

**BUSINESS LAW SECTION OF THE
FLORIDA BAR
ANALYSIS OF PROPOSED AMENDMENTS TO
CHAPTER 56**

PROCEEDINGS SUPPLEMENTARY TASK FORCE¹

Florida Statutes, Section 56.29, titled “Proceedings Supplementary” was first enacted in 1919 and has remained substantially unchanged throughout the last ninety years.² A revision was implemented by the Florida Legislature in 2014 to allow separate claims under Ch. 726 to be filed in proceedings supplementary. Section 56.29 is virtually one of the oldest statutes currently in existence in Florida; it contains formulaic provisions and references to archaic rules of civil procedure resulting in a lack of uniformity in the procedural application of the statute. This lack of uniformity causes excessive litigation and frustrates judgment creditors’ efforts to collect unsatisfied judgments.

Originating with an article published in the Florida Bar Journal, written by Benjamin H. Brodsky,³ the Proceedings Supplementary Task Force (“PSTF”) was constituted in 2013 to identify practical, legal and constitutional issues implicated in proceedings supplementary, levy and execution; and, to proceed with appropriate recommendations for best practices and/or statutory amendment.

Over the course of two years of study, the PSTF identified and debated numerous issues related to the understanding, implementation, and substantive provisions of F.S. 56.29. In drafting and submitting the proposed legislative changes herein the PSTF decided that addressing all issues raised by PSTF members and by the Florida Bar membership at large would be impractical. Accordingly, the proposed revisions to s. 56.29 address what have been identified as the most pressing issues: 1) reaffirming the right to trial by jury for persons first brought before the court in proceedings supplementary, 2) developing a uniform methodology to make persons who may be in possession of property subject to execution to satisfy a judgment parties to proceedings supplementary 3) providing such parties with full due process rights to contest levy and execution of property possibly subject to execution while fulfilling the mandate to provide an effective and prompt remedy to creditors seeking to satisfy judgments from assets transferred or conveyed by

¹ The PSTF gratefully acknowledges the overwhelming contributions of the membership of the BLS, non-BLS Florida Bar members, committee chairs and the leadership of the BLS for providing insight, research, analysis and Socratic dialogue to the process leading up to the amendments presented for consideration by the BLS.

² See Ch. 7842, Laws of Fla. (1919). The statute was cosmetically modified in 2000 and 2005.

³ Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties, The Florida Bar Journal, Dec., 2012 Vol. 86 No.10.⁴ Carol M. Bast, Lawyers Should Use Plain Language, Fla. B.J., OCTOBER 1995, at 30, 32.

judgment debtors to delay or hinder creditors, and 4) to clarify that F.S. 56.29 is part of, and not independent of, Ch. 56 Florida Statutes (Final Process).

As a result of this limitation to the mandate, the proposed revisions to Chapter 56 are procedural. There is no intended substantive change to proceedings supplementary or to any part of Ch. 56. The vast majority of the changes originate from the creation of a definitional section, 56.010, and the harmonizing of terms in the remaining sections of Ch. 56 with the new definitions.

I. **Statutory Background**

The statutory procedure was designed to avoid a step required by a creditor's bill, that the judgment creditor initiate an entirely separate action. As explained by the Florida Supreme Court,

[t]hese statutes intended to empower the court to follow through with the enforcement of its judgment, so that there would be no necessity for an independent suit to reach property which legally should be applied to the satisfaction of the judgment. Since its inception, the proceedings supplementary statute has given circuit courts 'broad discretionary powers' to subject any and all property, or property rights of any defendant in execution, however fraudulently conveyed, covered up, or concealed the same might be, whether in the name or possession of third parties or not, to the satisfaction of an execution outstanding against him.

State v. Viney, 120 Fla. 657, 663, 163 So. 57, 60 (1935).

Proceedings supplementary allow for discovery of assets that may have been improperly transferred by a judgment debtor, whether the transfers occurred prior to, or after, entry of a judgment, and for recovery and application of the assets so transferred to satisfy the judgment. Currently, both the discovery and the substantive tools are merged in s. 56.29. The statutory conditions precedent to initiating proceedings supplementary, the existence of a valid judgment and an unsatisfied execution are unchanged.

II. **Proposed Amendments**

In 2014, Florida Statutes, Section 56.29 was amended to permit judgment creditors to file Chapter 726 actions in proceedings supplementary. In the current proposed revision to s. 56.29, the section permitting the initiation of actions under Ch. 726 is moved to its own subsection and provides for docketing the new action. The new section is intended to underscore that Ch. 726 actions are distinct from proceedings supplementary, notwithstanding case law which correctly references the substantive elements of the badges of fraud contained in Ch. 726 when deciding the right to possession of property in proceedings supplementary. *See Mejia v. Ruiz*, 985 So.2d 1109, 1114 (Fla. 3d DCA 2008) (holding that the badges of fraud listed in Ch. 726 determine whether the plaintiff in proceedings supplementary has the right to set aside the transfer of defendant's property).

Clarifying the Language of Chapter 56

The changes aim to clarify the language of Chapter 56. In order to reach this goal, the PSTF introduced a “Definitions” section. The Definitions section identifies each party involved in the Proceeding Supplementary according to existing case law and provides a better understating of the scope and applicability of Chapter 56. Certain sections of the Chapter have been cosmetically adjusted to incorporate the new terminology, without altering the substance of the Chapter.

The proposed changes also clarify language in s. 56.16 and s. 56.18 to reaffirm the proposition, supported by current case law, that those sections of Ch. 56, including the remedies provided therein, are (and have always been) part of s. 56.29.

Moving the Discovery Provisions to a New Section

For the sake of clarity, the discovery provisions unique to proceedings supplementary have been moved to a new section, 56.30. This change is cosmetic in nature but greatly enhances the understanding of the unique discovery available in proceedings supplementary (which is in addition to discovery available in the post judgment execution context under Fla. R. Civ. P. 1.560).⁴

Ensuring Compliance with Due Process

The changes in Section 56.29(2) implement a procedure that, without changing the substantive law, creates a uniform procedure to bring non-parties into proceedings supplementary and ensures compliance with due process standards. After proceedings supplementary have been initiated, new section 56.29(2) requires a court to issue a Notice to Appear informing new parties that property in their possession or control may be subject to execution and applied to satisfy a judgment. Service of the Notice to Appear makes them parties to the proceedings supplementary. The new Notice to Appear is to be served by process server, should describe with reasonable particularity the property at issue, requires the non-party to serve an answering affidavit within a time to be fixed by the court (no less than 7 business days, unless shortened by the court for cause), and requires the non-party to assert any legal or factual defenses in the answering affidavit. The Notice to Appear should inform the new party that penalties that may be imposed for failure to timely file an affidavit and of the right to a trial by jury. Note that this new procedure does not change existing law that permits a judgment creditor to levy on property identified in a Notice to Appear at the time the Notice to Appear is served. However, the levy must be executed by the sheriff, not the private process server.

⁴ Carol M. Bast, Lawyers Should Use Plain Language, Fla. B.J., OCTOBER 1995, at 30, 32.

III. **Proposed Changes**

Definitions – New Section

SECTION 56.010 Definitions and index of definitions.

(1) In this chapter, the term:

(a) “Claimant” means any person other than the judgment debtor who claims any property levied on.

This definition is taken from Fla. Sta. § 56.16. It ensures uniformity within the Chapter.

(b) “Corporate Judgment Debtor” means any person who is a judgment debtor other than an individual, estate or trust that is not a business trust.

This definition simplifies interpretation of the statute.

(c) “Judgment Creditor” means the holder of an unsatisfied judgment, order, or decree for the payment of money, including any transferee or any surety having the right to control and collect the judgment under s. 55.13.

This definition ensures uniformity within the Chapter. Currently, certain sections of the Chapter use the term “plaintiff,” “plaintiff-in-execution” or “creditor” without uniformity.

(d) “Judgment Debtor” means each person who is liable on a judgment, order, or decree subject to execution under this Chapter 56.

This definition and its rationale parallel those for “Judgment Creditor” and ensures that the two parties juxtaposed in the collection proceedings are equally defined.

(e) “Levying creditor” means the levying judgment creditor.

This definition ensures consistency within Section 56.27, which currently uses the term (but fails to define it) and subsequently references it by using the possessive pronouns “his or her,” causing further ambiguity.

(f) “Person” means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

This definition is taken verbatim from Fla. Stat. § 726.102(10) (definition of “Person”).

(g) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

This definition is taken verbatim from Fla. Stat. § 726.102(13) (definition of “Relative”).

COSMETIC CHANGES – Reflecting changes due to the application of the newly drafted Definitions section (sections are listed in ascending order as they will appear within the Statutes).

56.011 Changes language “defendant” to “person” as defined under 56.010.

56.041 Changes language “defendant to “judgment debtor” as defined under 56.010.

56.071 Changes language “party” to “person” as defined under 56.010.

56.089 Changes language “corporations” to “corporate judgment debtor” as defined under 56.010. The change is needed to conform the statute to modern Florida corporate law, which now encompasses a variety of corporate entities, such as LLCs, and not just corporations. Also change language “plaintiff” to “judgment creditor” as defined under 56.010.

56.10 Changes language “corporation” to “corporate judgment debtor.” *Supra* comments to 56.089.

56.12 Changes language “defendant” to “judgment debtor” and “plaintiff” to “judgment creditor” as defined under 56.010.

56.15 Changes language “defendant in execution” to “judgment debtor” and “plaintiff” to “judgment creditor” as defined under 56.010.

56.19 Changes language “plaintiff” to “judgment creditor”, and “defendant” to “claimant” as defined under 56.010. Additionally, clarifies language to avoid ambiguity and comply with existing case law.

56.20 Change language “original defendant” to “judgment debtor” as defined under 56.010.

56.22 Change language “defendant” to “judgment debtor” as defined under 56.010.

56.26 Change language “plaintiff in execution” to “judgment creditor.”

56.27 Changes language “his or her” to “the levying creditor’s” as defined under 56.010 (and pursuant to the language of this section).⁵

56.28 Change language “plaintiff or his or her” to “levying creditor or the levying creditor’s” as defined under 56.010 and to maintain uniformity with 56.010.⁶

⁵ See also *supra* note 4.

⁶ See also *supra* note 4.

CHANGES FOR UNIFORMITY – These changes ensure consistency between Section 56.29 (proceeding supplementary) and Chapter 56 as a whole.

56.16 Changes language to clarify that a person served with a Notice to Appear under s. 56.29 who interposes a defense solely for delay is subject to the same penalties as a person who challenges a levy for the purpose of delay.

56.18 Changes language to clarify that a person served with a Notice to Appear under s. 56.29 who interposes a defense solely for delay is subject to the same penalties as a person who challenges a levy for the purpose of delay. The changes parallel the changes in s. 56.16.

CHANGES ENSURING UNIFORMITY, PREDICTABILITY AND DUE PROCESS

56.021 Changes language to clarify that execution can be issued upon an “order” (e.g. an order on fees and costs). *See Davidson v. Seegar*, 15 Fla. 671 (Fla. 1876) (explaining that an execution can be issued upon an order, decree or judgment).

56.29 Proceedings supplementary.

¹(1) When any ~~person or entity~~judgment creditor holds an unsatisfied judgment or judgment lien obtained under chapter 55, the judgment ~~holder or judgment lienholder~~creditor may file a motion and an affidavit so stating, identifying, if applicable, the issuing court, the case number, and the unsatisfied amount of the judgment or judgment lien, including accrued costs and interest, and stating that the execution is valid and outstanding, and thereupon the judgment ~~holder or judgment lienholder~~creditor is entitled to these proceedings supplementary to execution.

These changes are merely cosmetic and ensure consistency with the newly drafted Definitions section.

(2) ~~On such plaintiff's motion the court shall require the defendant in execution to appear before it or a general or special magistrate at a time and place specified by the order in the county of the defendant's residence to be examined concerning his or her property. The judgment creditor shall describe in the motion described in paragraph (1) or by filing a supplemental affidavit, any property of the judgment debtor, not exempt from execution, in the hands of any person, or any property, debt, or other obligation due to the judgment debtor, that may be applied toward the satisfaction of the judgment. Upon filing of the motion and affidavit(s) that property of the judgment debtor, or any debt, or other obligation due to the judgment debtor in the custody or control of any other person, may be applied to satisfy the judgment, then the court shall issue a Notice to Appear directing such person to file an affidavit, as provided in s. 56.16,⁷ with the court~~

⁷ The affidavit procedure is also used in Fla. Stat. § 77.16 for garnishment for a third party to claim ownership of garnished assets.

by a date certain, which date shall not be less than 7 business days from the date of service of the Notice to Appear, stating why the property, debt or other obligation should not be applied to satisfy the judgment. For good cause shown, the court may shorten the time for serving an affidavit. The Notice to Appear shall describe with reasonable particularity the property, debt or other obligation that may be available to satisfy the judgment, and shall provide such person with the opportunity to present defenses, discovery as provided under the rules of civil procedure, and to a jury trial, as provided in s. 56.18. The Notice to Appear shall be served as provided for in Fla. Stat. Chapter 48. A responding affidavit shall raise any fact or defense opposing application of the property described in the Notice to Appear to satisfy the judgment, including legal defenses, such as lack of personal jurisdiction. Legal defenses need not be filed under oath, but must be served contemporaneously with the affidavit.

56.29(2) Rewrite – new. Existing subsections 56.29(2) through 56.29(4) allow discovery in proceedings supplementary to be taken before the court. These sections have been moved to new section 56.30. 56.30 is a new section that groups together the discovery tools available to the parties in proceedings supplementary. Previously, these tools were scattered around and it was unclear whether they were generally available or whether they were a prerequisite to proceedings supplementary. Now, the new section 56.29(2) is drafted to provide a uniform procedure for a court to notify non-parties that property in their possession or control may be subject to execution and to make those persons parties to proceedings supplementary. The new Notice to Appear is to be served by process server, should describe with reasonable particularity the property at issue, requires the non-party to serve an answering affidavit within a time to be fixed by the court (no less than 7 business days, unless shortened by the court for cause), and requires the new party to assert any legal or factual defenses in the answering affidavit. These changes are consistent with due process and existing law. *See Ryan's Furniture Exchange, Inc. v. McNair*, 120 Fla. 109, 162 So. 483 at 487 (Fla. 1935) (holding that, in proceedings supplementary, satisfaction of due process principles calls for fair notice and opportunity to be heard); *see also* Fla. Stat. § 51.011 (requiring an answer to a summons within 5 days when the court's jurisdiction is limited to *res*). To ensure due process, the Notice to Appear should inform the non-party of any penalties that may be imposed for failure to timely file an affidavit and of the right to a trial by jury. *See Mejia v. Ruiz*, 985 So. 2d 1109, 1112 (Fla. 3d DCA 2008) (establishing that when impleading a third party in proceeding supplementary, a judgment debtor should provide the third party with an opportunity to raise their defenses and protect their interests); *see also State ex rel. Phoenix Tax Corp. v. Viney*, 120 Fla. 657, 163 So. 57 (Fla.1935) (affirming that jury trial on issues of fact raised in proceedings supplementary should not be denied to a third party who has asserted his claim in good faith). Note that this new procedure does not change existing law, which currently permits a

judgment creditor to levy on property identified in a Notice to Appear. *Ryan's Furniture Exchange Inc. v. McNair*, 162 So. 483 (Fla. 1935) (holding that a proceeding supplementary “is sufficiently broad and flexible to carry out the liberal purposes and intent of the statute providing for proceedings supplementary to execution to reach property actually subjected to execution but concealed or held under color of title in a third person, but in trust for, or derived from, defendant in execution”). However, the levy must be executed by the sheriff, not the private process server. See *Wieczorek v. H & H Builders, Inc.*, 450 So. 2d 867 (Fla. 5th DCA 1984) (where the court directed the sheriff to levy to property involved).

~~(3) The order shall be served in a reasonable time before the date of the examination in the manner provided for service of summons or may be served on such defendant or his or her attorney as provided for service of papers in the rules of civil procedure.~~

~~(4) Testimony shall be under oath, shall be comprehensive and cover all matters and things pertaining to the business and financial interests of defendant which may tend to show what property he or she has and its location. Any testimony tending directly or indirectly to aid in satisfying the execution is admissible. A corporation must attend and answer by an officer who may be specified in the order. Examination of witnesses shall be as at trial and any party may call other witnesses.~~

56.29(2)(3)(4) moved to 56.30 (discovery). As explained above, the new section 56.30 groups together discovery tools available to the parties in proceedings supplementary.

~~¹(5) The court may order any property of the judgment debtor, not exempt from execution, in the hands of any person, or any property, debt, or other obligation due to the judgment debtor, to be applied toward the satisfaction of the judgment debt. The court may entertain claims concerning the judgment debtor's assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith, irrespective of whether the transferee has retained the property. Claims under chapter 726 are subject to the provisions of chapter 726 and applicable rules of civil procedure.~~

56.29(5) moved down to new 56.29(6). New section 56.29(6) groups together the broad powers of the Court to entertain orders dealing with the property subject to proceedings supplementary. Currently, the powers are referenced in different subsections of 56.29, which led to inconsistent interpretations of the relationship between those powers.

(63)(a) When, within 1 year before the service of process on ~~him or her~~ the judgment debtor in the original proceeding or action, ~~defendant~~ the judgment debtor has had title to, or paid the purchase price of, any personal property to which the ~~defendant~~ judgment debtor's spouse, any relative, or any person on confidential terms with ~~defendant~~ the judgment debtor claims title and right of possession ~~at the time of examination~~, the ~~defendant~~ judgment debtor has the burden of proof to establish that such transfer or gift ~~from him or her~~ was not made to delay, hinder, or defraud creditors.

(b) When any gift, transfer, assignment or other conveyance of personal property has been made or contrived by the judgment debtor to delay, hinder, or defraud creditors, the court shall order the gift, transfer, assignment or other conveyance to be void and direct the sheriff to take the property to satisfy the execution. This does not authorize seizure of property exempted from levy and sale under execution or property which has passed to a bona fide purchaser for value and without notice. Any person aggrieved by the levy or Notice to Appear may proceed under ss. 56.16-56.20.

56.29(6) now 56.29(3) clarifies language as follows: 1) “him or her” is the judgment debtor in the original proceeding or action and clarifies that any transfer of personal property within 1 year before the original action shifts the burden of proof to the transferee to validate the transfer from the judgment debtor; and 2) Changes the “defendant” to “judgment debtor” as defined under 56.010 and harmonizes the language of the section according to modern principles of drafting.⁸

(6)(a) now 56.29(3)(a) clarified.

(6)(b) now 56.29(3)(b) clarified.

(74) At any time the court may refer the proceeding to a general or special magistrate who may be directed to report findings of law or fact, or both. The general or special magistrate has all the powers thereof, including the power to issue subpoena, and shall be paid the fees provided by ~~law~~ the court.

56.29(7) now 56.29(4) modernizes and clarifies language to indicate that special magistrate's fees are provided by the court.

(85) A party or a witness examined under these provisions is not excused from answering a question on the ground that the answer will tend to show him or her guilty of the commission of a fraud, or prove that he or she has been a party or privy to, or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose, or that the party or witness or another person claims to have title as against the ~~defendant~~ judgment debtor or to hold property derived from or through the ~~defendant~~ judgment debtor, or to be discharged from the payment of a debt

⁸ *Supra* note 4.

which was due to the ~~defendant~~judgment debtor or to a person in ~~his or her~~ behalf of the judgment debtor. An answer cannot be used as evidence against the person so answering in any criminal proceeding.

56.29(8) now 56.29(5) changes “defendant” to “judgment debtor” and “his or her” to “of the judgment debtor” as defined under 56.010 to maintain consistency.

¹(96) The court may order any property of the judgment debtor, not exempt from execution, or any property, debt, or other obligation due to the judgment debtor, in the hands of or under the control of any person subject to the Notice to Appear to be levied upon and applied toward the satisfaction of the judgment debt. The court may enter any orders, judgments, or writs required to carry out the purpose of this section, including those orders necessary or proper to subject property or property rights of any judgment debtor to execution ~~to execution, and~~ including entry of money judgments as provided in ss. 56.16 through 56.19 against any ~~impleaded defendant~~ person to which a Notice to Appear has been directed and over whom the court obtained personal jurisdiction irrespective of whether such ~~defendant~~ person has retained the property, subject to ss. ~~56.18 and 56.19~~ and applicable principles of equity, and in accordance with chapters 76 and 77 and all applicable rules of civil procedure. The provisions and remedies of F.S. 56.16 –56.20 shall apply to any order issued under this subsection (6).

56.29(9) now 56.29(6) clarifies language to preserve court’s broad authority under the amended terminology. This change clarifies the court’s broad authority to apply any property in the hands or under the control of any person properly brought before the court in the proceedings supplementary initiated via the Notice to Appear. Additionally, it clarifies that ss. 56.16 through 56.19 are applicable to the proceedings supplementary under 56.29.

(107) Any person failing to obey any order issued under this section by a judge or general or special magistrate or failing to attend in response to a subpoena served on him or her may be held in contempt.

56.29(10) now 56.29(7) No change.

(118) Costs for proceedings supplementary shall be taxed against the ~~defendant~~ judgment debtor as well as all other incidental costs determined to be reasonable and just by the court including, but not limited to, docketing the execution, sheriff’s service fees, and court reporter’s fees. Reasonable attorney’s fees may be taxed against the ~~defendant~~judgment debtor .

56.29(11) now 56.29(8) changes “defendant” to “judgment debtor” as defined under 56.010.

(9)⁹ The court may entertain claims concerning the judgment debtor’s assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith, irrespective of whether the transferee has retained the property. Claims under chapter 726 brought under this s. 56.29 shall be initiated by a supplemental complaint, and served as provided by rule 1.070 of the Florida Rules of Civil Procedure. The claims under the supplemental complaint are subject to the provisions of chapter 726 and the rules of civil procedure. . The clerk of the court shall docket a supplemental proceeding under both the same case number assigned to the original complaint filed by the judgment creditor or the case number assigned to a judgment domesticated per s. 55.01 ¹⁰, a separate supplemental proceeding number, and shall assign such supplemental proceeding to the same division and judge assigned to the main case or domesticated judgment.

⁹ / Following the amendment to s. 56.29 in 2014, s. 56.29(5) read:

(5) The court may order any property of the judgment debtor, not exempt from execution, in the hands of any person, or any property, debt, or other obligation due to the judgment debtor, to be applied toward the satisfaction of the judgment debt. The court may entertain claims concerning the judgment debtor’s assets brought under chapter 726 and enter any order or judgment, including a money judgment against any initial or subsequent transferee, in connection therewith, irrespective of whether the transferee has retained the property. Claims under chapter 726 are subject to the provisions of chapter 726 and applicable rules of civil procedure.

In this draft, the first sentence of the current 56.29(5) has been moved to 56.29(6). The remainder of s. 56.29(5) has been moved to 56.29(9) in this draft. The first sentence of 56.29(9) is identical to the 2014 language. The last sentence of the 2014 version of 56.29(5) has been revised in this draft to read:

Claims under chapter 726 brought under this s. 56.29 shall be initiated by a supplemental complaint, and served as provided by rule 1.070 of the Florida Rules of Civil Procedure. The claims under the supplemental complaint are subject to the provisions of chapter 726 and the rules of civil procedure.

The following language has been added to the end of 56.29(9) in the current draft:

The clerk of the court shall docket a supplemental proceeding under both the same case number assigned to the original complaint filed by the judgment creditor or the case number assigned to a judgment domesticated per s. 55.01 ⁹, a separate supplemental proceeding number, and shall assign such supplemental proceeding to the same division and judge assigned to the main case or domesticated judgment.

¹⁰ Florida Enforcement of Foreign Judgments Act.

56.29(9) part 1 is folded into 56.29(6). The current 56.29(5) reference to Chapter 726 actions moved to new 56.29 (9). This subsection groups together all references to Chapter 726, which were introduced in 2014 and reinforces that actions under Chapter 726 are substantively separate and distinct from proceedings supplementary, notwithstanding Chapter 726 actions may be brought procedurally within a proceedings supplementary as a supplemental claim. A claim for fraudulent transfer (i.e. Chapter 726) may, but need not be, brought in proceedings supplementary. Regardless, the badges of fraud generally used under Chapter 726 to determine whether a transfer is fraudulent are likewise applicable to determine the validity of a transfer in proceedings supplementary. The subsection also directs the clerk of court to provide the parties with a parallel case number that the parties will use for the fraudulent transfer action.

SECTION 56.30 Discovery in Proceedings Supplementary^[11]

1) In addition to any other discovery permitted under the rules of civil procedure, on the judgment creditor's motion the court shall require the judgment debtor to appear before it or a general or special magistrate at a time and place specified by the order in the county of the judgment debtor's residence or principal place of business to be examined concerning property subject to execution. This examination may occur prior to issuance of a Notice to Appear.

(2) The order shall be served in a reasonable time before the date of the examination in the manner provided for service of summons or may be served on the judgment debtor or the judgment debtor's attorney of record as provided for service of papers in the rules of civil procedure.

(3) Testimony shall be under oath, shall be comprehensive and cover all matters and things pertaining to the business and financial interests of the judgment debtor which may tend to show what property the judgment debtor has and its location. Any testimony tending directly or indirectly to aid in satisfying the execution is admissible. A corporate judgment debtor must attend and answer by a designee with knowledge or an identified officer or manager who may be specified in the order. Examination of witnesses shall be as at trial and any party may call other witnesses to be examined concerning property that may be subject to execution .

56.30 former 56.29(2).

56.30(2) former 56.29(3).

56.30(3) former 56.29(4).

NO CHANGE SECTIONS– The following sections will not be changed or amended:

56.031 No change.

56.051 No change.

¹¹ This Section is former section 56.29(6).

56.061 No change.

56.13 No change.

56.14 No change.

56.17 No change.

56.21 No change.

56.25 No change.

56.275 No change.

IV.

Conclusion

The proposed amendments are intended to harmonize proceedings supplementary with contemporary procedural and discovery standards. The goal is to bring the statute into compliance with contemporary practice and to provide a uniform procedural process to bring non-parties in front of the court. Existing case law was analyzed to avoid implementing any substantive modification while reorganizing and clarifying the chapter and the proceedings supplementary section.

The changes proposed are a necessary step to ensure a uniform, consistent, and due process-compliant application of proceedings supplementary in courts throughout the state. Currently, a number of inconsistent solutions have been developed locally, which causes serious confusion and concerns that a non-party's due process rights may be violated.

In its careful analysis, the PSTF rejected a number of suggested changes as they appeared to infringe on the substance of the statute. Accordingly, the PSTF is confident that the proposed changes can and should be safely passed by the Legislature. Uniformity and due process safeguards must be in place to afford debtors and creditors in Florida legal certainty as to their acts and consequences.