



Subpoena Respondents in Florida: Are You Taking Full Advantage of Florida's Cost-Recovery Statues?

Subpoena issuers often will pay a non-party respondent's costs because of a general expectation of paying reasonable expenses. When civil procedure cost recovery rules are fact-dependent or silent, responders may be hesitant to ask for cost recovery. **But Florida is truly the sunshine state for non-party and financial institution respondents.**

Florida civil rules unambiguously protect non-parties from discovery costs. In Florida courts, the party issuing a document subpoena must pay a non-party to respond.



*The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person upon whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies.**

Under this rule, any company doing business in Florida is owed reimbursement for the costs it incurs in complying with a state court subpoena. A financial institution in Florida stands on even stronger footing: Florida banking statutes require that banks specifically be reimbursed, and the provision is broader.

The books and records of a financial institution are confidential and shall be made available for inspection and examination only.... As compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure, or pursuant to a subpoena issued in accordance with state or federal law. Prior to the production of the books and records of a financial institution, the party seeking production must reimburse the financial institution for the reasonable costs and fees incurred in compliance with the production.**

The banking statute applies in state and federal court, civil and criminal proceedings, and to any subpoena issued under state or federal law. No limitations apply based on the issuing party, subject matter, or burden associated with compliance. And, in addition to costs, the statute covers reimbursement of fees.

Both the civil rule and the banking statute also provide leverage to the respondent by specifically authorizing a respondent to hold documents until its response costs are paid.

* Rule 1.351(c)

** Fla. Stat. § 655.059