

The Basics of Responding To A Civil Subpoena

Written By **Jeremy M. Wilson** (jw@wardandsmith.com)

May 14, 2014



There are many different kinds of subpoenas—civil subpoenas, criminal subpoenas, federal subpoenas, state subpoenas. This article addresses North Carolina state court civil subpoenas and what to do when you or your business is served with one.

Being served with a civil subpoena can be a stressful event for individuals or business owners, officers, and employees not accustomed to receiving or responding to them. It is important to know some basic background on what a

subpoena is and your options when responding to one. While seeking the advice of an attorney always is the best course of action, knowing the basics can help make a stressful situation more manageable. And, it can help you avoid pitfalls that could cause greater problems due to improper compliance.

What Is A "Subpoena"?

A subpoena is a legal device to compel a witness to testify or provide documents or other materials for use in a court proceeding. Parties to a lawsuit use subpoenas to obtain relevant information from other individuals or entities that are not directly involved in the lawsuit. Subpoenas are a key discovery tool for litigants to obtain evidence they think may support their case.

A subpoena may require you to testify at a trial, a hearing, or a deposition. A subpoena may also require you to produce documents or other materials—which can range from written records, to computer files, to actual physical items. A subpoena carries with it the full force of law. Failing to respond to a subpoena can lead to you being held in contempt of court, which can mean a fine or, in rare cases, even jail time.

In North Carolina, a subpoena typically appears as a fairly straightforward, two-page standardized form created by the court system and completed by the party seeking information to use in a legal proceeding. (A copy of the standard North Carolina state court subpoena form can be found at <http://www.nccourts.org/Forms/Documents/556.pdf>.) It will clearly bear the title "SUBPOENA," and will include details of the specific court proceeding with which it is associated. The subpoena will specifically identify the recipient—whether it is an individual, business, or other entity—and what the recipient is "commanded" to do.

If you are required to testify, the subpoena will state whether you are to testify in court or outside of court at a deposition, usually in an attorney's office, as well as the place and the time of your testimony.

If you are required to produce documents, the subpoena will list the types of documents being compelled and the date, time, and location where you are asked to produce them.

Finally, the subpoena will identify who issued it. Judges, other court officials, attorneys, and even *pro se* parties (someone representing himself or herself in litigation) can cause a subpoena to be issued.

In order for you to officially receive a subpoena, someone must "serve" it upon you in a manner required by law. A Sheriff's Department or other non-party to the legal proceeding may serve a subpoena by personally delivering it to you. Subpoenas are also commonly served via registered or certified mail, return receipt requested. However, a Sheriff's Department or a coroner can issue a subpoena by telephone when the subpoena requires someone to attend a proceeding and testify as a witness.

What Should You Do When You Receive A Subpoena?

First, read the subpoena! Do not simply ignore it. As explained above, a subpoena is a formal legal document that carries with it specific legal requirements and obligations. Note to whom the subpoena is directed (you as an individual? your company or business entity?) and note what it is compelling you or your company to do (produce documents? testify? both?). Also make a note of the date by which you are expected to take the specific action compelled.

If you have questions about the subpoena, it is appropriate for you to contact the attorney or party who issued it. For instance, a request for documents may be confusing and require clarification. A subpoena commanding you to testify at a trial that begins at a certain time on a particular date may not actually require your attendance at that specific time. Trials can last several days or weeks, so it is a good idea to ask the attorney, party, or other person issuing the subpoena when you actually should come to court.

Once you have a full understanding of what the subpoena is commanding you to do, the next step is to determine how to respond. The safest approach is to contact an attorney unrelated to the parties to give you advice. There are specific legal protections provided to persons receiving subpoenas under North Carolina law, and these may prevent you from having to respond to all or part of the subpoena. Some of these protections are listed under Rule 45(c) of the North Carolina Rules of Civil Procedure and are included with the standard subpoena form.

For instance, in a North Carolina state court proceeding, you have the option of objecting to the subpoena so long as you do so within ten days after you are served or before the time specified for compliance if that time is shorter. Some of the grounds under which you may object are that the subpoena:

- Does not allow reasonable time for compliance;
- Requires disclosure of privileged or protected matters;
- Subjects you to an undue burden or expense;
- Is unreasonable or oppressive; or,
- Is procedurally defective.

In addition to objecting, you can file a "motion to quash" the subpoena. Once you object, you have responded to the subpoena for the time being. The burden then shifts to the party sending the subpoena to resolve the objections, including use of a court hearing if necessary.

There are requirements for how you must respond to a subpoena when providing requested testimony, documents, or materials. For instance, when producing documents or other records, you must "produce them as they are kept in the usual course of business or [must] organize and label them to correspond to the categories of the request." Other requirements are spelled out in Rule 45(d) of the North Carolina Rules of Civil Procedure, the terms of which appear on the back of the standard North Carolina subpoena form.

When responding, it also is important to remember that you are fulfilling a legal obligation. Unless you file an objection or motion to quash, you must ensure that you are fully answering the subpoena to the best of your ability. You should not dismiss the importance of a subpoena because you "don't have a dog in that fight" and just don't have time to be bothered. Judges don't take kindly to those types of attitudes.

Of course, be careful not to produce privileged or protected information unless you are required to, and the subpoena should not force you to incur undue expenses or an unreasonable burden. That is why the protections of Rule 45(c) are available, and why you should seek legal counsel to ensure you are handling these issues appropriately.

Conclusion

Being served with a subpoena can be a very stressful moment for anyone. But stay calm! If you understand what a subpoena is, what it requires, and your rights, you will be in a strong position to deal with the subpoena as effectively and efficiently as possible. As always, reaching out to an attorney to assist with a subpoena is the best approach. Doing so will ensure that you protect your rights while also meeting your legal obligations.

--

© 2024 Ward and Smith, P.A. For further information regarding the issues described above, please contact Jeremy M. Wilson.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.