H.482 SUMMONS TO TRUSTEE

- Thank you for the opportunity to testify
- Banks find themselves in an interesting position with the trustee process because we need to know the procedures for responding to another creditor's summons to trustee as well as preparation of their own summons to trustee.
- What we have found over time there is a great deal of inconsistency in the summons to trustee process, especially with the courts
- Review court case and the problem it presents
- While we appreciate trying to bring clarity to the trustee process, we are concerned about the way some sections of the bill are word and the responsibilities being placed on financial institutions. This will have the effect of making the trustee process more expensive.
- Page 11 lines 20-21 how is this known to a creditor, does the debtor provide this information
- Page 12 lines 2-3 If the judgement creditor is responsible for preparing the disclosure form for the trustee and claim of exemption form for the judgement debtor, we believe these also should be court provided forms similar to summons
- Page 12 lines 2-3 include the debtor's social security number, banks have run into problems identifying the correct debtor (Meg's story at one bank)
- Page 12 lines 8-11 "If the judgment creditor requests issuance of more than one summons, the judgment creditor shall specify which financial institution shall not freeze the amounts exempted by subdivision 2740(15) of this title."
- This creates a conflict because the wording conflicts with the federal garnishment rules. This passage implies we are to freeze amounts exempted by 12 V.S.A 2740(15) if instructed by the creditor as part of the summons to trustee process. Banks cannot violate those regulations, we can't hold social security or other federal benefit payments made to the account two months prior to receiving the summons to trustee paperwork.
- This conflict needs to be resolved
- Also question why the creditor makes this determination, it should be the court
- Page 12 lines 14-18 are of concern because it indicates the financial institution having to make the determination of what is exempt or not.
- Today, if a bank receives a Summons to Trustee, they look at all deposit accounts of the judgment debtor and freeze any funds (with the exception of protected federal benefit payments received within the previous two months) in the accounts up to the amount of the summons. We would make note on our disclosure that some of the funds may be exempt from attachment and list the exemption reason (example: $700 in a bank account, joint account 2740 (15)). Sections (c)(1) and (2) make it the banks responsibility for identifying exemptions. In the past, the bank was only required to point out some or all of the funds may be exempt, but it has been the judgment debtor's responsibility to prove that the funds are, in fact, exempt. We are concerned about consequences to the bank if they incorrectly identified funds as exempt?

- We request these sections are changed so that the debtor makes the determination, or if appropriate, the court
- Bank attorneys have advised it is our responsibility to disclose what we have for funds, but, with the exception of identifying "protected funds", it is not our responsibility to determine if the funds are exempt from attachment.
- Page 13 lines 9-13 to be clear proof of service under Rule 4. Banks send certified mail and regular mail so that if the debtor does not sign for the certified mail, we can show that the regular first-class mailing was not returned thereby "proving service". Question whether that will be sufficient proof of service?
- Page 13 lines 9-13 does not address proof of service provided and debtor does not show, motion should not be denied
- Page 13 lines 14-19 This section seems to indicate the judgment creditor will supply a copy of the Summons to Trustee documents to be sent by the bank to the judgment debtor at the last known address. It is not the bank's responsibility to send documents to the debtor, remove this section
- Page 13 lines 14-19 Question as to how notification to joint account holders living at different addresses will be addressed? Since a hold has been placed on the funds in the account, all account holders should be made aware to avoid bouncing checks and incurring overdraft fees.
- Part of the debtors claim of exemption should include whether it is a joint account and who is on it.
- Page 14 lines 1-8 be clear it should not be the financial institution making the determination, provide claim of exemption form filled out by debtor to financial institution
- Financial institution should only exempt what is clear in 2740 and/or federal regulations
- Page 14 line 9 add "ten days from receipt"
- Page 14 line 15 after party remove and the trustee financial institution
- Page 14 lines 15-18 already addressed earlier in the bill
- Page 14 line 18 if the motion is granted, the court shall issue an order which shall
- Six bullets above
- Absent an order from the court telling us to what to do with the funds, we can have holds on accounts for years. We need a process by which the court sends correspondence to financial institution to release the funds. The amount of time a financial institution is required to hold funds should be limited by statute. We recommend 30 days given this bill. Without a limit, we could end up holding funds indefinitely.
- Page 14, lines 20-21 come up with a fixed number do not give court the discretion, will be inconsistent across the courts, great deal of uncertainty and inconsistent application, if 12% is the concern for post judgement make it 6-8% and be done with it