What is a Subpoena and How Do I Properly Respond to it?

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If you've been served with a subpoena, you may be thinking "What is this and what am I supposed to do now?"

To answer your question, a subpoena is a formal order served on individuals and companies typically seeking testimony or documents. If you or your company have been served with one, you should call your attorney right away. Subpoenas can be tricky to respond to and need to be dealt with promptly so as not to lose any of your or your company's rights and to ensure protection of the confidentiality of your personal or business information.

The overarching reason an individual or corporation is served with a subpoena is because he/she or it has evidence related to a lawsuit. A subpoena for testimony requires testimony under oath at a deposition, trial, or both. A subpoena for documents typically seeks certain documents or categories of documents from you or your company. The most common documents sought by a subpoena are communications (like emails and text messages) and business records. Simply because you have been served with a subpoena does not mean that you are now a party to the lawsuit or even in danger of becoming a party to the lawsuit. However, you or your company are required to respond to the subpoena and should not ignore it.

Accordingly, you should bear the following in mind when you receive a subpoena:

1. **Do not ignore the subpoena.** For many subpoenas, if you do not make objections within 7 to 14 days of receipt of the subpoena, you forever waive the right to object to all or any portion of the subpoena. Therefore, when you receive a subpoena, get in touch with your attorney right away.
2. **Prepare a proper and timely response to the subpoena.** Your response to the subpoena should both preserve your rights and comply with court rules. An incorrect response or a failure to respond to a subpoena can have serious consequences, such as fines for contempt or the waiver of your rights.
3. **Do not speak to anyone other than your attorney about the subpoena or the underlying lawsuit or investigation.** If you have been served on behalf of your company, do not speak with anyone outside the company about the subpoena or the underlying lawsuit or investigation, and only speak to those within your company on a "need to know" basis. Anything you say relating to the subpoena or the underlying lawsuit or investigation to anyone other than your attorney or the individuals in your company that requires knowledge of the subpoena is "fair game" during a deposition and you will be required to answer questions under oath relating to these conversations if asked.
4. **Do not destroy or throw away any documents which could possibly relate to the subpoena.** Whether you agree with the subpoena or ultimately provide the information to the party issuing the subpoena, you have an obligation to preserve documents and

information that the subpoena calls for. This includes contacting your IT department to turn off auto-delete protocols on relevant email accounts. Failure to do so can result in court sanctions.

5. **Object to the subpoena when appropriate.** If a subpoena calls for disclosure of confidential, proprietary, or sensitive information (such as trade secrets, business strategy, or confidential customer information) your attorney may elect to object to the subpoena and require that your confidential information be protected. In addition, some subpoenas are quite broad and may seem to call for hundreds or even thousands of documents. You may not have to provide all requested documents and/or you may not have to testify. Your attorney can help you understand your obligations and may be able to narrow the scope of the subpoena by negotiating with the party that issued the subpoena.

The Morse Massachusetts-based Litigation Team exclusively represents business entities.

For more information regarding what to do after being served with a subpoena, please contact Paige Zacharakis.