

You Got Served (with a Subpoena), Now What?



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Subpoenas are an important part of the litigation process in any case. In civil cases, parties are entitled to broad discovery of relevant information under state and federal civil procedure rules. Subpoenas are an effective and useful tool to obtain documents or testimony from people or entities that are not directly involved in the lawsuit as a party.

Thus, even if you or your business is not involved in a lawsuit, you may still be served with a subpoena. This article provides a basic overview of the types of subpoenas and what steps you should take once served with a subpoena to protect yourself or your business.

What is a subpoena?

Subpoenas are written orders compelling individuals or businesses to provide testimony on a particular subject. An individual, or often, the representative of a business, is required to provide testimony on certain topics. Subpoenas can also serve as an order compelling individuals or businesses to produce specific documents for inspection. The documents sought are often identified in an exhibit or appendix attached to the subpoena.

Types of Subpoenas

Generally, there are two types of subpoenas used in civil practice: (1) subpoenas commanding production or inspection of certain documents or access to inspect premises or records; and (2) subpoenas requiring attendance and testimony at a deposition or trial.

A subpoena to produce documents can be directed at individuals and businesses. Under the Federal Rules of Civil Procedure, the

scope of documents that can be requested in a subpoena is extremely broad and may include documents, electronically stored information, and tangible things in a person's or business entity's possession, custody, or control. The subpoena may even seek access to the business' premises to inspect records.

Subpoenas for testimony are just that — subpoenas commanding an individual or representative of a business or organization to testify at a deposition or trial.

Notably, a single subpoena could make a demand for documents and testimony. It is common for a witness subpoenaed to testify at a deposition to also be asked about documents that were subpoenaed.

Responding to Subpoenas

If you or your business is served with a subpoena, do not ignore it hoping it will go away. Only the court can excuse you from responding to a subpoena (i.e., "quash" a subpoena). Instead, immediately contact your attorney to determine if there is any basis to object to the subpoena, which may include:

- **Technical grounds.** There are specific rules about information a subpoena must contain and who can issue a subpoena. Consult with your attorney to determine if you can object to the subpoena on technical grounds.
- **Improper service.** If you were not properly served with the subpoena, there may be a basis to bring a motion to quash. It is important to consult with an attorney and determine what method of service is required. Not all subpoenas are personally served. Some types of subpoenas also require that a witness or attendance fee be provided upon service.
- **Undue burden or expense.** If the subpoena seeks such extensive documents it will cause undue burden or expense, your attorney may ask the court for a protective order to narrow the scope of documents sought or to shift the costs of production to the requesting party.

- **Seeks privileged information.** The subpoena may seek documents or testimony that is privileged and cannot be used in litigation. An attorney will help you decide if you need to assert a privilege. Note that you may still be required to produce or provide testimony related to non-privileged information.
- **No time to comply.** Subpoenas include deadlines for compliance. But the Federal Rules of Civil Procedure require a subpoena to provide a reasonable time for compliance. If the subpoena includes an impossible deadline, your attorney can ask the court to quash the subpoena or grant you additional time to comply.
- **Exceeds geographic limits.** The Federal Rules of Civil Procedure imposes geographic limits on a subpoena commanding a person to appear for a deposition or trial. If you are commanded to appear somewhere outside of the geographic limits, your attorney can object on your behalf.

Conclusion

If you or your business is served with a subpoena, please immediately contact your Moss & Barnett attorney to discuss options and a potential response.