To: All Judges and Court Personnel

Re: Calculation of Post-Judgment Interest

In response to questions we received from you, we have reviewed and revised our approach to how post-judgment interest should be calculated and applied in cases in justice court under Sections 304.001 – 304.003 of the Finance Code. We think this updated approach will be easier to apply in the long run.

In order to assist you in calculating the correct post-judgment interest rate, we have provided below: (1) the language of the statute; (2) an explanation of how the statute works; and (3) how the statute applies in cases in justice court and an order you may use to resolve any questions you have about the post-judgment interest rate when you receive a motion for a default judgment or an agreed judgment that does not specify the post-judgment interest rate.

As usual please do not hesitate to contact us if you have any questions. We plan to conduct a webinar on this topic in December. So please stay tuned! Thank you!

1. **The Language of the Statute**

Section 304.001: “Interest Rate Required in Judgment. A **money judgment** of a court in this state **must specify the postjudgment interest rate applicable to that judgment**.”

Section 304.002: “Judgment Interest Rate: Interest Rate or Time Price Differential **in Contract.** A money judgment of a court of this state **on a contract that provides for interest** or time price differential earns postjudgment interest at a rate equal to the lesser of: (1) the rate specified in the contract, which may be a variable rate; or (2) 18 percent a year.”

Section 304.003: “Judgment Interest Rate: Interest Rate or Time Price Differential **Not in Contract.** A money judgment of a court of this state to which Section 304.002 does not apply . . . earns postjudgment interest” between 5% and 15% per year as set each month by the Consumer Credit Commissioner based on the prime rate published by the Federal Reserve. (We may call this the “statutory post-judgment interest rate.”)

1. **How The Statute Works**

In order to calculate the post-judgment interest rate on a money judgment under Sections 304.001 – 304.003, Finance Code, the court should ask the following questions:

1. Is the judgment a “money judgment . . . **on a contract**?”

* If the answer to this question is **no**, then the statutory post-judgment interest rate under Section 304.003 (currently 5%) applies. An example of this would be a personal injury case (like a slip and fall case) which is not a suit on a contract.
* If the answer to this question is **yes**, go to the next question.

1. Does the contract on which the suit was brought “provide for interest or [a] time price differential?”

* If the answer to this question is **no**, then the statutory post-judgment interest rate under Section 304.003 (currently 5%) applies. An example of this would be a suit to recover unpaid medical bills which is a suit on a contract but one that does not provide for interest or a time price differential.
* If the answer to this question is **yes**, then go to the next question.

1. What is the interest rate or time price differential in the contract on which the suit was brought?

* If it is more than 18%, then the post-judgment interest rate is 18%; if it is less than 18%, then the post-judgment interest rate is the rate specified in the contract.

1. **How the Statute Applies to Specific Situations in our Courts**

The following scenarios apply to a judgment following a trial:

1. **Judgment after trial**: the court answers questions (1) – (3) above. If it is not a suit on a contract, or it is a suit on a contract that does not provide for interest, then the court would enter the statutory rate (currently 5%). If it is a suit on a contract that provides for interest, then the court applies the contract interest rate or 18%, whichever is less. If the parties did not submit evidence of the interest rate in the contact, then the court could ask the parties to submit evidence on that issue or stipulate to the interest rate provided in the contract.
2. **Judgment after trial but plaintiff waives post-judgment interest**: the court accepts the waiver and specifies zero as the post-judgment interest rate.

The following scenarios apply to a default judgment:

1. **Default judgment where plaintiff submits a proposed default judgment that waives post-judgment interest and specifies zero as rate**: the court accepts the waiver and specifies zero as the post-judgment interest rate.
2. **Default judgment where plaintiff submits a proposed default judgment but leaves post-judgment interest rate blank**: the court sends the plaintiff the attached order (see below); if the plaintiff fails to respond within 10 days, the court enters zero as the post-judgment interest rate.
3. **Default judgment where plaintiff does not submit a proposed default judgment for the court to sign:** the court answers questions (1) – (3) above. If it is not a suit on a contract, or it is a suit on a contract that does not provide for interest, then the court would enter the statutory rate (currently 5%). If it is a suit on a contract that provides for interest, then the court applies the contract interest rate or 18%, whichever is less. If the plaintiff did not submit evidence of the interest rate in the contact, then the court could ask the plaintiff to submit evidence on that issue or the plaintiff could waive post-judgment interest.

The following scenarios apply where the parties submit an agreed judgment:

1. **Agreed judgment which requests zero as post-judgment interest rate**: the court specifies zero.
2. **Agreed judgment which specifies the post-judgment interest rate:** the court enters the specified rate or 18% whichever is less.
3. **Agreed judgment where post-judgment interest rate is blank**: the court sends the parties the attached order (see below); if the parties stipulate to the contract interest rate, the court enters the stipulated rate or 18% whichever is less; if the plaintiff waives recovery of post-judgment interest or the parties fail to respond within 10 days, the court specifies zero as the post-judgment interest rate.
4. **Order to Send if Post-Judgment Interest Rate is Not Specified in a Motion for a Default Judgment or an Agreed Judgment**

In any case where the plaintiff submits a proposed default judgment or an agreed judgment that does not specify a post-judgment interest rate, the court should send the following order to the parties. If the response indicates either that it is not a judgment on a contract or it is a judgment on a contract that does not provide for interest or a time price differential, then the court specifies the statutory rate (currently 5%) as the post-judgment interest rate.

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