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Supplementary Proceedings: A Dynamic Collection Tool

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The post judgment remedy of supplementary proceedings consists of the judgment creditor's right to obtain a court order (after judgment has been rendered) for the debtor's appearance and examination under oath, or the debtor principals if the debtor is an organization, to extract information on the identity, location, value, etc., of assets and income of the debtor. In essence, it gives the creditor a basis to determine whether the debtor has assets for the creditor to effect collection of the judgment.

The requirements and procedures for the remedy of supplementary proceedings vary considerably from state to state and are set forth by statute in the respective states involved. In some states, before this remedy can be activated, the judgment creditor must first attempt to obtain payment of the judgment through the proceedings of execution by the sheriff, including possible levy on the debtor's assets. In many states it is no longer necessary to first exhaust the remedy of sheriff's execution.

The Strength of the Remedy

An experienced and resourceful creditor's attorney can often work miracles through the use of the remedy of supplementary proceedings. Often, depending on the jurisdiction and the facts, it is possible to obtain the appointment of a receiver in supplementary proceedings to marshal and liquidate debtor business assets and personal nonexempt assets in order to obtain payment on the judgment balance.

At the hearing on supplementary proceedings, creditor's attorney is able to obtain information regarding debtor assets, locations and identity of banks used, both presently and during the recent past, through not only the examination of the debtor but also the examination of the debtor's financial records, including federal and state income tax returns. Our firm has often successfully "uncovered" hidden assets through evidence detected in the debtor tax returns, such as rental income from debtor's undisclosed vacation home and dividends earned on undisclosed common stock holdings. Forcing Cooperation

If a debtor fails to appear at a supplementary proceedings hearing after being properly served an order, he can generally be cited for contempt of court. By ignoring the contempt order, it is often possible to obtain a civil "body attachment" ordering the sheriff to physically apprehend the debtor. In the past, judgment debtors of our clients have been held overnight at the county jail until they

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can face the circuit judge the next day on the contempt charges and be ordered to submit to our questions on the spot.

In most states providing for supplementary proceedings, it is also possible to subpoena a third party, such as the debtor's bank or other secured creditor, or to an organization that owes money to the debtor, to obtain proof, documentation, etc., that will open the door to garnishment or liquidation proceedings against the assets of the debtor held by or owed by the third party. At the least, a debtor is likely to go to great lengths (and sometimes payment) to stop a process by which his banker is summoned, particularly where the debtor is in financial difficulty and is attempting to preserve or repair his relationship with his bank.

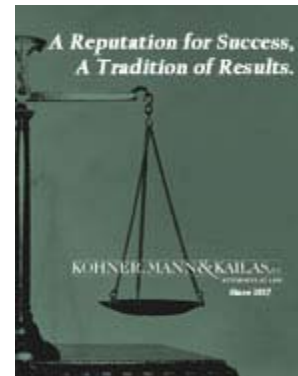
If the debtor refuses to divulge the source of his current income, other third-party witnesses who would have relevant information can be ordered to appear, including relatives or business associates. The interest of the creditor's attorney is to touch that sensitive nerve of the debtor that will discover assets and unlock the debtor's purse strings.

Where we are investigating apparent fraudulent transfers or activities and payments that would support the creditor's attack on the basis of "a successor business interest liability", or for the purposes of piercing the debtor's corporate veil, a written or taped record of the debtor's testimony is necessary as a deterrence to perjury.

Upon discovery of assets, the creditor then has the choice of the other remedies available, including garnishment of bank account balances, a sheriff's sale of assets or in some states the appointment of a receiver to liquidate assets.

The Collection Attack

Sometimes different post judgment remedies can be combined to create an extremely powerful collection attack. When the debtor is examined in supplementary proceedings and reveals the location of a bank account, the debtor can be served then and thereon the spot with garnishment process in order to protect against the transfer of assets by the debtor. Alternatively, the judge presiding over the examination of the debtor can, upon the motion of the creditor's attorney, order the immediate turnover of such funds under pain of contempt of court. We occasionally obtain significant cash from the debtor's wallet at these proceedings it is not uncommon for the debtor, upon our insistence and order of the presiding officer, to pull out a wallet and display substantial sums of cash, which may be turned over on the spot to pay for or apply against the outstanding judgment.



The use of a receiver in supplementary proceedings can afford the creditor maximum flexibility and speed in conducting collection litigation against third parties who possess or claim assets of the debtor, and in expeditiously liquidating assets. For instance, the creditor can bypass the often cumbersome execution and the sheriff's sale or real estate, which is a process that may take more than one year to complete. The receiver appointed at the supplementary hearing just moves forward and immediately arranges for the sale, or listing with a real-estate broker for sale, of the debtors real-estate interests.

Ordinarily, the creditor who starts supplementary proceedings is first in line against the debtor's assets, resulting in the creditor's judgment being paid in full with costs, interest, etc., before any other creditors judgment is paid out.

In many states once the lien of the supplementary proceedings is created by the appropriate legal procedures the lien will ordinarily be higher in priority than the interest of the bankruptcy trustee or other general liquidating receiver. The lien, will in fact, defeat the interests of a bankruptcy trustee if properly and legally created and reasonably enforced and if the effective date of the lien is outside the 90-day preference payment period under the US Bankruptcy Code.



Once commenced against a debtor supplementary proceedings can be kept pending during the time that the debtor makes payments to satisfy and liquidate the judgment. This usually affords protection to the creditor in the supplementary proceedings against seizure and sale of the debtor's assets by other judgment creditors.

Thus, though the post judgment remedy of supplementary proceedings appears to be a rather limited and self-contained procedure for obtaining information, it offers the experienced creditors' attorney an exceedingly powerful and wide range of collection tools to effect collection for the creditor limited only by the attorney's intellect and imagination. The vital, recurrent theme is that *it is the creditor who acts quickly, and with experienced, aggressive counsel, who will collect the most.*

About KMK Collections

KMK Collections is a division of **Kohner, Mann & Kailas, S.C.**, a law firm founded in 1937 as a result of a conviction that businesses deserved more aggressive and cost-effective advocacy for their interests and contractual rights. Over 70 years as leaders in debt liquidation and commercial law, Kohner, Mann & Kailas, S.C. and KMK Collections have earned an industry-wide reputation. Each year we handle many thousands of commercial contract and collection matters for the liquidation of commercial debt and recovery of goods and services provided, delivering the consistently exemplary results that our American and international clientele has come to rely upon and expect of us. **Kohner, Mann & Kailas, S.C.**, is a business law firm listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers that provides exemplary legal service in all areas of law encountered by businesses in the normal course of their operations and growth.