

A Guide to Subpoena Financial Records

I realize that many people think I am crazy, but my passion is analyzing financial documents for criminal and civil cases in order to provide attorneys answers to their Questions of Fact. I have been doing this for over thirteen years. Prior to that, I worked fraud cases in the private sector. Yes, it is tedious, but it is so rewarding when you find the silver bullet! What I have discovered is that attorneys hire me after the fact to review financial records that they have subpoenaed, that are often incomplete. This circle of obtaining records leads to increased costs and court delays for the client/victim. So, I am going to share my secrets to help any attorney prepare a Duces Tecum for many types of financial records.

To begin, a subpoena should request records for six to twelve months PRIOR to the start of the alleged incident. This is to allow any financial analysis to provide a baseline of behavior/activity and aids the attorneys in direct questioning as well as cross examination. Next, the subpoena should list every name and social security number in the immediate family. This is because people often hide money in their spouse's name or children's name. The following is an example of the language for the introduction on the Subpoena Duces Tecum:

For the period enter date to the present, any and all open or closed accounts pertaining to the following individuals and/or business entities whether held jointly or severally or as trustee or fiduciary as well as custodian, executor or guardian, as well as any other entity in which these individuals or entities may have a financial interest or signatory authority and/or right of withdrawal:

- NAME, Social Security number XXX-XX-XXXX
- NAME, Social Security number XXX-XX-XXXX
- NAME, Social Security number XXX-XX-XXXX
- BUSINESS NAME, Tax ID XX-XXXXXXX, and business address
- BUSINESS NAME, Tax ID XX-XXXXXXX, and business address

The next part of the subpoena Duces Tecum is determined by the type of financial records you are trying to obtain, which are described below.

Checking, Savings and Certificates of Deposit Accounts

Attorneys usually obtain the bank statements, but not the signature card. In order to prove who has control over the account you need to request the bank's Know Your Customer documentation, which includes the signature card, driver's license, and any corporate documents used. They also do not obtain copies of check images or deposit items. A deposit item is the actual item that is deposited (e.g. the check, not the deposit slip). This is the only way to determine the source of deposited funds. Statements often times do not provide the details for wire transfers, bill pay transactions or ACH transactions. Therefore, you end up with a lot of "Unknown" for the payor or payee when analyzing the records. If the attorney or paralegal were to call the bank to request the missing records, they would not be able to obtain them if they were not specifically covered in the subpoena language. The following is the recommended subpoena language for a checking or savings account.

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These records should include ALL open and closed checking, savings and/or Certificate of Deposit accounts and include the following, but are not limited to:

- Know Your Customer documentation (e.g. signature card, driver's license, corporate documents)
- Bank statements
- Deposit slips with deposit items
- Cancelled checks (front and back),
- Debit and credit items with offsets (e.g. cash out ticket, cashier's check, money order).
- Wire Transfer details
- ACH details
- Point of Sale details
- Bill Pay details
- Certificates of Deposit statements, purchase records and redemption records

Credit Card Accounts

Credit card records are a little different but can provide some valuable information. The application can tell you about income and employment. The statements can tell you where the money goes. The payment information can identify bank accounts used to make payments. The following is the recommended subpoena language for a credit card account.

These records should include ALL open and closed credit card accounts and include the following, but are not limited to:

- Customer application
- Know Your Customer documentation (e.g. signature card, corporate documents, personal identifiers)
- Credit report and/or background investigations conducted
- Correspondence
- Monthly billing statements
- Payment history plus copies of checks (or other methods) used to make payments

Brokerage Accounts

Brokerage accounts are typically an afterthought in following the money. But this is where an undisclosed asset can exist. Deposit and withdrawal information can identify undisclosed bank accounts. I often find hidden brokerage assets in an immediate family member's name, but the subject is still the custodian and has access to the funds. The following is the recommended subpoena language for a brokerage account.

These records should include ALL open and closed brokerage accounts and include the following, but are not limited to:

- Customer application

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- Know Your Customer documentation (e.g. signature card, corporate documents, personal identifiers)
- Brokerage Statements
- Source of deposits (including image of check or wire/EFT transfer info)
- Source of withdrawals (including image of check or wire/EFT transfer info)
- Correspondence

Loan Records

Like credit card records, loan records can provide financial leads to identify a person's assets, bank accounts, and lifestyle. The following is the recommended subpoena language for loan accounts.

These records should include ALL open and closed loan accounts, including but not limited to:

- mortgage,
- refinance,
- mortgage modification,
- home equity line of credit,
- student loan,
- personal line of credit,
- business loan and/or line of credit,
- equipment loan,
- auto loan,

and include the following, but are not limited to:

- Customer application
- Know Your Customer documentation (e.g. signature card, corporate documents, personal identifiers)
- Personal and/or business financial statements
- Personal and/or business tax returns
- Loan collateral
- Credit report and/or background investigations
- Loan agreements
- Promissory Notes or mortgages
- Settlement sheets
- Contracts
- Loan statements
- Payment history plus copies of checks (or other methods) used to make payments
- Liens and UCC filings
- Correspondence

Safe Deposit Records

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We've all seen it on TV. Safe deposit boxes are often used to hide cash from the spouse or the government. By requesting safe deposit records, you can identify this behavior by the number of times a person visits their box. As your financial investigation continues, the box's access information may be what the attorney needs to supplement probable cause for a Court ordered search warrant. The following is the recommended subpoena language for obtaining safe deposit records.

These records should include ALL open and closed safe deposit boxes, and include the following, but are not limited to:

- Contract
- Access records
- Payment history plus copies of checks (or other methods) used to make payments

Property Records (Title/Closing Companies)

Property records can tell a lot about large movements of money. For example, in a recent case, the title/closing file provided key links to individuals in a different state, including full names, dates of birth, and bank account information. Without subpoenaing these financial records, the investigation would have had "blinders on", and excluded a large sum of money. The property deed will identify the title company or attorney to subpoena by showing who prepared the deed, The following is the recommended subpoena language for obtaining property records.

Please provide the entire title/closing file for the following transaction:

- List date and parties, if known

For property located at:

- List address and/or legal description, if known

Including, but not limited to:

- Purchase agreement, and addendums
- Source of down payment (e.g. check image, wire transfer details)
- Property deed
- Title policy
- HUD settlement statement
- Mortgage Deed and/or Promissory Note
- Source of funds (e.g. check image, wire transfer details)
- Distribution of funds (e.g. check image, wire transfer details)

Life Insurance

Life insurance records can also identify insurance scams as well as unexpected beneficiaries. A recent case involved immigrants that used foreign funds to purchase life insurance for an aging parent, and then cashed in a short-time later as the beneficiary. The premiums were either paid in cash or money orders (e.g. 31 money orders just to make an

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annual premium payment). The beneficiaries were not relatives. It became a prime example of something to write a book about. So if you see a large deposit from an insurance company in your subpoenaed bank or brokerage records, I strongly urge you to follow the money, with the following recommended subpoena language.

Please provide any and all records related to check XXX, reference number XXX, dated XXX, in the amount of \$xxx, payable to XXX, including but not limited to:

- Source of Funds
- Purpose of disbursement
- Policy application
- Life insurance policy
- Payment history plus copies of checks (or other methods) used to make payments
- Beneficiary information
- Account statements
- Loan/withdrawal history

I believe it is important to share knowledge. So, it is my sincere hope that you, the attorney, find this information useful, regardless of your type of practice. I would love to hear from you as to how this information changed the course of your case's outcome.

Katheryn Scott is a retired FBI Sr. Forensic Accountant, a Certified Fraud Examiner, and an Alabama licensed private investigator who is a recognized expert in white-collar fraud cases. Ms. Scott is the co-owner of Driftwood Investigations LLC, which has the expertise and resources needed to research the truthfulness of interrogatories, and trace responses to financial and public records. While sometimes costly, a forensic accounting review will make a difference in a civil matter, criminal matter or even a divorce settlement.