

Surprise! It's a subpoena

My company has been served with a subpoena. What should I do?

Just because you or your company has been served with a subpoena does not mean that you have done something wrong or that you will be sued. Often it simply means that you or the company may have information or documents that relate to a dispute between two or more other parties. Sometimes, however, a subpoena can be a precursor to bigger problems.

Regardless, don't ignore it. Failure to appear at the stated time or otherwise respond to the subpoena could subject you or your company to punishment by the court.

Smart Business spoke with Julie Johnston-Ahlen, of counsel at Novack and Macey LLP, to learn more about the best way to respond to a subpoena.

What is a subpoena?

A subpoena is a writ, or written order, issued by a court, administrative body or attorney, that commands a person or entity to appear and testify, to produce documents or both. The subpoena should clearly state what it is seeking and when and where you must respond, so review the subpoena and any attached documents carefully.

Should an attorney be consulted before responding to a subpoena?

It is always a good idea to seek legal advice before responding to a subpoena. Moreover, there are certain circumstances in which you should almost certainly retain legal counsel to assist you. For instance:

- You or your company might be subject to liability related to the litigation. Before you respond to a subpoena, you need to make sure you understand

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the subject matter of the litigation or proceeding so that you can determine why you or your company is being subpoenaed. This may require reviewing the documents that have been filed in the case, seeking information from the parties in the case, or both. If there is any risk that you or your company might be subject to liability, you should retain counsel.

- The scope of the subpoena is very broad, and it will be costly to comply. Often when attorneys issue subpoenas, they ask for more documents than they actually need. In this case, you can and should ask the attorney to narrow the scope of the documents requested. If he or she won't, you can retain counsel to serve objections or file an appropriate motion with the court. But don't delay. In some jurisdictions you only have a short period of time to take action with respect to the scope of the subpoena.
- The subpoena is seeking information that is privileged, confidential or competitively sensitive. Typically, private conversations with lawyers are not subject to disclosure pursuant to a subpoena. In addition, sometimes information that is confidential, proprietary or competitively sensitive can be protected from disclosure, or can be disclosed pursuant to a protective order issued by the court. If the subpoena is seeking this type of information, you should retain counsel to assist you.
- Complying might open you or your company up to liability unrelated to the litigation. Sometimes a subpoena will request documents or information that, by law or by contract, you are not permitted to release, or are not permitted to release without permission from another person or entity. For example, you might be subject to SEC regulations or HIPAA requirements, or bound by a contract where you agreed to keep certain information private. In this case, you should seek legal advice.
- The subpoena may be invalid. Perhaps service was improper, required fees were not paid, the subpoena commands you to produce documents or appear too far away, or the court issuing the subpoena does not have the authority to compel you to respond. If so, you should consult counsel before responding.
- You do not understand what the subpoena is requesting. In this case, you should consult with counsel. Your attorney is likely to understand what is being requested, but if not, he or she can consult with the party that issued the subpoena to better understand what is being sought. ●