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Volunteer Lawyers Project  
Nebraska State Bar Association

# What To Do If You Have Been Subpoenaed

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Oftentimes, during legal matters, someone decides that they need additional information from someone else in order to address the issues pending in court. This need may result in that person asking a judge to give them the opportunity to get that information. If that happens, the court will issue an order or *subpoena* which requires another person to comply with the party's need for information. Any document issued with regard to a specific case will have the case name and case number on it for reference. By seeing the case name, you may know what information you can provide. Other times you may need to use the case number to ask questions that will allow you to learn how you may be involved.

### Is this a court order? Or is this simply a request?

It is possible that the person seeking information or compliance from you has not asked a judge to order you to comply. Instead, this person is asking you for information by simply contacting you. The difference between a party requesting your compliance and a judge ordering you to comply can be found in the document you receive. Is the document a letter signed by a lawyer? If so, you are most likely being asked to comply. If what you have is a letter asking for your participation, you must decide if and how you will respond. Should you choose not to respond or answer, the person may ask a judge to order you to comply.

On the other hand, if the document you received is a court order with a lawyer's or judge's signature, the document is a subpoena that you must comply with or answer. If you choose not to acknowledge the subpoena, the person seeking information from you will either choose to continue without what you were expected to contribute, or may ask for action against you for noncompliance. The best way to know what the person involved in the case, or *party*, plans to do if you do not comply or answer, is to contact the person that requested your compliance in order to discuss your disinterest or trouble with complying.

Another piece of information to take into consideration is the manner in which you received the subpoena. Subpoenas requiring action to comply will be delivered to you personally. This may be, for example, by a service provider or law enforcement entity. Requests for information are generally mailed to you.

### How do I know what they want from me?

A *witness subpoena*, or *subpoena ad testificandum*, is one type of court order that requires you to appear in court to testify regarding the case referenced in the subpoena.

A *deposition subpoena* is the other type that requires you to appear for a *deposition*, or recorded interview, to answer questions that takes place in preparation of trial. A subpoena does not always mean you have to appear in court.

There are times that turning over records may be enough to comply with the subpoena. A *subpoena duces tecum* requires that you turn over any documentation or records in your control by a certain date to a certain person. This type of subpoena offers the person receiving the subpoena

the opportunity to avoid having to appear in court or at a deposition, so long as the documentation is provided before a certain date. Again, look at the document to see whether you are being asked to appear and whether there is the option to only provide documentation by a certain date.

### I know why I am being subpoenaed and I want to fight this.

If you are being ordered to comply with a case as a *third party*, or someone that is not named in the case name, you may feel that this obligation is unfair or too much to ask of you. Keep in mind that you may need to explain in writing before 14 days passes from your receipt of the subpoena, what your hesitations are with complying. This is generally done in the form of a Motion to Quash or Modify the Subpoena. Here are some options for asking the court whether you really have to comply:

- **Relevance: *Non-parties***, or those not named in the case name, do have a right to object on relevance grounds. Those that are directly in the case should expect to have their privacy disturbed, but those that are not directly involved are entitled to challenge the impact of complying on their privacy rights.
- **Undue burden:** Non-parties are given additional protections from significant expenses that would result from compliance with the subpoena. This could look like a subpoena for copies of hundreds of pages of records, or a subpoena which would require travel a significant distance away.

Under most circumstances, some sort of compliance is required by subpoena. However, as the recipient of a subpoena, you are only required to produce what you have and only required to testify about what you know. A subpoena does not require the recipient to do research to find out more about the topics asked to testify about.

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