

# The Cost of Doing Business

BY MICHAEL G. CORTINA

## WHILE I HAVE WRITTEN ABOUT

this topic in the past, it bears repeating. Bank accounts are generally considered the proverbial “low hanging fruit” regarding judgment enforcements, but banks are allowed to charge certain fees and costs for compliance with citations and subpoenas. In addition, they can refuse to supply the sought-after documentation until their fees and costs have been paid.

Generally speaking, any bank customer’s financial records are private and cannot be shared with third parties. Creditors, however, have the ability to obtain a judgment debtor’s financial records pursuant to 205 ILCS 5/48.1(c)(2), which contains an exception to a bank’s required non-disclosure of financial information that states that such information may be provided to a third party if “the financial records are disclosed in response to a lawful subpoena, summons, warrant, citation to discover assets, or court order which meets the requirements of subsection (d) of this Section.” Subsection (d) requires banks to send a copy of the pertinent document to its customer prior to disclosing the financial information to the third party.

But where is the bank’s authority to charge creditors fees or costs for responding to a citation to discover assets? 205 ILCS 5/48.1(g) states “[a] bank shall be reimbursed for costs that are reasonably necessary and that have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced pursuant to a lawful subpoena, summons, warrant, citation to discover assets, or court order. The Commissioner shall determine the rates and conditions under which payment may be made.” Has the Commissioner determined rates and conditions? Yes, and they can be found in the Illinois Administrative Code, and that

is where it sometimes gets interesting.

38 Ill. Admin. Code 356.10 through 356.40 are germane to the discussion of bank reimbursement of fees. Section 356.20, which has not been updated in decades, gives the rates for reimbursement. Personnel costs incurred in locating, retrieving, etc. financial records shall be reimbursed at \$20/hour; reproduction costs shall be reimbursed at 30 cents per exposure; transportation costs are 31.5 cents per mile, or the actual cost of a courier; and all other costs shall be redeemed at actual cost. Banks are required to provide an itemization of all costs being charged to any requesting party. 38 Ill. Admin. Code 356.30.

It is section 356.40 that can cause grief for judgment creditors. Under this section, a bank may prepare one or more estimates of the ultimate reimbursement that it seeks, and require payment before even proceeding with the work to locate or produce the requested documents. In addition, delivery of the requested documents may be delayed until the final reimbursement of all costs is received.

It is not uncommon for creditors to seek years of financial documentation and information regarding a judgment debtor, and copies of such documents could get expensive. I have personally represented a bank where a third party subpoenaed thousands and thousands of pages of documents that the bank estimated would take dozens of hours to retrieve and reproduce. In that case, we informed the subpoenaing counsel that the bank estimated that it would cost around \$3,000 in reimbursement to comply, and that the bank would not begin the process until full payment of this amount was made. While \$3,000 is a relatively small amount in the grand scheme of things, no attorney working on a contingency wants to spend thousands of dollars on the hope that they will find the information that they need. This particular attorney threatened to have my client and me held in contempt

for failing to abide by the subpoena, but I simply directed him to the Administrative Code to show that the bank was 100% in compliance with the law. The result? The attorney pared-down his request to a much more manageable size so that it took the bank less time to retrieve and copy the documents, and the costs were substantially lowered.

The point is that banks do have some control when responding to third party requests for documents and information. Creditors should tailor their citations to banks as much as possible or they could receive resistance from compliance from a bank that would rather be engaged in profitable banking endeavors instead of searching for documents and information for some other creditor. Consideration about what information is truly needed is an approach that could be much less expensive than the casting of an extremely broad net. ■

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