

ASK KENNEDY

March 3, 2021

Topics Covered:

1. Garnishments
 2. [Legislative Update](#)
 3. NDBA Compliance Resources – [Compliance Companions](#)
 4. Free [Virtual Conferences](#) for NDBA Members
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Question #1: If the garnishee summons is not addressed to a specifically named president or vice president when the bank receives the summons through any form of mail or third-party commercial delivery service, is the bank obligated to process the summons?

Response: **No. North Dakota law is specific about service of a garnishee summons on banks, in that it explicitly requires delivery to a “specifically named president or vice present of the bank...or to the registered agent for service of process of the bank.” Furthermore, when served via mail or third-party commercial delivery service, delivery must be restricted to the named individual or registered agent and signed by the same. Failure to meet these legal requirements likely makes the service incomplete and the summons unenforceable.**

See N.D.C.C. § 32-09.1-08 (“Service of a garnishee summons and disclosure statement upon a bank or credit union must be made by delivery of the summons and disclosure statement to a specifically named president or vice president of the bank or credit union or to the registered agent for service of process of the bank or credit union. Delivery of the summons and disclosure statement to the specifically named individual may be in hand as established by the sworn affidavit of the individual who delivered the summons and disclosure statement or by any form of mail or third-party commercial delivery service, if delivery is restricted to the named individual or registered agent and the sender receives a receipt signed by that individual or registered agent.”).

Question #2: If service upon the bank is done personally by a sheriff’s deputy or other personal means, must the garnishee summons indicate the name of the specifically named president or vice president? Or can the deputy be directed to the president’s or vice president’s office so that service can be made directly upon either one of them?

Response: Yes, it should indicate the name of the president and/or vice president, and the deputy may deliver the summons and disclosure statement to the specific individual named by hand. See [Response to Question #1](#).

Question #3: If the \$25.00 disclosure fee is not included when the garnishee summons and disclosure is received by the bank, is the bank obligated to process the summons?

Response: Probably, but you can demand the payment of the fee (provided for in N.D.C.C. § 32-09.1-10).

Question #4: One of our banks received a garnishment summons that was issued through the State of Minnesota. The documents reference Minnesota statutes, and the garnishee fee was only \$15.00. Is the bank obligated to process a garnishee summons if the judgment was issued through a court outside of the State of North Dakota?

Response: Only if the bank is subject to MN jurisdiction.

Question #5: What are the implications (if any) if the bank does not follow the terms of the garnishee summons?

Response: Bank might be responsible to the account holder for any loss sustained because of the bank's failure to comply with the legal and contractual protections it owes to its depositor.

Question #6: One of our banks processed a garnishee summons and a hold was placed on \$70.00 that was available in the debtor's account. According to the document, these funds were to be retained for 360 days from the date of service until a writ of execution had been served upon the bank, until the defendant authorized release of funds to the plaintiff, or until the expiration of 360 days from the date of service of the summons. Instead of holding the funds for the specified amount of time, the bank remitted the funds immediately to the plaintiff's attorney on the same day the summons was received. This has happened numerous times in the past.

Response: A bank should not release funds unless it receives an execution (which can be sent by an attorney).

Question #7: Are we okay to garnish funds in the following situation?:

The customer had their social security deposited to their savings account. They then transferred the funds to their checking account. When the garnishment notice was received, the social security funds were in their checking account.

Response: [Part 212 of Title 31 of the Code of Federal Regulations](#) (CFR) provides the regulations for Garnishment of Accounts Containing Federal Benefit Payments. When a financial institution is served with a garnishment order, [section 212.5](#) requires an account review to determine whether “a benefit agency deposited a benefit payment into the account during the lookback period.” The “lookback period” is the 2 months prior to the account review. [31 C.F.R. § 212.3](#).

Legislative Updates available [here](#).

Compliance Companions Available to NDBA Members!

Compliance Companions are available to and a great resource for NDBA members. Please [contact Jolene German](#) for assistance with accessing the Compliance Companions. They cover the following topics:

- Bank Advertising Rules
 - Business Accounts
 - Commercial Customers
 - Expedited Funds Availability Act and Regulation CC
 - HDMA-Reporting Banks Subject to the Partial Exemption
 - Secured Transactions Under the UCC
 - The Right of Rescission
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Upcoming Virtual Conferences

The American Bankers Association (ABA) is offering two virtual conferences free for ABA members:

- [Conference for Community Bankers](#) (February 18, 2021 – March 31, 2021). Includes on-demand access to speakers, including keynote speaker Magic Johnson; as well as podcasts, through March 31, 2021.
 - [Washington Summit](#) (March 16-17, 2021). The Washington Summit is held annually in Washington D.C., but available as virtual event this year. Through this event, you will hear what lawmakers, regulators, and the Biden Administration are planning and have the opportunity to participate.
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