

Banks Can Require Cost Reimbursement

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Illinois banks should be reimbursed for costs that are incurred by having to comply with a lawful subpoena, summons, warrant or court order. But, because the amount of money at issue is generally small, banks usually forego charging for these costs and simply comply with the order and produce the desired documents. If an economic slowdown occurs, more debtors may find themselves being named as defendants by creditors suing to collect, and that will result in a rise of subpoenas and court orders to banks seeking documents regarding debtors' assets. Rather than simply comply, however, banks should consider requiring creditors to pay the bank's costs for personnel, transportation, and reproduction in responding to the request.

The Illinois Administrative Code (38 Ill. Adm. Code 356.10) requires that banks are to be reimbursed for costs that are reasonably necessary and which have been incurred in searching for, reproducing and transporting books, papers, records or other data of a customer which are sought. How much can a bank charge? Twenty dollars per hour per person incurred in locating, retrieving, reproducing and preparing financial records is allowed by the Administrative Code.

Reproduction costs shall be reimbursed at 30 cents per exposure, transportation costs to convey the documents to an examination shall be reimbursed at a rate of 31.5 cents per mile, and all other costs shall be reimbursed at actual cost (38 Ill. Adm. Code 356.20). There is no provision, however, for the reimbursement of attorneys' fees. If a bank charges these costs, it must also provide an itemized invoice detailing the costs for personnel, reproduction, transportation, and other costs (38 Ill. Adm. Code 356.30).

Banks also have the power to ensure that they are reimbursed for the costs that they incur. The Administrative Code also states: "At the bank's ... option, it may prepare one or more reasonable estimates of the ultimate reimbursement of costs associated with a search for financial records in the form prescribed in Section 356.20 ... and require one or more partial payments before proceeding with the work of locating and reproducing the requested documents. Delivery of the requested documents may be delayed until final reimbursement of all costs is received." (38 Ill. Adm. Code 356.40)(emphasis added).

Subpoenas often seek years of financial information for customers which would entail the production of sometimes thousands of pages of documents. Instead of working for free, banks have the authority to provide the subpoena-issuing attorney an estimate of costs for complying with the subpoena and require payment of that amount before beginning any of the work to gather and produce the documents. Not only would this lessen the burden on the bank by having some of its costs of compliance reimbursed, but it also may decrease the number of documents being sought if the subpoena-issuer realizes that they must pay the bank upfront.

Banks should consider adopting a policy and standard procedures for responding to such legal requests. With creditors' rights litigation on the rise, subpoenas to banks will also increase, so having such policies and procedures in place in advance will help protect the bank in the future.