from expensive private investigations and/or personal document and database reviews, is now available to anyone with an Internet connection. This article will describe several methods of conducting a post-judgment investigation of the judgment debtor using the Internet and publicly-available information regarding the judgment debtor. The use of such an investigation, prior to issuing post-judgment discovery or taking post-judgment depositions, can also be extremely helpful in narrowing the focus of discovery and confirming the responses to the discovery.
D. Ethics and Professionalism In Post-Judgment Practice

Most judgment debtors will aggressively resist post-judgment discovery and collection efforts. Accordingly, during the post-judgment phase of the litigation, attorneys for both the judgment creditor and the judgment debtor must be mindful of the ethical duties and obligations which continue to govern their relationships and their communications. Although the application of the so-called “anti-contact” rule, which prohibits contact between an attorney and another person who is represented by counsel, is usually rather obvious during the pre-trial and trial stages of the lawsuit; the application of the “anti-contact” rule and the ethical considerations arising from the rule are frequently less clear in the post-judgment and collection phase of the proceedings. This article will also address the ethical rules and considerations which arise in the post-judgment phase of litigation and how counsel for both the judgment creditor and the judgment debtor may effectively deal with these issues in an ethical and professional manner.

II. POST-JUDGMENT DISCOVERY RULES AND PROCEDURES

A. Overview

For purposes of collecting a judgment entered in federal court, the Federal Rules of Civil Procedure generally adopt the practices and procedures of the state in which the federal district court is located. See Fed. R. Civ. P. 69. Accordingly, a judgment entered in federal court in Texas is enforced by way of Fed. R. Civ. P. 69, which adopts Tex. R. Civ. P. 621a, which in turn adopts “any discovery proceeding authorized by these [Texas] rules for pre-trial matters.”

“Where a money judgment has been entered in federal court, enforcement of the judgment is governed by Fed. R. Civ. P. 69, which provides that the procedures to be used are those of the state in which the district court sits, unless there is an applicable federal statute.” Aetna Cas. & Sur. Co. v. Markarian, 114 F.3d 346, 349 (1st Cir. 1997); see also Natural Gas Pipeline Co. v. Energy Gathering, Inc., 2 F.3d 1397, 1405 (5th Cir. 1993) (stating Rule 69 “allows post-judgment discovery to proceed according to the federal rules governing pre-trial discovery, or according to state practice.”) Specifically, Rule 69 provides:

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

Fed. R. Civ. P. 69(a) (emphasis added).

C. The Texas Post-judgment Discovery Rule, Tex. R. Civ. P. 621a

In Texas, post-judgment discovery is governed by Tex. R. Civ. P. 621a, Discovery and Enforcement of Judgment, which provides:

At any time after rendition of judgment, and so long as said judgment has not been suspended by a supersedeas bond or by order of a proper court and has not become dormant as provided by Article 3773, V.A.T.S., the successful party may, for the purpose of obtaining information to aid in the enforcement of such judgment, initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. Also, at any time after rendition of judgment, either party may, for the purpose of obtaining
information relevant to motions allowed by Texas Rules of Appellate Procedure 47\(^3\) and 49\(^4\) initiate and maintain in the trial court in the same suit in which said judgment was rendered any discovery proceeding authorized by these rules for pre-trial matters. The rules governing and related to such pre-trial discovery proceedings shall apply in like manner to discovery proceedings after judgment. The rights herein granted to the parties shall inure to their successors or assignees, in whole or in part. Judicial supervision of such discovery proceedings after judgment shall be the same as that provided by law or these rules for pre-trial discovery and proceedings insofar as applicable.

**D. Continuing Jurisdiction in the Trial Court**

Although TEX. R. CIV. P. 621a became effective on January 1, 1971, eleven years later in 1982 the Texas Supreme Court noted that “[n]o cases have addressed the procedures required to “initiate and maintain” discovery proceedings under this rule.” *Arnold v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982). Accordingly, in *Arnold*, the supreme court explained and held that even though a trial court’s plenary power to vacate, modify, correct, or reform a judgment ceases under TEX. R. CIV. P. 329b(d) thirty days after the judgment is signed, Rule 621a provides the trial court with continuing jurisdiction over discovery and proceedings in aid of enforcement of the judgment. *Id.* Later cases have further clarified that a trial court’s continuing jurisdiction under Rule 621a continues even after an appeal is perfected, provided that the judgment has not been suspended by a supersedeas bond or by order of a proper court. *See O’Connor v. Smith*, 815 S.W.2d 338, 340 (Tex. App.–Houston [1st Dist.] 1991, orig. proceeding).

**E. Invoking the “Continuing Jurisdiction” of the Trial Court**

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\(^3\) Now TEX. R. APP. P. 24 (effective Sept. 1, 1997).

\(^4\) *Id.*
In *Arndt*, the judgment debtor argued that Rule 621a requires the filing of a new petition seeking discovery and the issuance and service of a new citation on the judgment debtor in order for the trial court to “re-gain” jurisdiction. 633 S.W.2d at 499. However, the Court made it clear that where the judgment creditor served a notice of post-judgment deposition and filed that notice with the trial court; that was sufficient to “initiate and maintain” discovery under Rule 621a and that trial court therefore had jurisdiction to hear a motion to compel and/or for sanctions in aid of enforcement of the judgment. *Id.* at 499-500.

**Practice Note:** In response to document storage problems at the courts, under the Texas rules governing discovery conducted after January 1, 1999, most discovery requests and responses are not filed with the trial court. T EX . R. C IV . P. 191.4. Furthermore, after the judgment is entered, the trial court would most likely not wish to continue to receive filed copies of post-judgment discovery requests. It is therefore advisable to file and serve a Certificate of Discovery for each discovery request or deposition notice in order to make a record with the trial court for enforcement of any such requests. Although no recent case law was located on this point, such a filing would most likely be sufficient to “initiate and maintain” discovery under Rule 621a.

### III. SCOPE OF POST-JUDGMENT DISCOVERY

#### A. No Discovery Levels

Although T EX . R. C IV . P. 621a adopts the usual discovery methods and procedures available during litigation to the post-judgment discovery process, the discovery conducted post-judgment does not contain the usual discovery limitations (Discovery Levels 1, 2 and 3) imposed by T EX . R. C IV . P. 190 Discovery Limitations. In fact, Rule 190.6 specifically provides:

This rule’s limitations on discovery do not apply to or include discovery conducted under Rule 202 (“Depositions Before Suit or to Investigate Claims”), or Rule 621a.
(“Discovery and Enforcement of Judgment”). But Rule 202 cannot be used to circumvent the limitations of this Rule.

See also In re Smith, ___ S.W.3d ___ (Tex. App.-San Antonio, orig. proceeding) (03/12/2003) (designated to be published under TEX. R. APP. P. 47). Which notes that the limitation of twenty five interrogatories in TEX. R. CIV. P. 190.3(b)(3) does not apply to post-judgment interrogatories in light of TEX. R. CIV. P. 190.6.

B. Broad Scope

The broad scope of permissible post-judgment discovery requests should be directed at identifying and locating assets which are subject to execution to satisfy the judgment. Accordingly, Texas courts have permitted the broad scope of post-judgment discovery to include any “information reasonably calculated to lead to the discovery of assets from which to satisfy the judgment.” In re Amaya, 34 S.W.3d 354, 358-359 (Tex. App.–Waco 2001, orig. proceeding); see also Collier v. Salinas, 812 S.W.2d 372, 376 (Tex. App.–Corpus Christi 1991, orig. proceeding) (holding discoverable evidence includes any information that would aid in the enforcement of the judgment).

In an unpublished opinion, In re Platt, No. 05-01-01405-CV, 2001 WL 1352920 (Tex. App.–Dallas Nov. 5, 2001), a judgment debtor sought mandamus relief to avoid responding to post-judgment discovery which was issued by an assignee of the judgment creditor (the assignee was not a party to the trial court action). Denying the judgment debtor’s petition for writ of mandamus, the court of appeals held that the trial court had jurisdiction to determine ownership of the judgment for purposes of post-judgment discovery under Rule 621a.
Despite this broad scope, however, the scope of post-judgment discovery has been restricted where the judgment creditor is attempting to re-litigate issues which were determined in the lawsuit. See, e.g., Cross, Kieschnick & Co. v. Johnson, 892 S.W.2d 435, 439 (Tex. App.–San Antonio 1994, no writ) (court prohibited the use of post-judgment requests for admissions to establish that the defendant corporation was an alter ego of a partnership which owned non-exempt assets).

C. Executable Assets

Because only an individual’s non-exempt assets are subject to execution to satisfy a judgment, the permissible scope of post-judgment discovery is determined, in large part, by whether the judgment debtor is an individual or a corporation (or other incorporated business entity). Although certain assets belonging to individual judgment debtors are exempt from execution under Texas Homestead laws, incorporated entities have no exempt property and are not protected by Texas Homestead laws. Where the judgment debtor is an individual, the post-judgment discovery should be directed at unencumbered assets which are not exempt from execution under Texas Homestead laws. Where the judgment debtor is a corporation, the post-judgment discovery should be directed at location and identity of assets which are not encumbered by a security interest or where the security interest is for an amount less than the market value of the property.

D. Property Subject to Execution in Texas

In Texas, an individual judgment debtor’s property is subject to levy by execution if it is not exempted from execution by constitution, statute, or other rule of law. TEXAS CONST.
Therefore, the primary focus of post-judgment discovery inquiries should be directed at identifying property of the debtor which is subject to execution and that property which is not subject to execution. In general, property which is subject to execution to satisfy a judgment includes: cash on hand or in bank accounts, boats and other recreational vehicles, collections, investment securities, airplanes, and real property which is not claimed and designated as the homestead.

**Practice Note:** The burden of designating exempt Homestead property is on the judgment debtor. Accordingly, the judgment creditor may issue a request, in writing, that the judgment debtor designate exempt property.

**IV. TEXAS DISCOVERY METHODS AND PROCEDURES**

**A. Overview of Discovery Procedures**

TEX. R. CIV. P. 621a contemplates the use of all discovery methods applicable during the litigation including request for production, interrogatories, request for admissions, oral depositions, depositions upon written questions, and discovery from non-parties. Furthermore, the same enforcement procedures available under TEX. R. CIV. P. 215 for abuse of the discovery process are available in a post-judgment setting. Given the fact that most judgment debtors will resist all efforts directed at enforcing the judgment, the motion to compel and motion for sanctions procedures set forth in Rule 215 take on additional importance in the post-judgment setting.
B. Post-Judgment Requests For Production, TEX. R. CIV. P. 196

TEX. R. CIV. P. 196.1 governs “Request for Production and Inspection to Parties.” With respect to the contents of the requests, Rule 196.1(b) provides:

The request must specify the items to be produced or inspected, either by individual item or by category, and describe with reasonable particularity each item and category. The request must specify a reasonable time (on or after the date on which the response is due) and place for production. If the requesting party will sample or test the requested items, the means, manner and procedure for testing or sampling must be described with sufficient specificity to inform the producing party of the means, manner, and procedure for testing or sampling.

Practice Note: As discussed below, a well-drafted request for production of documents accompanying a notice of oral deposition of the judgment debtor is perhaps the most productive and efficient post-judgment discovery tool. Although it would first appear to be more expensive than issuing written discovery, the notice of deposition with request for production provides for face-to-face contact, provides for follow up of evasive answers, and provides for expeditious judicial enforcement if the judgment debtor does not appear, does not produce requested documents, or does not answer questions. Additionally, the cost of the deposition can be significantly reduced by noticing a non-stenographic deposition which does not require a court reporter. See TEX. R. CIV. P. 199.1(c).

See also Form of Notice of Deposition In Aid of Enforcement of Judgment and Request for Production of Documents. [Appendix, C]. [DocsOpen 3115108]

C. Post-Judgment Interrogatories, TEX. R. CIV. P. 197

During the pre-trial phase of litigation, a party is limited to sending twenty five (25) interrogatories in cases which are designated under Discovery Levels One and Two. TEX. R. CIV. P. 190.2(c)(3) (Level One); 190.3(b)(3) (Level Two). However, post-judgment discovery is not limited by Rule 190 and, accordingly, there is no specific restriction on the number of interrogatories in aid of enforcement of the judgment.

Practice Note: Due to the ability of a judgment debtor to respond in a vague or evasive manner to interrogatories, I have found that post-judgment interrogatories are
seldom successful in obtaining significant useful information. For that reason, I do not recommend spending a significant amount of time drafting and preparing post-judgment interrogatories. However, a good form of post-judgment interrogatories directed at an individual is located at 9 WILLIAM V. DORSANEO, TEXAS LITIGATION GUIDE § 132.114[2], pp. 132-125 through 132-131. The use of a form of post-judgment interrogatories, as slightly modified based upon known information, is usually the most efficient use of interrogatories in post-judgment discovery.

See also Form of Post-Judgment Interrogatories In Aid of Enforcement of Judgment [Appendix, D]. [DocsOpen 3115117]

D. Post-Judgment Requests For Admissions, TEX. R. CIV. P. 198

Requests For Admission are seldom beneficial in post-judgment discovery information unless the drafter has already obtained information on the subject of the inquiry. For example, requests for admission may be used to verify designation of homestead as reflected in public records or ownership of vehicles or other property. Furthermore, as stated above, the use of request for admissions has been restricted where the judgment creditor attempted to re-litigate issues which were determined in the lawsuit. See Cross, Kieschnick & Co. v. Johnson, 892 S.W.2d 435, 439 (Tex. App.—San Antonio 1994, no writ) (court prohibited the use of post-judgment requests for admissions to establish that the defendant corporation was an alter ego of a partnership which owned non-exempt assets).

**Practice Note:** Although request for admissions cannot be used to re-litigate issues which were determined in the lawsuit, the “deemed admission” provision of the Rules may provide leverage to the judgment creditor as to certain matters. TEX. R. CIV. P. 198.2(c) provides that “[I]f a response is not timely served, the request is considered admitted without the necessity of a court order.” Accordingly, where a judgment debtor refuses to answer interrogatories or deposition questions regarding ownership status of assets or similar matters, service of request for admissions may provide a method of either (1) securing a response by the judgment debtor, or (2) providing a deemed admission on the issue which may be extremely difficult for the judgment debtor to overcome. See Heap v. Val-Pak of Greater Houston, No. 01-00-00756-CV, 2001 WL 699944 (Tex. App.—Houston [1st Dist.] 2001, pet. denied)
(upholding deemed admissions during post-judgment discovery in light of the judgment debtor’s failure to timely object or respond).

E. Post-Judgment Depositions Upon Oral Examination, TEX. R. CIV. P. 199

Of all the post-judgment discovery tools, perhaps the most useful is the notice of oral deposition coupled with a well-drafted request for documents. When a judgment debtor responds evasively to written discovery requests, the requesting party is often delayed by the thirty (30) day response period, the filing of a motion to compel, the additional time period involved in obtaining an order compelling discovery, and in seeking an order of contempt where the judgment debtor ignores the order or still fails to answer completely and adequately. Accordingly, an oral deposition, although seemingly expensive at first, is often the most efficient and most useful post-judgment discovery tool.

**Practice Note:** TEX. R. CIV. P. 199.1(c) provides for non-stenographic recording of the deposition by videotape or audiotape before any notary. In the post-judgment discovery setting, this tool may reduce the costs of the deposition considerably. Furthermore, counsel for the judgment creditor is simply interested in obtaining the information itself, as opposed to securing evidence. Where the judgment debtor fails to object to the deposition or appear for the deposition, the judgment creditor may proceed to file a motion to compel and/or for contempt pursuant to Rule 193.3—Compelling Witness to Attend.

*See also* Form of Request For Production of Documents In Aid of Enforcement of Judgment. [Appendix E]. [DocsOpen 33215067]

F. Post-Judgment Depositions Upon Written Questions, TEX. R. CIV. P. 200 and Post-judgment Discovery From Non-Parties, TEX. R. CIV. P. 205

Post-judgment requests to non-parties may be useful in obtaining bank account records, investment account records, or similar documents evidencing executable assets. However, the use of such discovery methods necessarily requires the requesting party to
locate and identify the non-party who has such assets or information. Tex. R. Civ. P. 205 provides for discovery from non-parties by serving a subpoena compelling: (a) an oral deposition, (b) a deposition on written questions, (c) a request for production of documents served with a notice of oral or written deposition, and (d) a request for production without deposition.

**Practice Note:** Post judgment request to non-parties often have the indirect effect of placing significant burdens on the judgment debtor. Although a judgment debtor may aggressively resist the attempts at discovery, he or she may receive immense pressure from a non-party who is suddenly pulled into the judgment debtor’s problem upon receipt of a post-judgment subpoena and document request. For example, in *In re Amaya*, 34 S.W.3d 354, 358-359 (Tex. App.–Waco 2001, orig. proceeding) (where judgment debtor had left the country, the court held that the judgment creditor could depose the daughter of the judgment debtor for information reasonably calculated to lead to the discovery of assets from which to satisfy the judgment).

G. **Abuse of Discovery; Sanctions, Tex. R. Civ. P. 215**

In my experience, most judgment debtors will either fail to respond to post-judgment discovery, or will respond in such an evasive manner that the responses are not useful. Furthermore, a judgment debtor who does not respond to discovery requests will also likely not respond to a motion to compel. Accordingly, in order to obtain an enforceable order compelling responses and/or awarding sanctions or costs, counsel for the judgment creditor should take the utmost care in properly serving post-judgment discovery via certified mail and by regular mail, and evidence of service should be retained for later use at a hearing on the motion to compel. The following is a checklist:

1. **Serve copies of each discovery request on all parties of record by certified mail, return receipt requested. Tex. R. Civ. P. 191.5.**

2. **Retain the original “green card” evidencing service on the judgment debtor.**
3. The serving party must retain originals or exact copies of the discovery materials which were served, but not filed. TEX. R. CIV. P. 191.4(d).

4. It is recommended that you file a Certificate of Discovery with the trial court referencing the type of discovery served, the date of service, the method of service, and the response date.

5. If the discovery responses are incomplete or evasive, or if the judgment debtor fails to respond, observe the conference requirement prior to filing a motion to compel with the court. TEX. R. CIV. P. 191.2. In practice, this conference should be in letter form served both by certified mail and by regular mail.

6. The burden to secure a hearing on a discovery disputes is on the party seeking the discovery. TEX. R. CIV. P. 193.4(b).

7. File a motion to compel discovery under TEX. R. CIV. P. 215.1 and request an oral hearing. (Attach the discovery requests and proof of service as exhibits. Also attach a true and correct copy of the discovery “conference” letter). I usually attach an affidavit authenticating the foregoing exhibits as well as the response date.

8. The motion to compel should be accompanied by a proposed form of order which is specific and is capable of either being specifically enforced or is specific enough to uphold a contempt order for its violation. I usually leave two blanks in the order, the first for the court to fill in a date by which the judgment debtor must comply, and the second blank for the court to set a hearing in the event that the judgment debtor does not comply.

9. The motion to compel should request an award of fees and expenses. TEX. R. CIV. P. 215.1(d).

10. The motion to compel should request that the court, in its discretion and based upon the record, impose sanctions as set forth in TEX. R. CIV. P. 215.2(b).

See also Form of Motion To Compel Responses To Post Judgment Discovery Request In Aid of Enforcement of Judgment. [Appendix, F]. [DocsOpen 3215093]

H.  Appellate Review of Post-Judgment Discovery Orders
Another issue raised by the trial court’s continuing jurisdiction under Rule 621a is whether an order rendered to aid in enforcement of judgment must be appealed or whether it is the proper subject of a petition for writ of mandamus.

Rule 621a does not provide for a direct appeal from post-judgment discovery orders. Furthermore, several courts have held that Rule 621a discovery orders are not final and appealable because they do not resolve all disputes between all parties. See Arndt v. Farris, 633 S.W.2d 497, 500 n. 5 (Tex.1982), citing Parks v. Huffington, 616 S.W.2d 641, 645 (Tex. Civ. App.–Houston [14th Dist.] 1981, writ ref’d n.r.e.); and Fisher v. P.M. Clinton International Investigations, 81 S.W.3d 484 (Tex. App.–Houston [1st Dist.] 2002) (holding “[t]rial-court orders that grant or deny post-judgment discovery requests are not appealable until a final judgment is rendered that disposes of all issues between the parties.”).

However, in In re Amaya, 34 S.W.3d 354, 358-359 (Tex. App.–Waco 2001, orig. proceeding), the court held that a party may seek review of post-judgment discovery orders by mandamus where appropriate.

V. POST-JUDGMENT RELIEF UNDER THE DTPA

Assuming a judgment creditor has made good faith attempts to obtain satisfaction of a judgment entered under the DECEPTIVE TRADE PRACTICES ACT, Section 17.59 of the TEXAS BUSINESS & COMMERCE CODE provides certain statutory presumptions against a judgment debtor, and in favor of receivership, in the event that the judgment remains unsatisfied thirty
days after it becomes final. Specifically, the following presumptions exist with respect to the judgment debtor:

1. the judgment debtor is insolvent or in danger of becoming insolvent;
2. the judgment debtor’s property is in danger of being lost, removed, or otherwise exempted from collection on the judgment;
3. the judgment creditor will be materially injured unless a receiver is appointed over the judgment debtor’s business; and
4. the judgment creditor has no other adequate remedy other than receivership.

In the event that the judgment has remained unsatisfied and the judgment creditor has made good faith attempts to obtain satisfaction, the judgment creditor may move that the judgment debtor show cause why a receiver should not be appointed. Upon adequate notice and hearing, the statute mandates the appointment of a receiver unless the judgment debtor proves that all of the presumptions set forth above are inapplicable.

However, the order appointing a receiver must clearly state whether the receiver has the general power to manage and operate the judgment debtor’s business or have the power

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6 Id.
7 Id. at § 17.59(b).
8 Id.; see also Dudley v. E.W. Hable & Sons, Inc., 683 S.W.2d 102 (Tex. App. – Tyler 1984, no writ) (Plaintiff, who had obtained judgment against defendant in action brought under Deceptive Trade Practices Act, was entitled to an appointment of a receiver where defendant testified that he did not make any payments on judgment, and defendant was not insolvent or in danger of becoming insolvent and plaintiff testified good faith attempts had been made to satisfy judgment, and attempts to execute on judgment had been unsuccessful).
to manage only the judgment debtor’s finances.\(^9\) Further, receivership is limited in duration to such time as the judgment is satisfied.\(^10\)

**VI. THE INTERNET AS A POST-JUDGMENT DISCOVERY TOOL**

The Internet has truly revolutionized post-judgment discovery practice because it has placed full search and investigative capabilities into the hands of anyone with a computer and Internet access. Although there are many articles which extensively list the various publicly-available database websites, I have found that [www.craigball.com/links.html](http://www.craigball.com/links.html) is one of the most useful places to begin any post-judgment investigation. Additionally, attorney Howard Nations has a similar website at [www.howardnations.com/nlili/html](http://www.howardnations.com/nlili/html) known as Nations’ Legal Links.

As a general rule, it is usually better to do an extensive investigation of the judgment debtor on the Internet prior to issuing written post-judgment discovery or taking a post-judgment deposition. The information gained on the Internet can then be used both to narrow the focus of discovery and to verify the responses to discovery questions.

**A. General Overview**

AnyWho:  [www.anywho.com](http://www.anywho.com)

Yahoo:  [www.yahoo.com](http://www.yahoo.com)

Craig Ball:  [www.craigball.com/links.html](http://www.craigball.com/links.html)


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\(^10\) *Id.*
MapQuest: www.mapquest.com

ZIP Code Locator: www.usps.gov

B. Federal

Federal Bureau of Investigation: www.fbi.gov


Hoovers: www.hoovers.com

Social Security Death Indexes:
www.ancestry.com/search/rectype/vital/ssdi/

C. Texas State

Texas Secretary of State: www.sos.state.tx.us

Texas Department of Public Safety: www.txdps.state.tx.us

List of all counties in Texas: www.state.tx.us/county/counties.html

Comptroller of Public Accounts: http://ecpa.cpa.state.tx.us/coa/Index.html

D. Texas Counties

Texas County Appraisal Districts
www.txcountydata.com/selectCounty.asp

Harris County DBA (Assumed Name) Filings:
http://63.101.65.71/CoolICE/AssumeNames/an_inquiry

Harris County Appraisal District: www.hcad.org

Harris County Voting Records: www.tax.co.harris.tx.us/voters.htm/

E. Texas Newspapers

Houston Chronicle www.houstonchronicle.com
VII. PROFESSIONALISM IN POST-JUDGMENT PRACTICE (ETHICS)

A. Introduction

Although obtaining a judgment in your client’s favor is the goal of most attorneys involved in litigation, the entry of judgment is often not the end of the litigation process. In rare circumstances, the judgment debtor will simply satisfy the judgment through payment of the full amount of the judgment or by payment of a negotiated settlement of the judgment
amount. In most cases, however, the judgment debtor will resist enforcement of the judgment and/or will appeal the judgment.

During the post-judgment phase of the litigation process, attorneys for both the judgment creditor and the judgment debtor must be mindful of the ethical duties and obligations which continue to govern their relationships and their communications. Although the application of the so-called “anti-contact” rule, which prohibits contact between an attorney and another person who is represented by counsel, is usually rather obvious during the pre-trial and trial stages of the lawsuit, the application of the “anti-contact” rule and the ethical considerations arising from the rule are frequently less clear in the post-judgment and collection phase of the proceedings.

This lack of clarity provides several traps for the unwary attorney of the judgment creditor who, while attempting to aggressively pursue collection of the judgment, may inadvertently run afoul of the “anti-contact” rule. Similarly, an attorney for the judgment debtor may have to take affirmative action to clarify whether or not his representation of the judgment debtor has concluded with the entry of a final judgment.

In many cases, a defendant’s trial counsel will no longer represent the defendant after entry of the judgment, either because no appeal is being taken or because a new attorney is representing the defendant, now the judgment debtor, on appeal. Accordingly, during post-judgment discovery and collection proceedings in the trial court, questions may arise regarding whether or not the judgment debtor is still represented by trial counsel, whether the judgment debtor’s appellate attorney is also representing the judgment debtor in ongoing
collection proceedings in the trial court, and to whom counsel for the judgment creditor should direct written or oral communications and service of post-judgment discovery and pleadings. Improperly serving post-judgment discovery and pleadings upon the wrong person or wrong attorney may result in expensive delays, may give rise to unenforceable orders compelling discovery responses due to lack of proper notice, and, in some circumstances, may even result in inadvertent violations of the “anti-contact” rule. A violation of the anti-contact rule may have results ranging from disqualification of the communicating attorney from further representation in the proceeding, or, in the worst case, disciplinary action against the communicating attorney.

The focus of this article is the ethical rules and considerations which arise in the post-judgment phase of litigation and how counsel for both the judgment creditor and the judgment debtor may effectively deal with these issues in an ethical and professional manner. Although the Texas Rules of Civil Procedure provide little guidance for counsel in the post-judgment phase, the Texas Supreme Court has recently written on the anti-contact rule and has provided practical steps for the communicating attorney who is attempting to collect on the judgment while navigating the ethical issues presented by the anti-contact rule. The Court’s guidance, although helpful, stops short of applying bright line rules for the practitioner who is faced with an issue under the anti-contact rule in the pre-judgment or post-judgment setting. However, an analysis of the applicable rules, taken in concert with the Court’s recent pronouncements on this issue, provides attorneys with a practical and sensible
set of guiding principles and strategies for effectively dealing with these issues in a professional manner.

B. The Texas “Anti-Contact” Rule

The Texas “anti-contact” rule provides that “[i]n representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.”\textsuperscript{11} The Texas anti-contact rule is similar to the \textsc{American Bar Association’s Model Rule of Professional Conduct, Rule 4.2} which provides that “[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.”\textsuperscript{12}

The purpose of the anti-contact rule is “to preserve the integrity of the client-lawyer relationship by protecting the represented party from the superior knowledge and skill of the opposing lawyer.”\textsuperscript{13} Accordingly, the Texas anti-contact is designed to require “the consent of the other lawyer,” as opposed to the consent of the represented party, prior to direct communications with the party taking place. As explained by the \textsc{ABA Commission on Professional Ethics}:


\textsuperscript{12} \textsc{Model Rules of Prof’l Conduct R. 4.2} (2002).

ETHICS AND PROFESSIONAL RESPONSIBILITY, “because the prohibition is designed, in part, to protect the effectiveness of the lawyer’s representation, the represented person may not waive it.” The obvious concern is that if the attorney for one party was allowed to communicate directly with the opposing party and obtain a waiver of the anti-contact rule, the communicating attorney may assert undue influence over the party to his detriment, could undermine or eviscerate the attorney-client and work product privileges which protect that party, and could essentially circumvent the opposing party’s ability and right to protect himself from his own naivety through employment of counsel.

Due to the concerns addressed above, violation of the anti-contact rule may result in various degrees of sanctions including disqualification of the communicating attorney from further representation in the matter, or disciplinary action including suspension of the attorney’s license or even disbarment. Although disbarment would occur in only the most egregious circumstances, the lesser sanction of disqualification could be used by the judgment debtor as a tool to increase the costs associated with enforcement of the judgment and/or to generally complicate and delay collection and enforcement of the judgment.

C. The Identity of Trial Counsel Is Designated In the Court’s File

The issue of whether or not a party is represented by counsel during the pre-trial and trial phase of litigation is rarely problematic because each party’s respective attorney of record, or alternatively a pro se designation, is reflected in the court’s file. Additionally,


15 In re News America Publishing, Inc., 974 S.W.2d at 102, citing United States v. Lopez, 4 F.3d 1455, 1459 (9th Cir. 1993) and other cases.
because both the designation of lead counsel and the withdrawal of lead counsel during the pre-trial and trial phases of litigation are governed specifically by the Texas Rules of Civil Procedure, there is rarely a question as to whether or not the opposing party in a lawsuit is represented by counsel and which counsel is designated as the “attorney in charge” for purposes of properly serving pleadings and discovery upon the opposing party.

As a general rule, the Texas Rules of Civil Procedure provide that any party to a suit may appear and prosecute or defend his rights therein either in person or through an attorney. The notable exception to this general rule is that, in Texas, an incorporated entity such as a corporation or limited liability company must be represented before the court by a licensed attorney. The Texas Rules provide that the attorney whose signature first appears on the initial pleadings for any party is designated as the “attorney in charge” for that party and all communications from the court or other counsel with respect to that lawsuit must be sent to the designated attorney in charge. Similarly, where an individual party chooses to make his appearance in the lawsuit pro se, all communications from the court or other counsel must be sent to the pro se party at the party’s address for service as listed in the

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party’s initial pleading on file with the court. Accordingly, in order to determine where to serve discovery requests and pleadings during the pre-trial and trial phases of the lawsuit, the serving attorney may consult and rely upon the information in the court’s litigation file.

Once a party to the lawsuit has made an appearance through its attorney in charge, the Rules provide that the attorney may only withdraw from representing that party upon written motion to the court for good cause shown.\(^{20}\) In fact, even though a client may discharge his attorney at any time with or without cause,\(^{21}\) the discharged attorney must still seek and obtain court approval of the withdrawal by satisfying the requirements of TEX. R. CIV. P. 10 and by obtaining a court order approving the withdrawal.\(^{22}\) Furthermore, if the attorney in charge is allowed to withdraw or another attorney is substituted as attorney in charge in his place, the Rules require that the substituting attorney be designated as attorney in charge or a pro se designation must be filed and notice must be given to all parties in accordance with TEX. R. CIV. P. 21a.\(^{23}\) Accordingly, unless and until the court formally enters an order allowing an attorney to withdraw as attorney in charge and proper notice is served to all parties in the lawsuit, all other counsel in the lawsuit must continue to serve pleadings on the designated attorney in charge and they are prohibited from communicating directly with the other party.\(^{24}\)

\(^{20}\) TEX. R. CIV. P. 10 (West 2003).

\(^{21}\) TEX. DISCIPLINARY RULES PROF’L CONDUCT 1.15 cmt. 4 (“A client has the power to discharge a lawyer at any time, with or without cause . . .”), cited with approval in In re Users System Services, Inc. 22 S.W.3d 331, 335 fn. 14 (Tex. 1999).

\(^{22}\) Rogers v. Clinton, 794 S.W.2d 9, 10 n.1 (Tex. 1990).

\(^{23}\) TEX. R. CIV. P. 10 (West 2003).

\(^{24}\) In re News America Publishing, Inc., 974 S.W.2d at 104.
This general prohibition against direct contact with the opposing party during litigation applies even where the opposing party who has discharged his attorney initiates, or attempts to initiate, direct contact with other attorneys in the case prior to entry of a court order approving the withdrawal or confirming for the discharged attorney that his representation has been terminated.\textsuperscript{25} However, because the Texas Supreme Court recognized certain exceptions may arise, the Court recently held that although obtaining actual confirmation and consent from the discharged attorney is a “sensible course,” it is not a prerequisite to direct communication in every instance.\textsuperscript{26}

D. The Existence and Identity of Post-judgment Counsel Should Be Confirmed or Verified Prior to Direct Communications with the Judgment Debtor

Despite the specific rules regarding designation of the attorney in charge during the trial phase of litigation, the Rules provide very little guidance or direction regarding the application of the anti-contact rule during the period of time after a final judgment is signed. This lack of clarity is complicated by the fact that many attorney engagements provide for representation only through entry of final judgment. Furthermore, entry of a judgment against the defendant may also have an adverse or chilling effect on the ongoing relationship between the defendant, now judgment debtor, and his trial counsel.

Once a final judgment is entered in the litigation, the trial court loses plenary power upon the expiration of thirty days after the date the judgment is signed.\textsuperscript{27} Thus, when no

\textsuperscript{25} Id.

\textsuperscript{26} In re Users Services, Inc., 22 S.W.3d 331, 336 (Tex. 1999).

\textsuperscript{27} TEX. R. CIV. P. 329b(d) (West 2003).
appeal is filed, the trial counsel for the judgment debtor may effectively take the position that he or she no longer represents the judgment debtor because there is no longer a “live” lawsuit and no motion to withdraw is required to terminate the representation. In practice, the trial counsel for the judgment debtor will usually take this position when he is served with post-judgment discovery requests, but is unable to communicate with the judgment debtor or is unable to timely secure the judgment debtor’s responses to the discovery requests.

However, although the trial court loses plenary jurisdiction to alter or amend the judgment after thirty days, the Texas post-judgment discovery rule provides that post-judgment discovery and certain proceedings in aid of enforcement of the judgment may be filed in the same trial court and under the same cause number in which the judgment was rendered.\textsuperscript{28} Texas courts construing the post-judgment discovery rule have specifically held that the trial court has limited, yet continuing, jurisdiction over post-judgment discovery in aid of enforcement of the judgment.\textsuperscript{29} This continuing jurisdiction for post-judgment discovery matters, however, does not necessarily mean that trial counsel for the judgment debtor remains as trial counsel after entry of the judgment.

The questions that often arise in this instance, include: To whom should the post-judgment discovery be served when the judgment debtor’s trial counsel claims that his representation has ended, but the judgment debtor requests or demands no direct contact and instructs the judgment creditor to serve his trial counsel? To whom should post-judgment discovery

\begin{footnotesize}
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\item \textsuperscript{28}\textit{Tex. R. Civ. P. 621a} (West 2003).
\item \textsuperscript{29} \textit{Arndt v. Farris}, 633 S.W.2d 497, 499 (Tex. 1982); \textit{Metzger v. Casseb}, 839 S.W.2d 160, 161 (Tex. App.–Houston [1st Dist.] 1992, orig. proceeding).
\end{itemize}
\end{footnotesize}
discovery be served when the judgment debtor’s appellate counsel claims to have a limited scope of representation with respect to only the appellate proceedings? If the post-judgment discovery requests are ignored by the trial counsel because he claims that he no longer represents the judgment debtor, what confirmation is required by counsel for the judgment creditor prior to serving the post-judgment discovery directly upon the judgment debtor? When no discovery responses or other communications are ever received from either the judgment debtor or his trial counsel (as is most often the case in my experience), how does counsel for the judgment creditor obtain the “consent of the other lawyer” as required by the anti-contact rule prior to directly serving the request upon the judgment debtor?

Counsel for the judgment creditor who proceeds to directly communicate with the judgment debtor without resolving these questions runs several risks including obtaining an order compelling post-judgment discovery responses which is later held to be unenforceable due to improper notice. Another risk is a finding that the communicating attorney has violated the anti-contact rule. Finally, even where the attorney directly communicates with the judgment debtor with the proper consent or waiver, the communicating attorney must be cognizant of the heightened and additional duties imposed upon an attorney when dealing with an unrepresented person. RULE 4.03 of the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT—Dealing With Unrepresented Person—provides that

[i]n dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.
When the heightened obligations of RULE 4.03 are injected into the stressful new relationship between counsel for the judgment creditor and the judgment debtor who is attempting to fend off collections attempts, the situation is ripe for allegations of improper conduct against the communicating attorneys. Accordingly, RULE 4.03 provides additional traps even where the communicating attorney has obtained the proper consent or waiver required by the anti-contact rule.

Until very recently, there was very little formal guidance with respect to the foregoing questions, whether in the TEXAS RULES OF CIVIL PROCEDURE, the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT, or case law construing and applying those rules. However, several courts have recently addressed these issues and have attempted to provide practical guidance to counsel faced with these important questions. As set forth below, the Texas Supreme Court fell short of promulgating bright line rules in this regard and instead wrote in terms of a “sensible course” of action, providing various “practical” guidelines to follow when initiating direct contact.30

E. Texas Courts Provide Some Practical Guidance Regarding the Anti-Contact Rule

In two fairly recent opinions related to the same trial proceeding, the San Antonio Court of Appeals and the Texas Supreme Court discussed the anti-contact rule and the potential ramifications of violating the anti-contact rule. Although the opinions involved

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30 In re Users System Services, Inc., 22 S.W.3d at 335-337.
proceedings prior to judgment, the analysis and practical advice provided by the Texas Supreme Court is both applicable and helpful during the post-judgment phase of litigation.

In *In re News America Publishing, Inc.*, Donald Ray Frazier, one of several codefendants who were represented by the same defense counsel, Mark Cannan, held a private meeting with the plaintiff and plaintiff’s counsel in which Frazier both communicated information to the plaintiff’s counsel and obtained a nonsuit of the plaintiff’s claims against him. The meeting occurred after direct telephone communications between the plaintiff and Frazier, which culminated in Frazier sending a letter directly to plaintiff’s counsel stating:

*Dear Ms. Gulde [plaintiff’s counsel]:*

>This is to inform you that I desire to meet with you today to discuss the above-referenced lawsuit without assistance of counsel. Prior to meeting with you, I decided to terminate my representation by Mark Cannan [Frazier and codefendants’ counsel]. Therefore, I hereby state that I am no longer represented by any attorney in this matter, and I do not desire to be represented by counsel in connection with my discussions with you, Ron Landreth [plaintiff], and any of the attorneys for Plaintiffs in this case.

>Sincerely,

>s/ Donald Ray Frazier

The evidence was undisputed that Frazier did not inform his attorney Mark Cannan of the “discharge” before, or even after, the meeting. It was also undisputed that neither the plaintiff nor plaintiff’s counsel ever contacted Mark Cannan, who officed in the same building as plaintiff’s counsel, to inquire regarding Mr. Cannan’s apparent discharge. In fact, Cannan and the other defendants were not aware of Frazier’s actions until months later.

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32 *In re News America Publishing, Inc.*, 974 S.W.2d at 99.
when the meeting was disclosed during the plaintiff’s deposition and when the plaintiff subsequently designated Frazier as the plaintiff’s own expert witness in the case.\textsuperscript{33}

In response to the foregoing events, the defendants moved to disqualify plaintiff’s counsel, alleging that he had violated the anti-contact rule by meeting directly with Frazier without seeking or obtaining the consent of Mark Cannan under the anti-contact rule and while Cannan was still attorney in charge for Frazier as reflected in the court’s file under TEX. R. CIV. P. 8 and 10.\textsuperscript{34}

The trial court denied the motion to disqualify and the court of appeals issued a conditional writ of mandamus directing the trial court to enter an order of disqualification.\textsuperscript{35} However, on appeal to the Texas Supreme Court, the Court held that no violation of the anti-contact rule had occurred and that the court of appeals had, therefore, abused its discretion when it directed disqualification of plaintiff’s counsel.\textsuperscript{36} Perhaps more importantly than the Court’s ruling, however, is the practical guidance provided in the opinion regarding the anti-contact rule.

The specific question addressed by the Court in \textit{In re Users Systems Services, Inc.} was whether a communication with a person who has terminated his lawyer’s services unbeknownst to that lawyer violates RULE 4.02. Noting that the court of appeals below had failed to cite case law which would support a finding of a RULE 4.02 violation, the Court

\textsuperscript{33} \textit{Id.} at 100.
\textsuperscript{34} \textit{Id.}
\textsuperscript{35} \textit{Id.} at 105.
\textsuperscript{36} \textit{In re Users System Services, Inc.}, 22 S.W.3d 331, 336-337 (Tex. 1999).
relied heavily upon the AMERICAN BAR ASSOCIATION COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY FORMAL OPINION 95-396 which states as follows:

When contact is initiated by a person who is known to have been represented by counsel in the matter but who declares that the representation has been or will be terminated, the communicating lawyer should not proceed without reasonable assurances that the representation has in fact been terminated.37

Analyzing the reasoning and guidance set forth in the ABA OPINION, the Texas Supreme Court softened the rule substantially when it wrote that “[a]s a “practical matter,” the “sensible course” of action would be for the communicating lawyer to confirm whether in fact the representing lawyer had been effectively discharged.38 The Court noted that the communicating lawyer could request that the party provide evidence that the lawyer has been dismissed, or the communicating lawyer could contact the other lawyer to determine if he had been informed of the discharge.39

However, noting that actual confirmation is not always possible, the Court specifically held that confirmation from the withdrawn attorney in not a prerequisite to direct contact in all instances, even where the attorney has not formally withdrawn his appearance in the action.40 One example cited by the Court, is the situation where a codefendant, such as Frazier, may not wish to inform his attorney of the discharge prior to meeting with the plaintiff because his attorney would then be obligated to communicate that same information

38 In re Users System Services, Inc., 22 S.W.3d at 336
39 Id.
40 Id.
to his codefendants who would likely attempt to dissuade or deter him.\textsuperscript{41} Although this was
the only example of an exception cited by the Court, the Court refused to fashion a bright
line rule that absolutely prohibits direct contact without the prior consent of the other
lawyer.\textsuperscript{42} In doing so, the Court referred to Rule 12 of the \textit{Texas Rules of Civil
Procedure}, which prescribes a procedure requiring an attorney to show his authority to act
for a party and noted that the procedures presupposes the possibility that an attorney can be
counsel of record for a party he is not authorized to represent.\textsuperscript{43}

\textbf{F. Additional Guidance May Be Found In the Appellate Rules}

Most of the discussion above relates to the situation in which a judgment is entered,
no appeal is taken, and post-judgment discovery proceedings are commenced in the trial
court. However, in situations in which an appeal is perfected by the judgment debtor and the
judgment debtor does not supercede enforcement of the judgment, the \textit{Texas Rules of
Appellate Procedure} provide additional guidance in applying the anti-contact rule. This
guidance may also be helpful when applied to cases in which no appeal has been filed.

Similar to \textit{Tex. R. Civ. P. 8} in the trial court, the identity of lead counsel in the
appellate proceeding is governed by the \textit{Tex. R. App. P. 6}. Rule 6 states that unless another
attorney is designated in the notice of appeal, the attorney whose signature first appears on
the notice of appeal will automatically be designated as the “lead attorney” for appellant in

\textsuperscript{41} \textit{Id.} at 335.
\textsuperscript{42} \textit{Id.} at 335-336.
\textsuperscript{43} \textit{Id.} at 335, citing \textit{Tex. R. Civ. P. 12} (West 2003).
Furthermore, the appellate rules require that the appellate court and appellees serve all appellate documents and communications upon both the party’s lead counsel on appeal and upon the party’s attorney in charge in the trial court if: (1) the party was represented by counsel in the trial court; (2) lead counsel on appeal has not been designated; and (3) the attorney in charge in the trial court has not filed a nonrepresentation notice or been allowed to withdraw. The appellate rules also provide that an attorney in charge in the trial court may file a “nonrepresentation notice” in the appellate court in the event that he does not wish to receive copies of the appellate pleadings, notices and communications.

Although the appellate rules refer to the filing of a nonrepresentation notice by trial counsel in the appellate court, a similar filing may also be useful if filed in the trial court. For example, where an attorney for a judgment debtor wishes to terminate his representation after entry of judgment, it may be prudent to file a “nonrepresentation notice” in the trial court in the event that post-judgment proceedings are commenced there. This filing would arguably provide the “consent” required by the anti-contact rule. Additionally, the filing could also provide address and service information for the pro se judgment debtor and/or his new appellate counsel where applicable.

G. Conclusion

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When faced with an issue under the anti-contact rule, the first course of action should be to review the requirements of the applicable TEXAS RULES OF CIVIL PROCEDURE and the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT. Second, counsel should make a complete review of the court’s litigation file to determine the identity of all counsel of record and the correct services addresses. Although a telephone call to the court may be helpful in this regard, there is no substitute for an actual in-person review and inspection of the court’s file. Third, counsel should take the practical and sensible course of attempting to communicate with the lead counsel of record to determine the status of the representation of the judgment debtor. It is apparent from the authorities cited that attempts to obtain direct communication without obtaining “reasonable assurances” that the attorney has been discharged can give rise to disqualification or even disciplinary proceedings. Finally, counsel should act in a reasonable and sensible manner based upon the court’s record and should keep a good personal record of the various pieces of information relied upon when identifying counsel for service or obtaining consent for direct communication, waiver by the nonrepresented party, and similar information. The professional application of these general guidelines should allow counsel to achieve a worry-free and successful collection of the judgment.
VIII. Appendix of Forms

A. Form of Request For Abstract of Judgment [DocsOpen 3450444].
B. Form of Filling Letter for Abstract of Judgment. [DocsOpen 3749795].
C. Form of Notice of Deposition In Aid of Enforcement of Judgment and Request for Production of Documents. [DocsOpen 3115108]
D. Form of Post-Judgment Interrogatories In Aid of Enforcement of Judgment. [DocsOpen 3115117]
E. Form of Request For Production of Documents In Aid of Enforcement of Judgment. [DocsOpen 33215067]
F. Form of Motion To Compel Responses To Post Judgment Discovery Request In Aid of Enforcement of Judgment. [DocsOpen 3215093]

G.

IX. Curriculum Vitae of the Authors

Curt M. Langley [DocsOpen 2600213]
C. Larry Carbo [_________________]