

SATISFACTION OF JUDGMENT: PROCESSING AN ARIZONA COLLECTION CASE IN 2023

Presented by:

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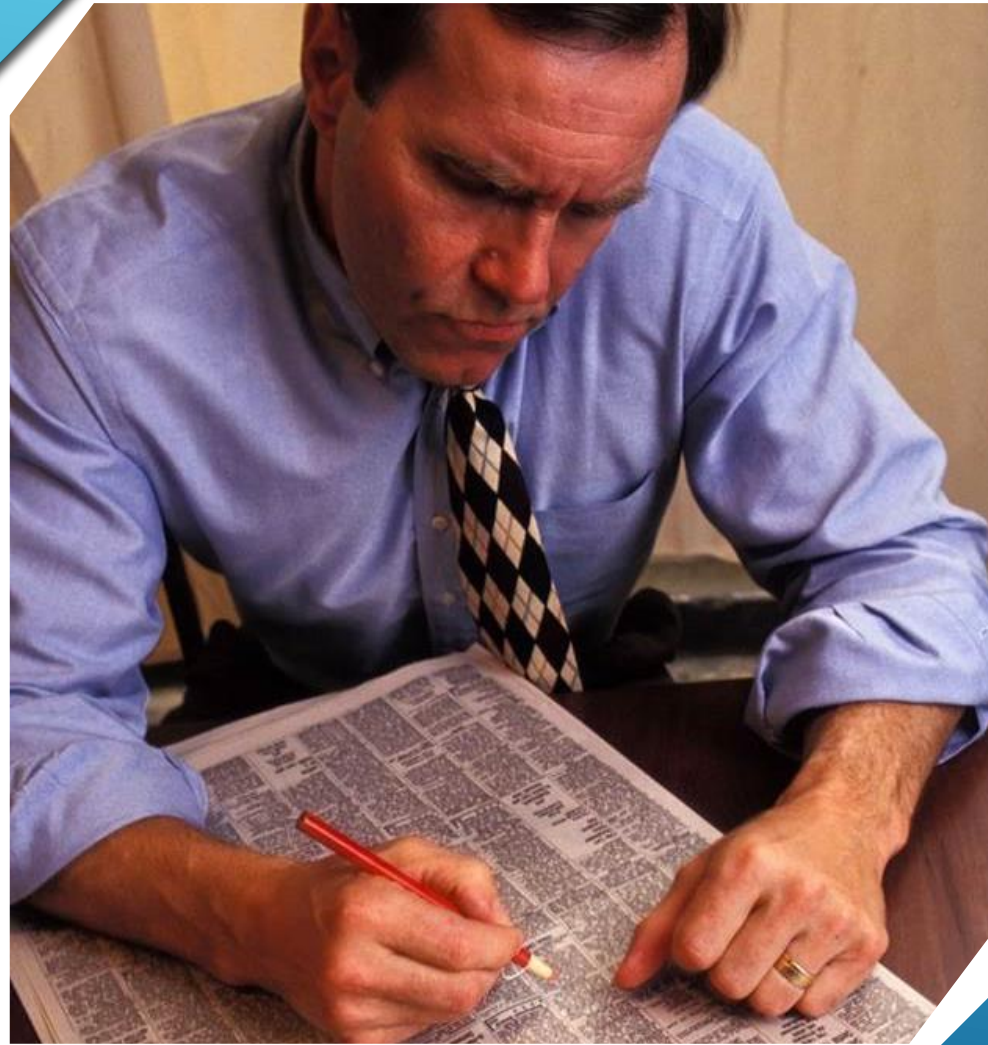


EVALUATING A NEW COLLECTION CLAIM

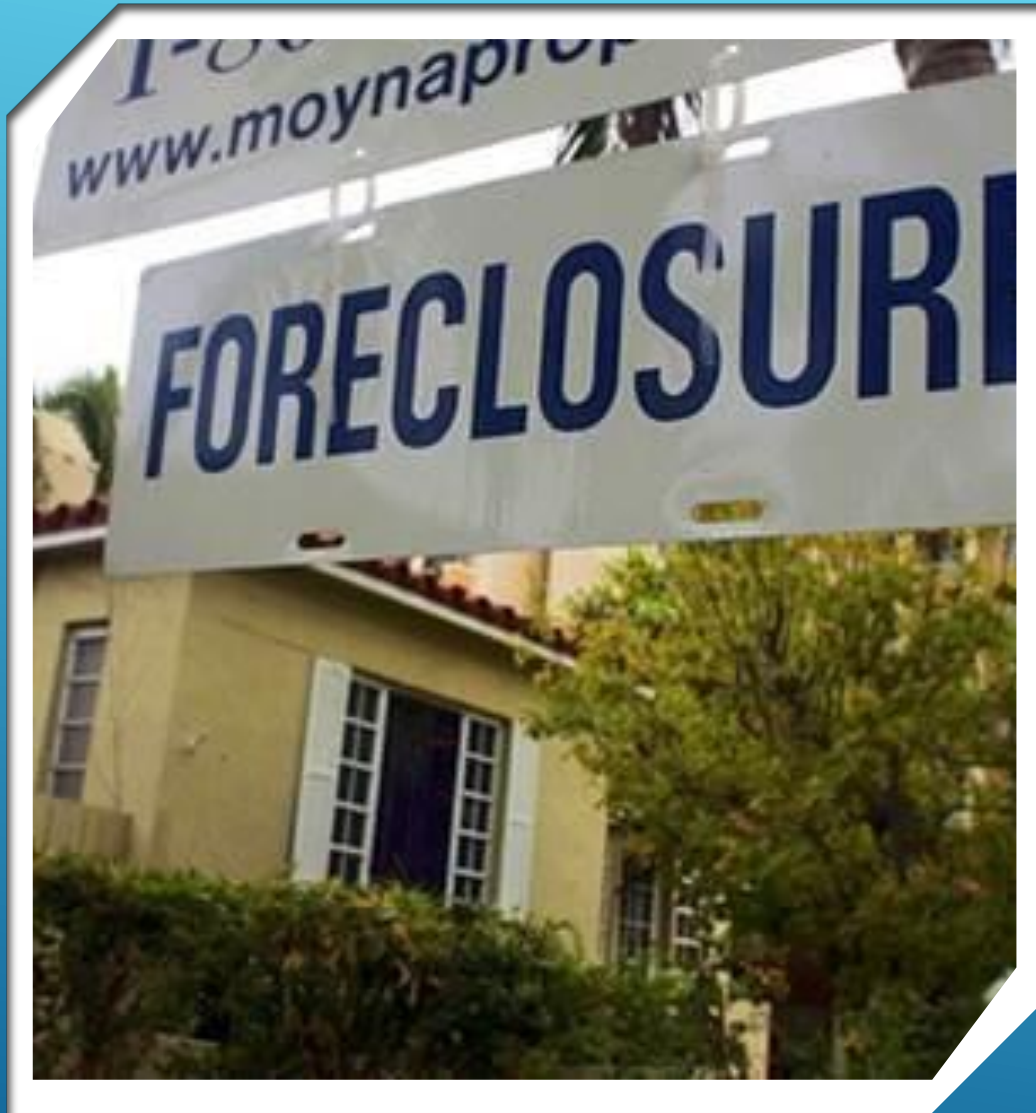
Who is a
Judgment
Debtor?



WHO IS A
JUDGMENT
DEBTOR?



WHO IS A
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WHO IS A
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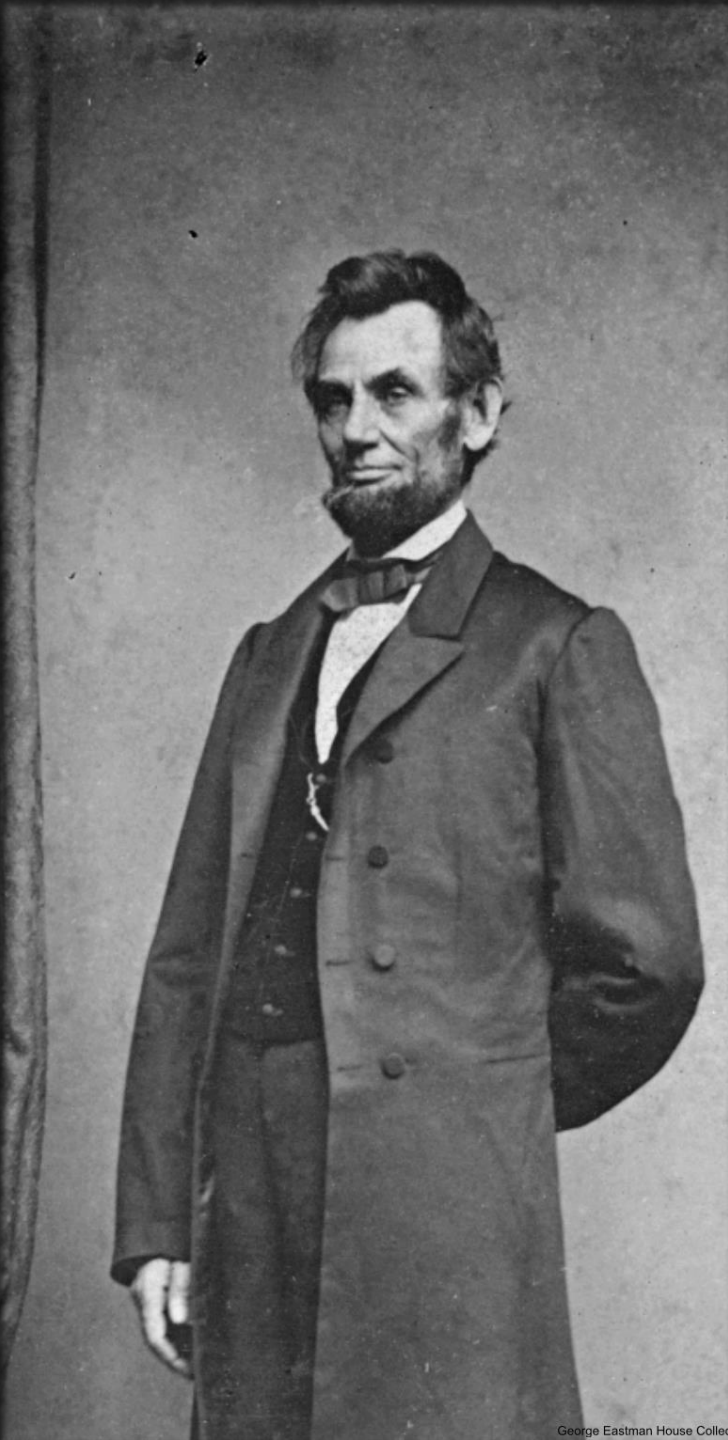
WHO IS A
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WHO IS A JUDGMENT DEBTOR?





WHO IS A
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WHO IS A JUDGMENT DEBTOR?

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WHO IS A JUDGMENT DEBTOR?

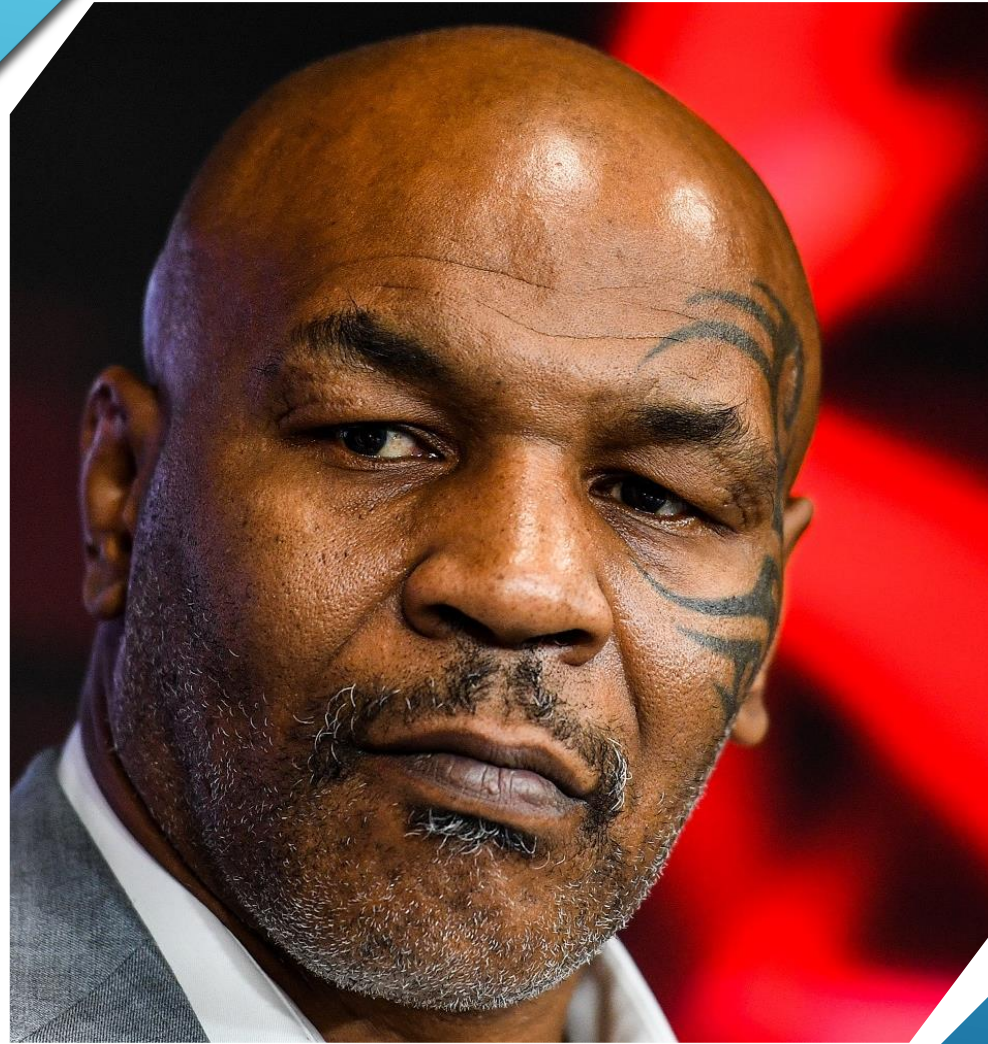




WHO IS A JUDGMENT DEBTOR?



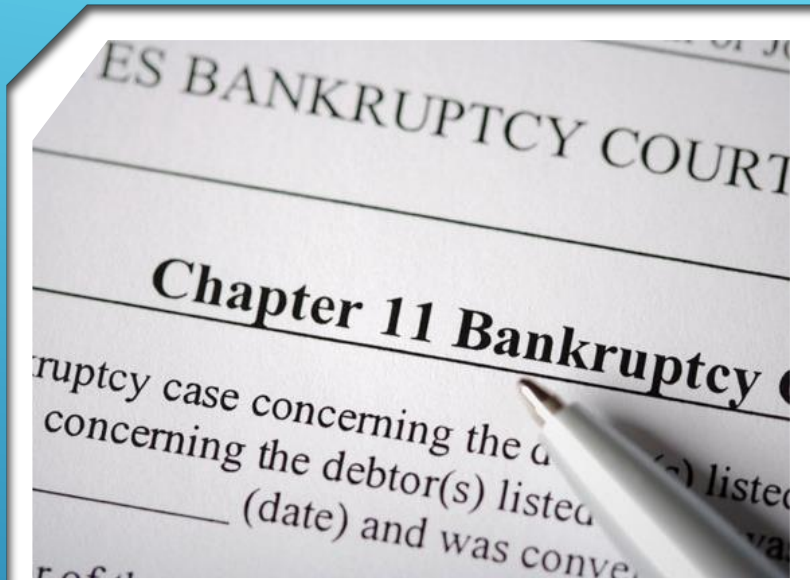
WHO IS A JUDGMENT DEBTOR?



WHO IS A JUDGMENT DEBTOR?



WHO IS A JUDGMENT DEBTOR?



WHO IS A COMMERCIAL DEBTOR?



Source: <https://nypost.com/2020/11/10/j-c-penney-gets-bankruptcy-court-approval-to-be-acquired/>



Source: https://www.sst.net/wp-content/uploads/2016/05/Logo_of_General_Motors.svg_.png



Source: <https://thedcpatriot.com/%E2%80%8Bgnc-files-bankruptcy-with-closure-of-nearly-1400-stores/>





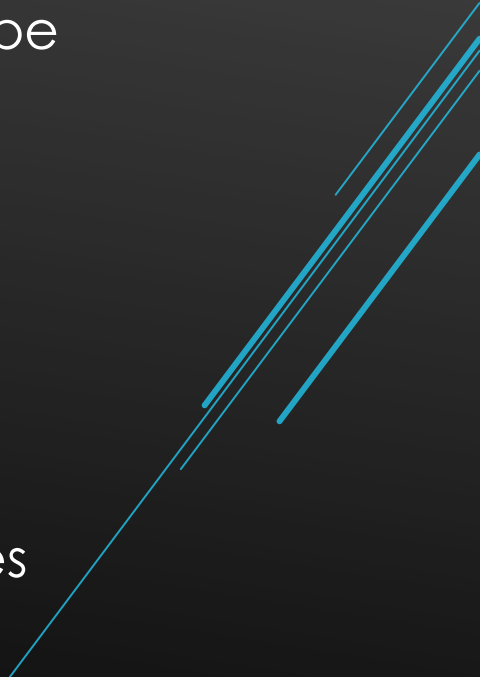
Source: <https://www.eminentseo.com/wp-content/uploads/2016/05/RoomStore-Sports-Chalet-Closing-Eminent-SEO.jpg>



Source:
https://www.thestar.com/business/2012/01/11/twinkies_maker_hostess_brands_files_for_bankruptcy_protection.html

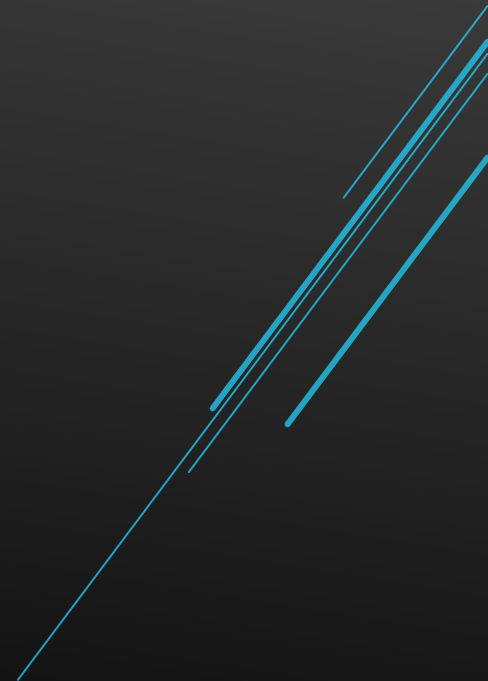
EVALUATING A NEW COLLECTION CLAIM

- ▶ Validation of debt
 - ▶ Provide if requested
 - ▶ Debt must be fully validated before suit can be filed

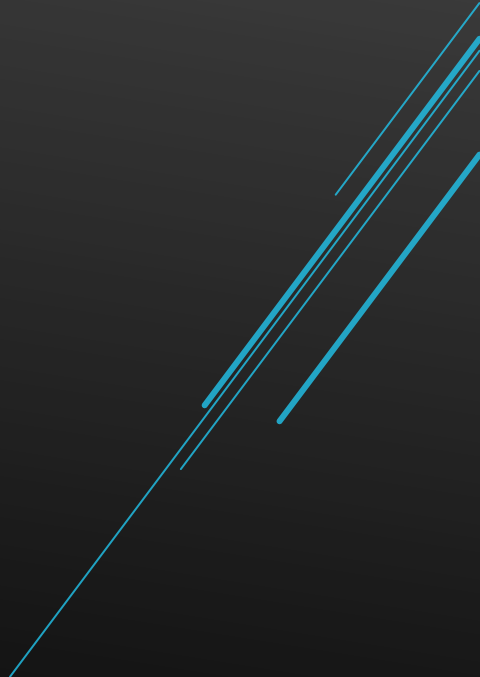
 - ▶ Before Starting Legal Proceedings
 - ▶ Obtain all relevant information
 - ▶ Look for hidden arbitration clauses
 - ▶ Review contract for venue/jurisdiction clauses
 - ▶ Is this a counterclaim waiting to happen?
- 

EVALUATING A NEW COLLECTION CLAIM

- ▶ Demand Letters
 - ▶ Consumer vs. Commercial
- ▶ Skip-Tracing and Pre-Litigation Investigation
 - ▶ Is the business open?
 - ▶ Phone being answered
 - ▶ Active/current website
 - ▶ Listing with Registrar of Contractors/Corporation Commission
 - ▶ Other lawsuits?



EVALUATING A NEW COLLECTION CLAIM

- ▶ Community Property vs. Personal Guaranty
 - ▶ Arizona – Community Property state
 - ▶ Can include Jane/John Doe in most cases
 - ▶ A.R.S. § 25-215
 - ▶ Personal Guaranty
 - ▶ Cannot pursue spouse if they did not sign guaranty
 - ▶ Limits collection efforts
 - ▶ “Judgment proof” assertion
- 



PLEADING PREPARATION

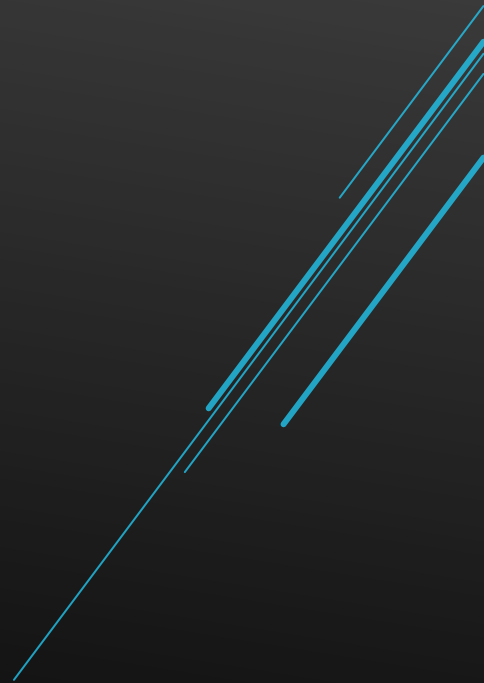
PLEADING PREPARATION

- ▶ Summons and Complaint
 - ▶ Keep it simple
 - ▶ Make allegations as undeniable as possible
 - ▶ Sample Complaints (consumer vs. commercial)
 - ▶ Redact account numbers/personal information
- ▶ Naming Proper Parties
 - ▶ Conduct thorough review of supporting documents
 - ▶ Prevents later amendments



PLEADING PREPARATION

- ▶ Rule 26.2, ARCP – Tier Limits to Discovery
 - ▶ Tier 1 – \$50,000 or less
 - ▶ Simple cases tried in 1-2 days
 - ▶ Minimal documentary evidence/witnesses
 - ▶ 5 total hours of fact witness depositions
 - ▶ 5 Rule 33 interrogatories
 - ▶ 5 Rule 34 requests for production
 - ▶ 10 Rule 36 requests for admission
 - ▶ 120 days to complete discovery

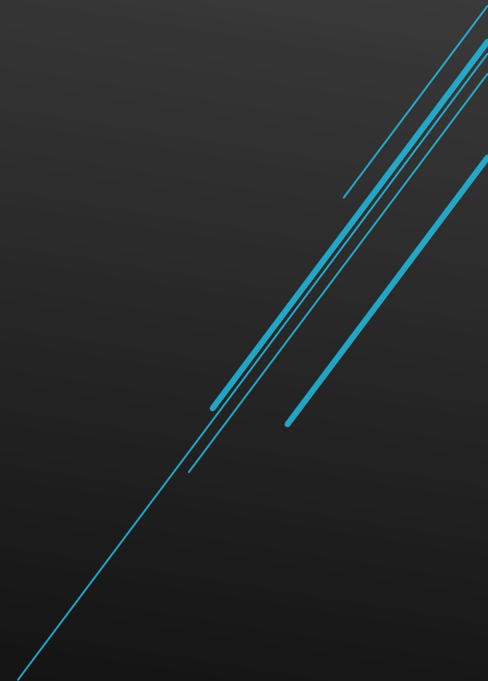


PLEADING PREPARATION

- ▶ Rule 26.2, ARCP – Tier Limits to Discovery
 - ▶ Tier 2 – \$50,000 - \$299,999
 - ▶ Intermediate complexity
 - ▶ More than minimal documentary evidence
 - ▶ More than a few witnesses/may have expert witnesses
 - ▶ Multiple theories of liability/counterclaims/cross-claims
 - ▶ 15 total hours of fact witness depositions
 - ▶ 10 Rule 33 interrogatories
 - ▶ 10 Rule 34 requests for production
 - ▶ 10 Rule 36 requests for admission
 - ▶ 180 days to complete discovery

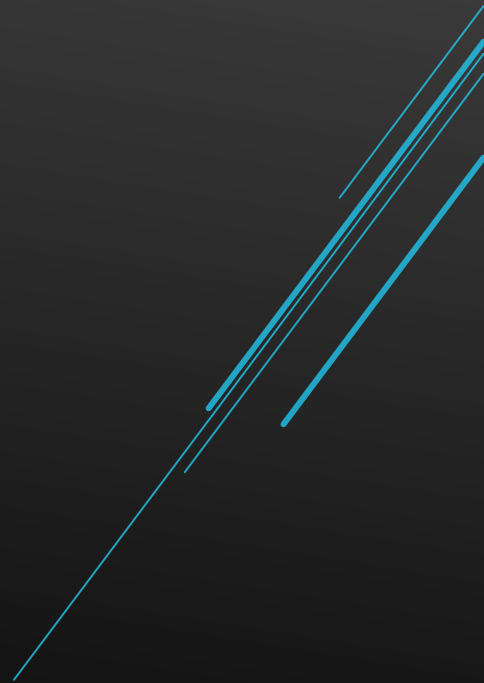
PLEADING PREPARATION

- ▶ Rule 26.2, ARCP – Tier Limits to Discovery
 - ▶ Tier 3 – \$300,000+
 - ▶ Logistically or legally complex (e.g. class actions, multi-party commercial cases)
 - ▶ Voluminous documentary evidence/numerous pretrial motions
 - ▶ Require management of large number of witnesses
 - ▶ 30 total hours of fact witness depositions
 - ▶ 20 Rule 33 interrogatories
 - ▶ 10 Rule 34 requests for production
 - ▶ 20 Rule 36 requests for admission
 - ▶ 240 days to complete discovery

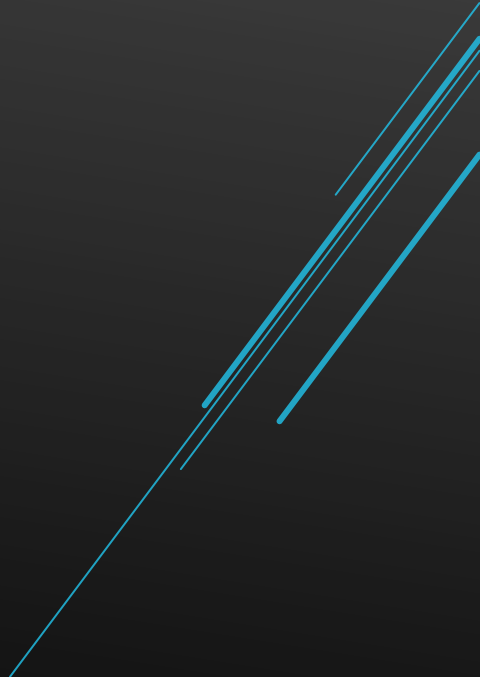


PLEADING PREPARATION

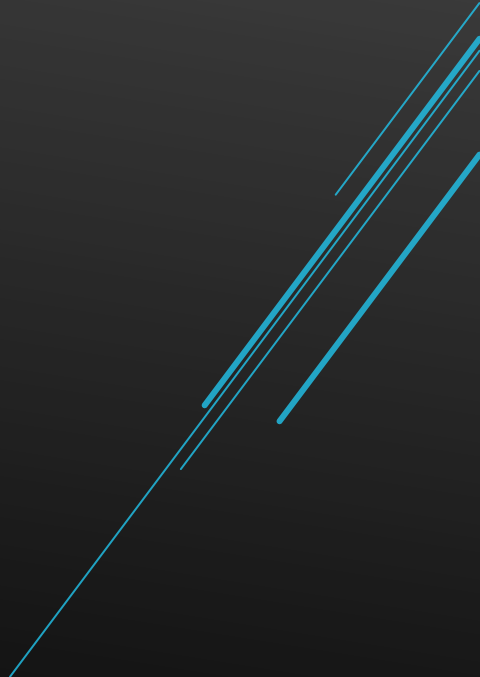
- ▶ Business Cases
 - ▶ Commercial Court – Rule 8.1, ARCP
 - ▶ Who can file
 - ▶ Eligible claims
 - ▶ Benefits of filing
 - ▶ Automatic Tier 3 case per Rule 8.1 (e)
 - ▶ Can change to lower Tier through Joint Report, Motion, or Stipulation
 - ▶ Show good cause



PLEADING PREPARATION

- ▶ Naming Fictitious Parties
 - ▶ Not usually included in collection cases
 - ▶ Community Property Issues
 - ▶ Include “John/Jane Doe”
 - ▶ Don’t include a Doe if personal guaranty
 - ▶ Application for Entry of Default
 - ▶ Attorney contact
- 

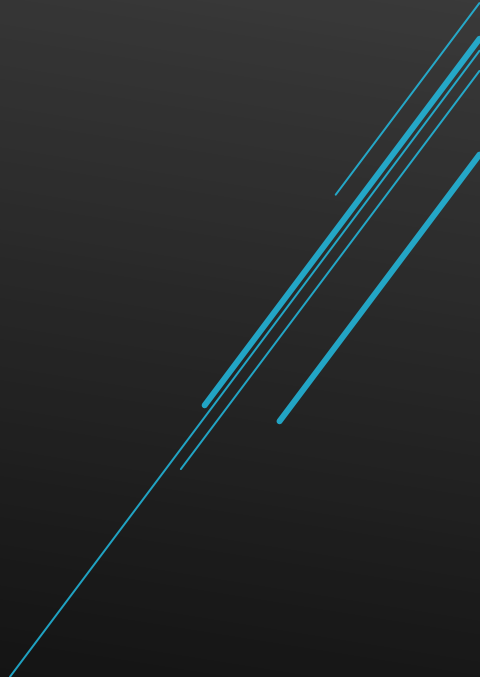
PLEADING PREPARATION

- ▶ Answer
 - ▶ Review upon receipt
 - ▶ What does it really say?
 - ▶ Is the Answer a surprise?
 - ▶ Early Meeting requirement – Rule 16(b), ARCP
 - ▶ Early Meeting Report – Arbitration cases
 - ▶ Good Faith Consultation Certificate – Both Arbitration and Trial cases (Rule 7.1(h), ARCP)
 - ▶ Stipulations for Judgment
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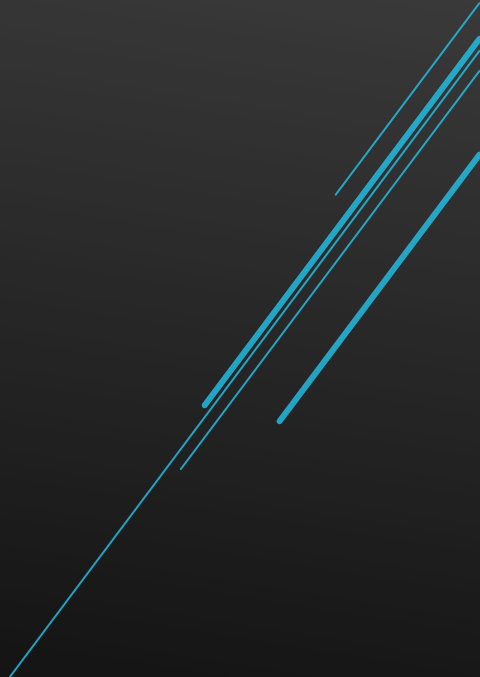


DISCOVERY TECHNIQUES

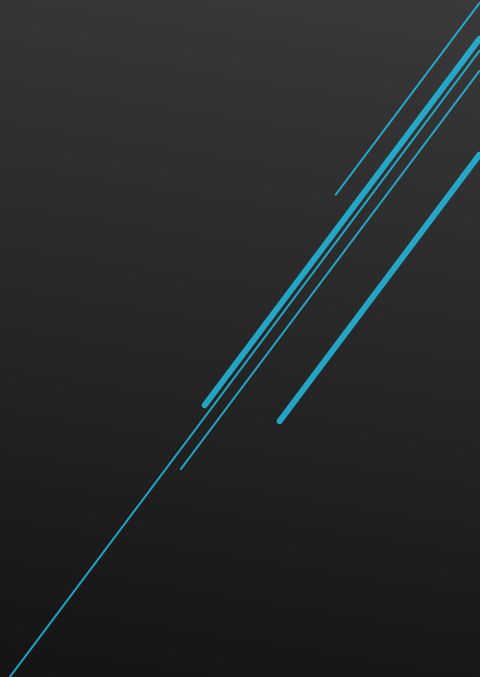
DISCOVERY TECHNIQUES

- ▶ Litigation Strategies
 - ▶ Provide a complete Disclosure Statement
 - ▶ Propound meaningful discovery
 - ▶ Make the other side prove their case
 - ▶ Written Discovery
 - ▶ Propound after exchange of initial disclosure statements
 - ▶ Rule 26(f)(1) – Early discovery not permitted without court order
 - ▶ Saves discovery requests if information is provided in initial disclosures
 - ▶ Call the other side out on what information is missing
 - ▶ Know Tier requirements
- 

DISCOVERY TECHNIQUES

- ▶ Requests for Admission
 - ▶ You want the other side to admit as many as possible
 - ▶ Avoid grouping several requests into one
 - ▶ Send by certified mail/e-mail receipt
 - ▶ Interrogatories
 - ▶ Play off what other side says in their disclosure statement
 - ▶ Look at legal theories/affirmative defenses
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DISCOVERY TECHNIQUES

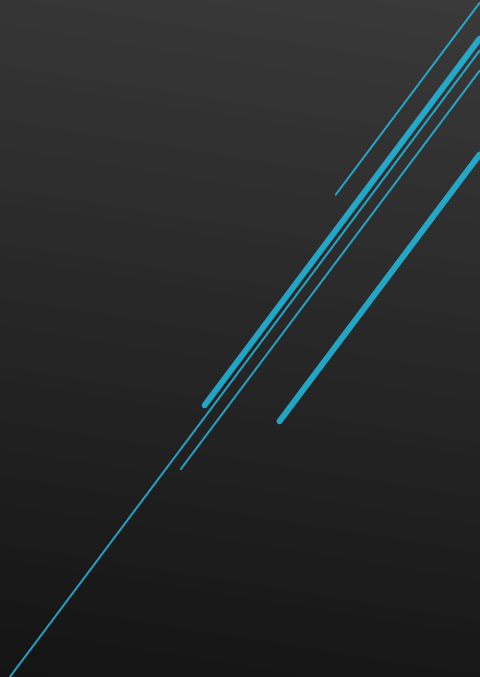
- ▶ Requests for Production of Documents and Things
 - ▶ If other side should have documentation, need to ask them for it first before subpoenaing a third party
 - ▶ Cost sharing
 - ▶ Depositions
 - ▶ Schedule only if necessary
- 



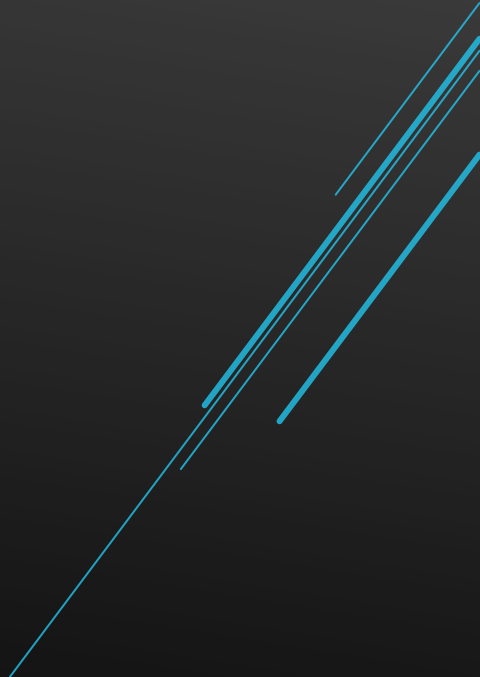
POST- JUDGMENT ENFORCEMENT



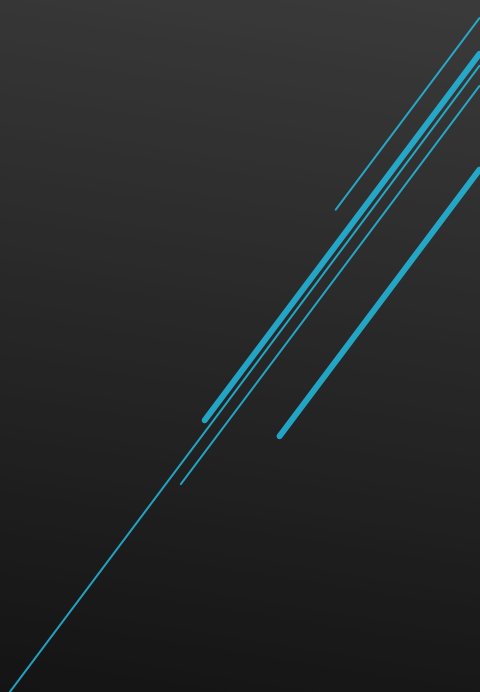
POST-JUDGMENT ENFORCEMENT

- ▶ Wage/Earnings Garnishments
 - ▶ Issued/served on employer (aka Garnishee)
 - ▶ Withholding begins with next applicable check
 - ▶ Federal Minimum Wage vs. State Minimum Wage
 - ▶ Answer of Garnishee
 - ▶ How much to withhold?
 - ▶ Independent contractors
 - ▶ Tips as earnings
 - ▶ Existing wage garnishment/Priority garnishment
- 

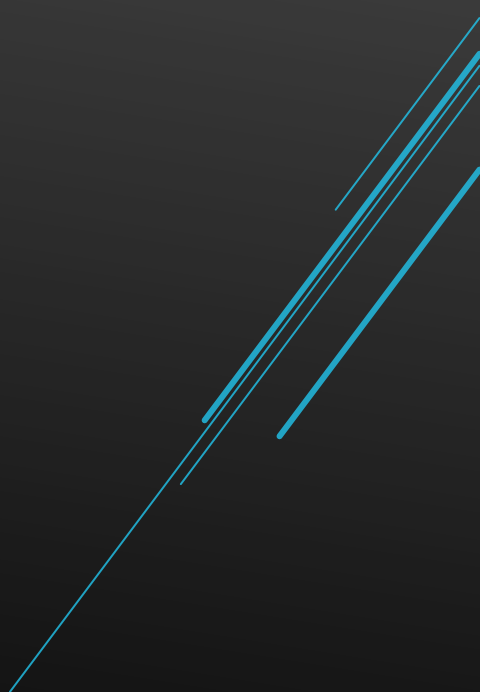
POST-JUDGMENT ENFORCEMENT

- ▶ Wage/Earnings Garnishments
 - ▶ Request for Hearing
 - ▶ Continuing liens
 - ▶ Order to Show Cause
 - ▶ Reporting
 - ▶ Release of Garnishment
 - ▶ Effects of Proposition 209 on Arizona's wage garnishments
 - ▶ Anticipated domino effect on bankruptcy filings
- 

POST-JUDGMENT ENFORCEMENT

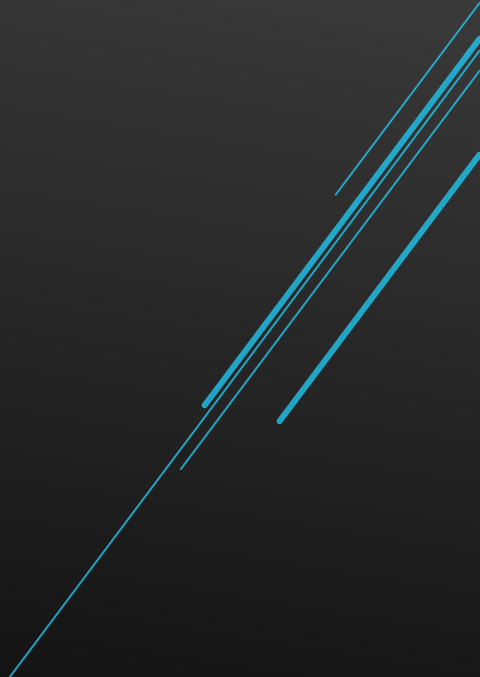
- ▶ Bank/Non-Earnings Garnishments
 - ▶ Issued/served on banking institution (aka Garnishee)
 - ▶ Search fee
 - ▶ Funds immediately frozen by bank
 - ▶ Personal exemptions
 - ▶ Answer of Garnishee
 - ▶ Seizure of safe deposit boxes/CDs
 - ▶ Additional parties
- 

POST-JUDGMENT ENFORCEMENT

- ▶ Bank/Non-Earnings Garnishments
 - ▶ Request for Hearing
 - ▶ Judgment Against Garnishee/Satisfaction
 - ▶ Release of Garnishment
 - ▶ Effects of Proposition 209 on Arizona's bank garnishments
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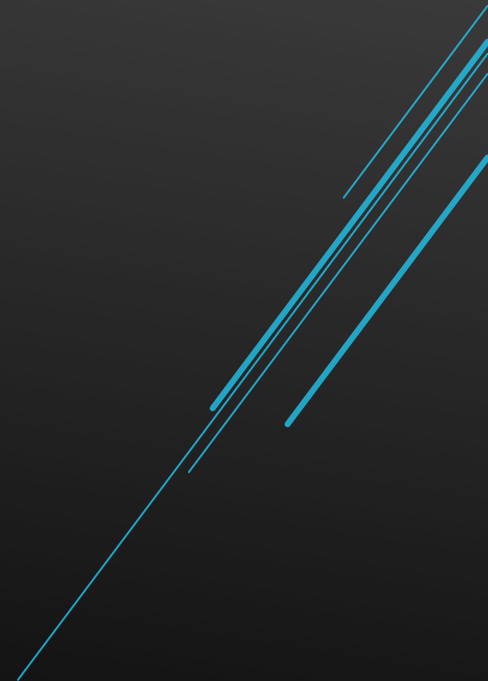
POST-JUDGMENT ENFORCEMENT

▶ Informal Interviews

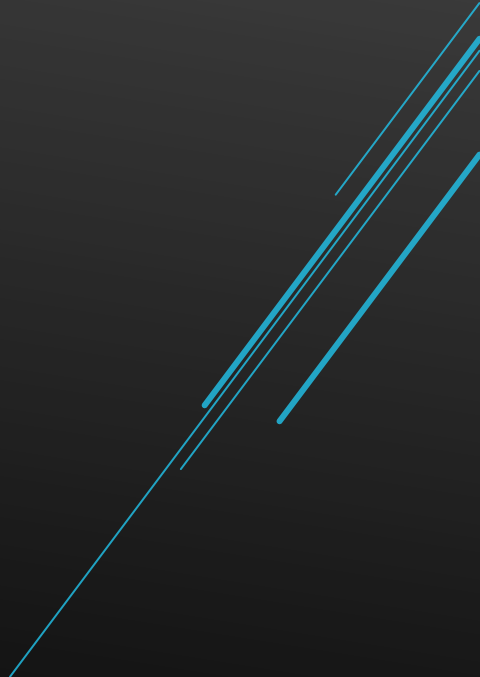
- ▶ Set based on attorney/collector's convenience
 - ▶ Conducted in office/by phone
 - ▶ Collect same financial information as you would during a formal debtor's exam
 - ▶ Could lead to payment arrangement/garnishment
 - ▶ Inexpensive
 - ▶ If debtor fails to appear, can proceed with formal exam in court
- 

POST-JUDGMENT ENFORCEMENT

- ▶ Supplemental Proceedings/Debtor's Exams
 - ▶ Formal proceeding in court – Virtual appearance
 - ▶ Purpose
 - ▶ To determine assets/employment of debtor
 - ▶ To set up formal payment arrangement
 - ▶ Fees/costs
 - ▶ Petition/Order filed
 - ▶ Court sets date/time of exam

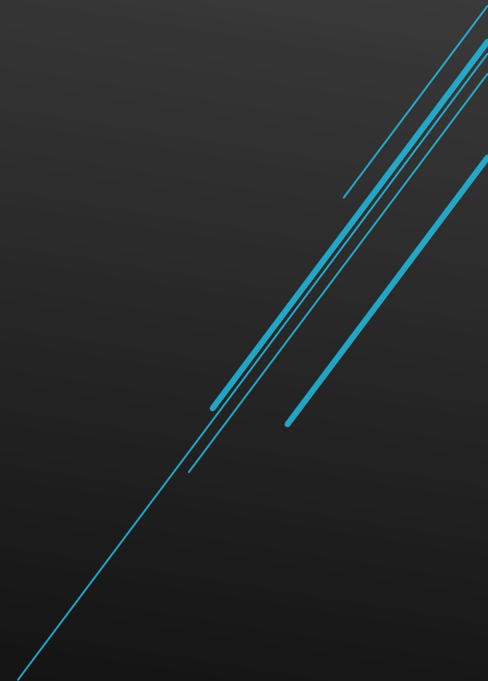


POST-JUDGMENT ENFORCEMENT

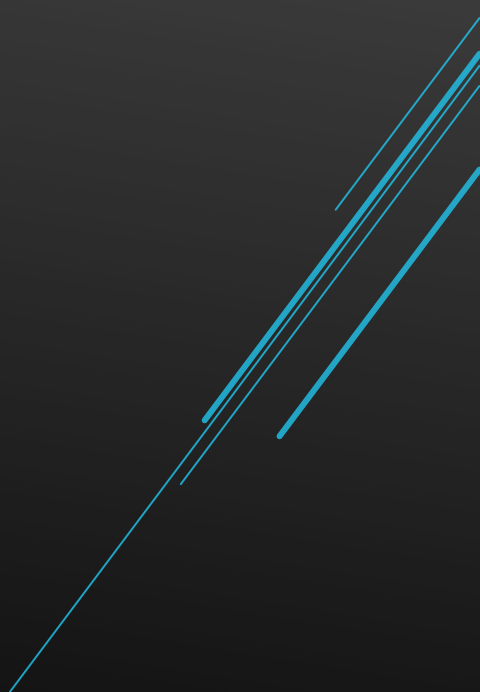
- ▶ Supplemental Proceedings/Debtor's Exams
 - ▶ Debtor personally served with Petition/Order
 - ▶ Special exhibits for individuals/corporations
 - ▶ Debtor meets with judgment creditor or its counsel
 - ▶ Failure to cooperate – contempt of court
 - ▶ Failure to appear – civil arrest warrant
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POST-JUDGMENT ENFORCEMENT

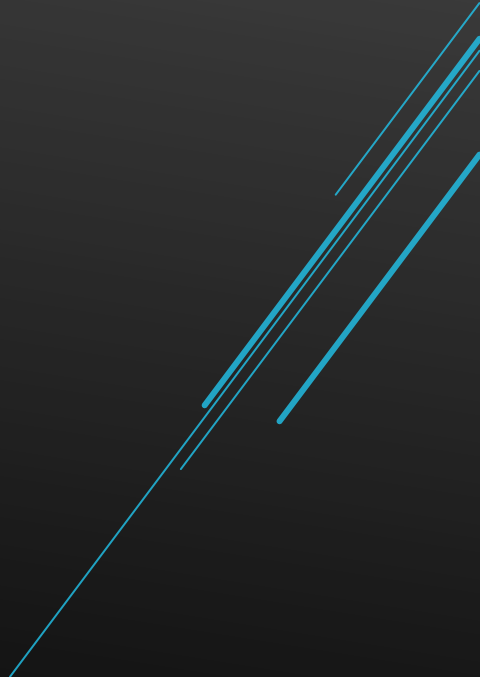
- ▶ Writs of Execution
 - ▶ Prepared after Judgment is obtained
 - ▶ Involves sheriff
 - ▶ Items recovered to cover Judgment balance
 - ▶ Debtor must have complete ownership
 - ▶ Not a preferred way of recovery
 - ▶ Expensive

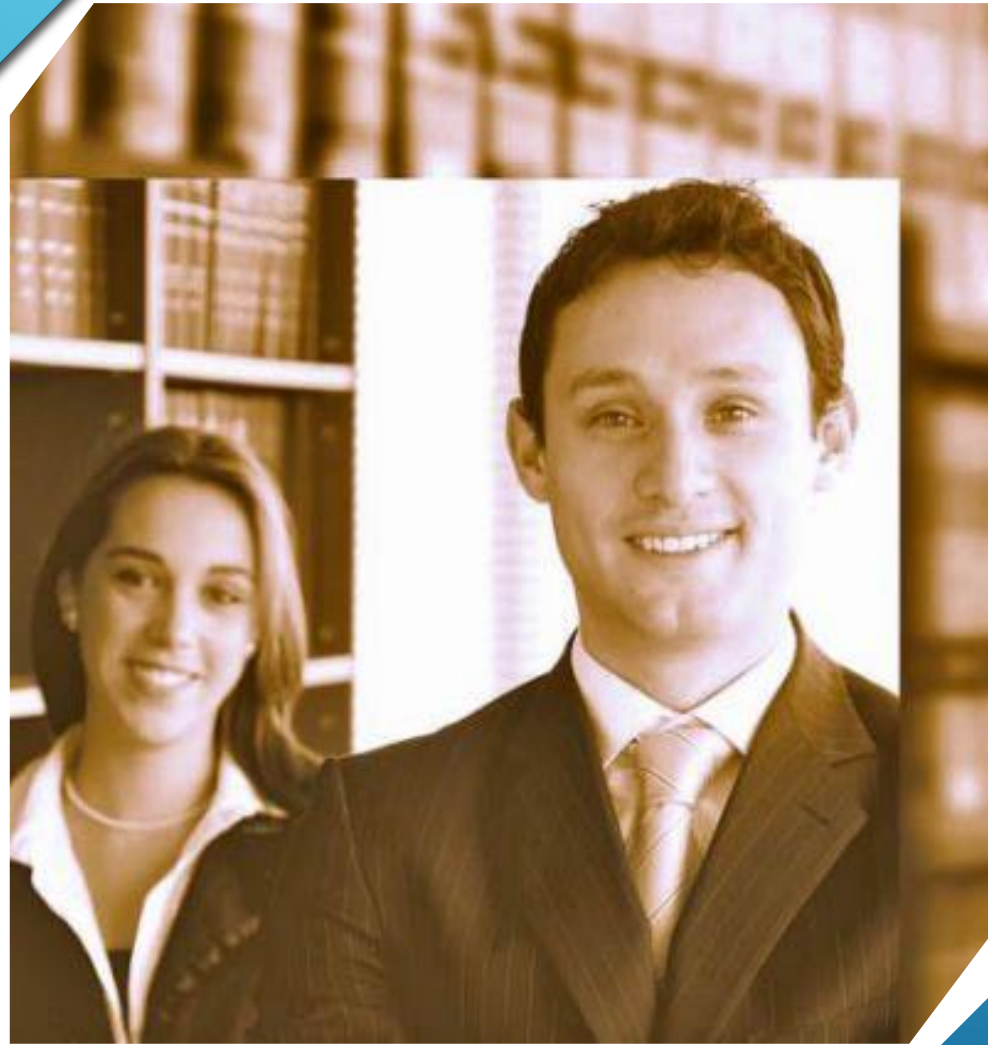


POST-JUDGMENT ENFORCEMENT

- ▶ Driver's License Suspension
 - ▶ Unique remedy
 - ▶ Must have judgment resulting from motor vehicle accident in Arizona involving an uninsured driver
 - ▶ Allows creditor to suspend debtor's license after proof of judgment is provided to ADOT
 - ▶ Very effective
- 

POST-JUDGMENT ENFORCEMENT

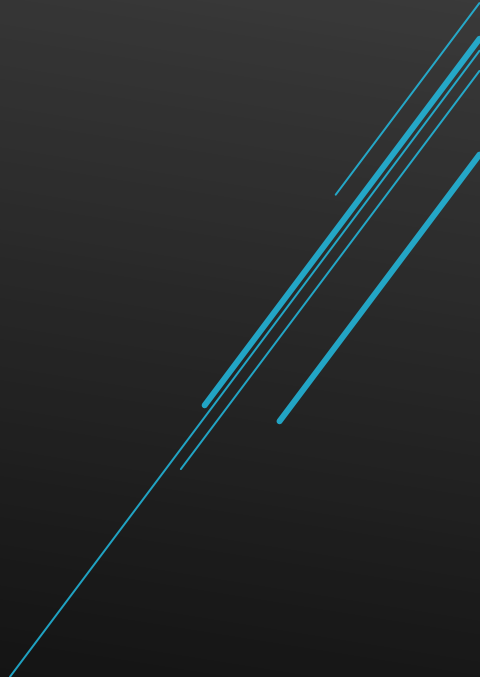
- ▶ Judgment Renewals
 - ▶ AZ Judgments valid for 10 years
 - ▶ Must renew within 90 days of expiration date
 - ▶ Can renew every 10 years until Judgment is paid
 - ▶ Should renew at least once
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ATTORNEY/PARALEGAL
TEAMWORK


ATTORNEY/PARALEGAL TEAMWORK

- ▶ Fee Agreements
 - ▶ Attorney negotiates rates/fees
 - ▶ Paralegal prepares fee agreement

 - ▶ Client Contact
 - ▶ Attorney is usually initial point of contact
 - ▶ Paralegal must disclose their status to avoid inadvertently misleading clients that they are an attorney
 - ▶ Paralegals may correspond with client regarding status of case and to obtain information for attorney
 - ▶ Paralegal should be extension of supervising attorney
 - ▶ Beneficial for paralegal to establish professional relationship with client
- 

ATTORNEY/PARALEGAL TEAMWORK

▶ The Team

- ▶ Should be on the same page when it comes to the law
 - ▶ Paralegal should make recommendations to attorney regarding the flow of a case
 - ▶ Paralegals draft pleadings and other documents including the Complaint, Answer, disclosure statements, discovery requests, and discovery responses
 - ▶ Paralegals/Attorneys should “nag” each other about complying with time requirements
 - ▶ Be courteous to clients, court staff, and other members of your firm
- 

Q & A