

USING DISCOVERY TO ENFORCE JUDGMENTS

Indiana Trial Rule 69, Kentucky Rule of Civil Procedure 69, and Federal Rule of Civil Procedure 69 all allow a creditor through its counsel to take discovery upon a judgment defendant or other individuals for purposes of locating assets which can be applied toward satisfaction of a judgment.

It is not unusual for an attorney who has taken a judgment for his client to have insufficient information in his file or in his client's file in regard to the judgment defendant's assets. If the defendant is unwilling to make voluntary payment in satisfaction of a money judgment, and if the creditor plaintiff does not know where to issue execution to collect the judgment, then the logical procedure is to put the debtor under oath and have him testify about any possible avenues of recovery.

Debtors in business should always be questioned about their accounts receivable. If a debtor is recalcitrant about revealing such sensitive information, the court will compel him to do so under the threat of finding him in contempt. The creditor can discover where the defendant does his banking, whether he has a safety deposit box, whether anyone owes him money, whether he owns any real estate or personal property, etc. The creditor can also obtain the names of other in-

dividuals who would be likely to have information about the debtor's finances, and additional discovery can be had on these third parties, if necessary, to uncover assets available for satisfaction of the judgment.

The actual procedures for taking discovery under the various versions of Rule 69 vary considerably from court to court. Ordinarily, however, the creditor's counsel will first issue a simple discovery notice for the debtor to appear at the attorney's office on a given date. The careful practitioner will request that the debtor bring along with him his most recent tax return as well.

In order to keep court costs to a minimum, such depositions are rarely recorded and transcribed. In order to assure comprehensiveness, however, most creditors' attorneys use a form questionnaire which the debtor is made to sign under oath. If the debtor fails to appear as a result of a notice to appear in the lawyer's offices, then the next step will usually be the issuance of a subpoena to have the debtor appear before the court to give the required testimony.

The discovery session itself also gives the creditor's counsel the opportunity to negotiate with the debtor for payment, and the attorney's negotiating posture is frequently strengthened by obtaining all the information about the debtor's assets before discussing payment. □

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