

## Handout 1: Contest of a Statement of Inability to Afford Payment of Court Costs

COMMON  
PITFALL**b. When a Statement of Inability May Not be Contested**

A Statement of Inability to Afford Payment of Court Costs **accompanied by a legal-aid provider certificate may not be contested.**

The certificate is provided by an attorney and it confirms that the legal-aid provider screened the person for eligibility under the income and asset guidelines established by the provider. The attorney must be providing free legal services because of the person's indigence, and without a contingent fee arrangement, either directly or by referral from a legal aid provider. *Rule 502.3(c).*

*When the Statement  
May Not be Contested*

A Statement of Inability may not be contested when it is accompanied by a legal-aid provider certificate. The person has already been screened for eligibility by the legal-aid provider and an attorney is representing the person without compensation (pro bono).

KEY  
POINT**c. When a Statement May be Contested**

If a legal-aid provider certificate is **NOT** filed, then the defendant may file a contest of a Statement filed with the petition. The contest must be filed **within seven days after the day the defendant's answer is due.** *Rule 502.3(d).*

**Limit on what may be contested:**

If the Statement says the plaintiff receives a government entitlement based on indigence, then the only challenge that can be made is to whether or not that is true – in other words, is the person actually receiving the government entitlement. *Rule 502.3(d).*

**Hearing:**

The judge must hold a hearing on the contest to determine the plaintiff's ability to afford the fees, and the burden is on the plaintiff to prove such inability. **The judge may conduct a hearing on their own even if the defendant does not contest the Statement.** *Rule 502.3(d).*

**If the judge determines that the plaintiff can afford the fees:**

If the judge determines that the plaintiff is able to afford the filing and service fees, the judge must enter a written order listing the reasons for that determination. The plaintiff must then pay the fees in the time specified in the order or the case will be **dismissed without prejudice** (meaning the plaintiff is not barred from filing the suit again). *Rule 502.3(d).*

KEY  
POINT

Cause No. JP02-16-DC00002993

Whitewind, LLC  
Plaintiff

v.

Brandy Daniels aka Brandy Renc Daniels  
Defendant\* In The Justice Court  
\*  
\*  
\* Precinct 2 Place 1  
\*  
\*  
\* Tarrant County, Texas**ORDER GRANTING APPLICATION FOR TURNOVER FOR COLLECTION OF JUDGMENT AND APPOINTING OF A RECEIVER**

On this day, the Court considered the Application of Whitewind, LLC, Plaintiff and judgment creditor, for the issuance of an order for the collection of judgment by court proceedings pursuant to Sec. 31.002, Tex.Civ.Prac. & Rem. Code (the "Statute"), and for appointment of a Receiver, against Brandy Daniels aka Brandy Rene Daniels, Defendant and Judgment Debtor. After consideration of the Application, the supporting evidence attached, taking judicial notice of the judgment and all postjudgment filings, the Court finds it has subject matter jurisdiction. Defendant was duly served with citation according to law but has failed to appear and wholly defaulted. This Court has personal jurisdiction to enter this judgment. This Court rules as follows:

1. IT IS ORDERED that the Application for Turnover and for Appointment of a Receiver be, and is hereby granted.

2. IT IS ORDERED that Robert Jenkins, 13904 Josey Ln #815928, Dallas, TX 75381, 214-220-2022, be, and is hereby, appointed Receiver until the judgment in Cause No. JP02-16-DC00002993 in the Justice Precinct 2 Place 1 of Tarrant County, Texas and until all attorney fees, expenses and costs of the court awarded in this Judgment, are paid. Receiver is in all ways qualified to act as Receiver herein and is not disqualified in any way, and that the Receiver is not required to post a bond in this post judgment matter.

**Powers of the Receiver**

3. IT IS ORDERED : The Receiver has the authority to take possession, *in custodia legis*, immediately, the property of the Judgment Debtor which is subject to collection under the Statute, and not exempt therefrom, including but is not limited to, all right, title, interest and documents of ownership to the following property:

All cash money on hand; all money in any checking and savings account held in Judgment Debtor's name individually or held jointly with another person; all debts payable and notes payable to Defendant; all rents payable to Defendant; all legal rights, licenses contract rights and powers; all causes of action and legal claims, including without limit any counterclaims and the personal injury action; all judgments payable to Defendant and the funds received from the payment of any judgment in favor of Defendant; all account receivables payable to Defendant; all stock and stock certificates; all membership interests, all business interests, all partnership interests; all titles and deeds to non-exempt, real and personal property; all leases (including without limitation any personal property leases or hunting leases) all bonds with any bonding agency or insurance company; all money in the registry of any court or on deposit with any government entity; all inheritances and all trust payments; all beneficial interests, all mineral rights; all deposits held by a third party and all prepaid money; all income and funds from all of the above property; all checks on hand payable to the order of Defendant, all future interests in any of the foregoing types of property, and all records concerning the foregoing property, hereafter referred to as the "Property".

4. IT IS ORDERED that the Receiver is hereby granted all the power and authority to take possession of all non-exempt Property that is in, or later comes into, the actual or constructive possession or control of Judgment Debtor, and to use whatever means in the reasonable judgment of the Receiver is necessary to enforce the Court's

Turnover Receivership - Daniels , Brandy CN2

judgment and orders in this case.

**Access to Property.** The Receiver is authorized by this Order to take all action reasonable and necessary, to gain access to real Property, leased premises, storage facilities, mail, and safety deposit boxes, in which Property of any Judgment Debtor may be situated, whether owned by a Judgment Debtor or not.

**No interference.** Any person with notice of this Order is ordered not to interfere with any Property belonging to the Judgment Debtor or Property that is in the control of the Receiver or that is subject to this Order. Any person with notice of this Order is ordered not to interfere with the Receiver in the carrying out of the Receiver's duties.

**Storage.** The Receiver is authorized by this Order to take control of Property in place that belongs to the Judgment Debtor or to place the Property into storage;

**Insurance.** The Receiver is authorized, but not required, to Insure Property taken into his possession.

**Moving.** The Receiver is authorized by this Order to Hire assistants to move Property belonging to the Judgment Debtor or aid the Receiver in taking possession, custody and control of the Property.

**Receiver has the sole power over Property.** Every Judgment Debtor is prohibited from re-letting, selling, assigning or changing the ownership identification of the domain name or modifying or amending any lease agreement or any other agreement effecting the domain name without the prior written consent of the Receiver.

**Collecting payments due Judgment Debtors.** The Receiver has the power by this Order to re-direct and to collect all payments due to any Judgment Debtor.

**Credit bureau.** The Receiver has the authority to obtain and use Judgment Debtor's credit reports.

**Receiver has no duty to protect any Judgment Debtor or asset.** Nothing in this Order requires Receiver to protect Judgment Debtor or Property from loss or anything else.

**IT IS ORDERED** that this Order applies to Defendant under Defendant's name and any variations of Defendant's name.

#### **Duties of Third Party Recipients of this Order**

5. **IT IS ORDERED** that all utility providers, including without limit, all telephone, water, electric, gas, cable, internet, or satellite television services (such as Time Warner, Satellite TV, Direct TV, EV1), shall provide to the Receiver all information that is requested by the Receiver and known to the utility provider.

6. **IT IS ORDERED** that all financial institutions shall provide to the Receiver all information that is requested by the Receiver and known to the financial institution, including without limit, the existence and location of a Judgment Debtor's whereabouts, bank accounts, loan, and credit card information.

This Order specifically serves as the court order required by 47 U.S.C. § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

7. **IT IS ORDERED** that upon service of a certified copy of the Order of Receivership in the manner specified by Section 59.008, Finance Code, Property held by a financial institution in the name of or on behalf of the Judgment Debtor as customer of the financial institution, shall be turnover forthwith to the Receiver.

8. **Law Officers to assist.** **IT IS ORDERED** that every security officer, constable, deputy constable, sheriff, deputy sheriff, or any other peace officer with notice of this Order is authorized to accompany the Receiver to any location designated by the Receiver where Receiver believes Property or documents of a Judgment Debtor may be located, without the necessity of a writ of execution's having been issued, and is ordered to prevent any person from interfering with the Receiver (or any person under the direction of the Receiver) from carrying out any duty under this Order or interfering with any Property in control of the Receiver, or any Property subject to this order. The Receiver is authorized by this Order to direct any sheriff or constable to seize and sell Property under writ of execution or assist to the Receiver under a writ of turnover.

The Receiver shall have and exercise the fullest and broadest powers, including, but not limited to:

**Production and turnover.** Ordering the production of any and all documents upon the matters the Receiver

deems necessary to effectuate this Order; and

Examinations and Testimony. Scheduling status conferences, hearings and meetings and directing parties and witnesses to give testimony at such hearings and meetings.

#### Further Orders

9. Turnover of all Property, present and future. Duty to supplement. Every Judgment Debtor or party with knowledge of this Order is hereby ordered to turn over all of the listed items, and all similar items. All portions of this Order continue until the Judgment is paid. The duties to disclose, supplement, turnover, etc., continue. If the items are not presently in existence, or the control of a Judgment Debtor or the party with knowledge of this Order, then Judgment Debtor or the party with knowledge of this Order shall turnover the Property to the Receiver, immediately upon its existence and that person obtaining control of the Property. If a Judgment Debtor or the party with knowledge of this Order does not obtain control of an asset, but receives knowledge of its existence, that Judgment Debtor or the party with knowledge of this Order is ORDERED to notify the Receiver, immediately.

Disputes. If there be any dispute, including (but not limited to) whether an Property is non-exempt, or whether Judgment Debtor has an interest in the Property, then the Receiver shall have custody and control of the Property until the Court can determine the rights of those claiming interests in the Property.

Judgment Debtors' duties to disclose and supplement. Judgment Debtor and any person with knowledge of this Order is ORDERED to fully disclose to the Receiver the location of all Property and to neither directly nor indirectly interfere or impede the Receiver in the performance of Receiver's duties under this Order. Exempt and nonexempt property shall be disclosed, so that the exempt status of the property can be determined. Judgment Debtor is ORDERED to supplement all disclosures, in writing, within five days of knowledge of information required to be disclosed by this Order.

#### Disposition of Property

10. IT IS ORDERED that Judgment Debtor deliver the Property to the Receiver's address above, within 21 days from service of this Order on Judgment Debtor, or within 21 days of Judgment Debtor's actual receipt or actual notice of this Order, whichever is earlier. IT IS ORDERED that upon oral or written request of the Receiver, Judgment Debtor shall properly endorsed in blank all documents needed to transfer possession or title to the Receiver.

11. IT IS ORDERED that the Property be stored by the Receiver in possession until liquidated.

12. IT IS ORDERED that the Property be sold at public or private sale at Receiver's discretion by the Receiver. IT IS ORDERED the sale shall be conducted by the Receiver or an agent for the Receiver. The funds received from such sale of the Property and all the cash on hand be shall delivered, after deduction of any and all sales expenses (including Receiver's 25% commission fee of the funds collected), to the Plaintiff, in reduction of the indebtedness owed to Plaintiff on the Judgment and any other indebtedness ordered in this cause to be paid by Judgment Debtor. The Receiver shall report the results of the sale and distribution to the Court at the conclusion of the case, or sooner upon written request of any party or the Court.

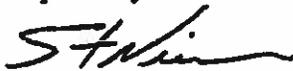
13. IT IS ORDERED that Plaintiff have judgment of and from Judgment Debtor in the sum of \$750.00 as reasonable and necessary costs, including attorney's fees and expenses for bringing this Application.

14. IT IS ORDERED that this is not an exclusive remedy, and this Court reserves the right to make further orders and issue all writs necessary to enforce the Judgment, and to enforce or clarify orders in this cause.

Signed: \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge Presiding

Prepared by:



Stephen Niermann, Attorney for Plaintiff

CACH, LLC  
Plaintiff(s)

VS.

INOCENTE PEREZ; DIANNA PEREZ  
Defendant(s)

§ IN THE JUSTICE COURT  
§  
§ PRECINCT ONE  
§  
§ ANGELINA COUNTY, TEXAS

**ORDER APPOINTING POST-JUDGMENT RECEIVER  
(LIMITED RECEIVERSHIP)**

On this 4th day of May, 2018, came on to be considered CACH, LLC, (hereinafter referred to as "Judgment Plaintiff(s)") Motion to Appoint a Post-Judgment Receiver, ROBERT E JENKINS (hereinafter referred to as "Receiver") Pursuant to CPRC 31.002 (Limited Receivership). After reviewing the evidence and the Court's file, the Court finds that the Judgment in this case is valid, final and fully payable, but remains unsatisfied, and that Judgment Plaintiff(s) is entitled to aid from this Court in order to reach non-exempt property of INOCENTE PEREZ and DIANNA PEREZ, (herein after referred to as "Judgment Defendant(s)") to obtain satisfaction on of the Judgment. The Court further finds that a receiver should be appointed. Notwithstanding any language to the contrary, this ORDER does not compel turnover of the homestead, checks for current wages, or other exempt property of Judgment Defendant(s).

IT IS THEREFORE, ORDERED, that ROBERT E JENKINS, JENKINS LAW FIRM, PC, 13904 JOSEY LN # 815928, DALLAS, TX 75381, 214-220-2022, FrontDesk@JenkinsLaw.com be and is hereby appointed Receiver pursuant to the Texas Turnover Statute for 120 days from the day Order is signed.

**Receiver's Powers:** The Receiver SHALL have the power and authority to take possession of (a) all financial accounts (Bank accounts), certificates of deposit, and money-market accounts held by any third party; and (b) all financial records related to such property that is in the actual or constructive possession or control of Judgment Defendant(s); and that all such property shall be held in custodia legis of said Receiver as of the date of this Order.

**Additional Powers:** The Receiver SHALL have the following additional rights, authority, and powers with respect to the Judgment Defendant(s); (a) obtain Judgment Defendant(s)'s credit information and credit reports; (b) obtain from any third party and financial records belonging to or pertaining the Judgment Defendant(s) and (c) to negotiate and obtain installment payment agreements with Judgment Defendant(s), if the Receiver reasonably believes that a payment agreement is the best option to satisfy the judgment; and the Receiver does not compromise any amounts awarded in the judgment without Plaintiff's authorization.

**Receiver's Fee, Oath, and Bond:** The Receiver's fee is taxed as costs against the Judgment Defendant(s). A Receiver's fee of 25% is usual and customary; however a finding by the Court for the Receiver's fee will be made at a later date. Because this is a post-judgment receivership pursuant to CPRC 31.002, no receiver bond is required. The Receiver is further ordered to take the oath of his office.

**Receiver's Expenses:** After approval by the Court at a later date, costs reasonably incurred in carrying out the terms of this Order shall be taxed against the Judgment Defendant(s) as costs of court, and shall be collected by the Receiver from the Judgment Defendant(s) which shall be in addition to those sums and amounts provided for in the Judgment.

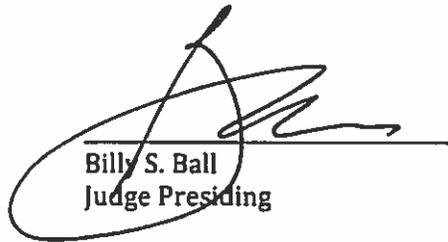
**Cause No. 16127**

**Receiver to Hold Property:** Receiver **SHALL NOT** disburse to judgment Plaintiff(s), funds recovered by Receiver without judgment Defendant(s) written consent, or court order.

**Receiver's Responsibilities:** Receiver **SHALL** inventory all property, funds, and records recovered and submit to the Court.

**This Order expires and terminates 120 days from the day this Order is signed.**

ORDERED THIS 4th day of May, 2018

  
Billy S. Ball  
Judge Presiding



**Receivership Panel – Areas of Consensus**

1. **2017 Amendment:** property does not need to be property that cannot be readily attached or levied on by ordinary legal process.
2. **Evidence:** The judgment creditor does need to submit some evidence that the judgment debtor has non-exempt property that will be the subject of the order. This may be done with an affidavit.
3. **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).
4. **Order to Defendant:** Court may not order defendant to turn over property directly to the plaintiff.
5. **Duties of Receiver:** Should be limited and the bond should be nominal.
6. **Allowing Receiver to Collect Cash on Hand:** This is a bad idea.
7. **Opening Mail and Locking Defendant Out:** This is a bad idea. These measures are not appropriate for recovering small judgments such as the ones issued by justice courts; possibly appropriate for larger judgments.
8. **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.

## Receivership Panel – Debt Collector’s Position

1. **Ex Parte Order:** this is appropriate; it is in place of a writ of garnishment; so it should be ex parte so the debtor does not empty their bank account.
2. **Evidence in Support of Application:** an affidavit that there is a bank account is sufficient.
3. **Is it Injunctive Relief:** Rule 505.2 permits a justice court to issue this order.
4. **Turnover Property to Constable:** this usually doesn’t work; need a receiver instead.
5. **Appointment of a Receiver:** court should grant this request; the creditor is entitled to the court’s aid.
6. **Receiver who is an Attorney:** should not be required to post a bond.
7. **Award of Fee to Receiver:** say what the fee will be up front (e.g. 25%) but subject to proof after the work is done that it is reasonable.

## Receivership Panel – Judgment Debtor’s Position

1. **Notice:** judgment debtor should receive notice; matter of due process.
2. **Evidence:** an affidavit of a bank account is not sufficient.
3. **Turnover Orders:** this is injunctive relief so justice court cannot order them.
4. **Constables:** but if they could do so, ordering property to be turned over to a constable is a good first step; constables are better than receivers; receivers can be problematic.
5. **Appointment of a Receiver:** court should just say no; creditors can use garnishment instead.
6. **Receiver’s Duties:** if they are broad a bond is needed to protect the consumer.
7. **Receiver’s Fees:** they are entitled to be paid but the fee should be paid by the debt collector not the debtor; this is up to the court.