



INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

The information included in this column is for educational and informational purposes only. Please consult an attorney regarding specific legal questions.

Responding to a Texas Criminal Subpoena

How you been served with a criminal subpoena? A criminal subpoena may include a subpoena for witness testimony, a subpoena *duces tecum* for documents or other tangible evidence, or a combination of both. A person receiving a criminal subpoena is commonly a victim or a witness to a crime.

TRIAL SUBPOENAS

A trial subpoena compels you to appear at a trial or hearing. The subpoena must include basic information surrounding the case, including the name of the case, the cause number, the summoning court, and the date they are summoned to appear. If a subpoena is requesting the production of documents or other tangible evidence, it is required to identify those items with reasonable specificity.

Once you receive the subpoena, the attorney who is seeking your testimony will typically provide you with instructions as well as the attorney's contact information. You should contact the lawyer who has subpoenaed you as early as possible.

Over the duration of the trial, court rules will usually prohibit a witness from being present within the courtroom while other witnesses are giving testimony. The court will also instruct the witness not to discuss the case or their testimony with anyone other than the lawyers trying the case. Even if you have fully testified and are no longer needed as a witness, both of these rules will continue to apply to you until the evidence portion of the trial has concluded.

The amount of time you spend on the witness stand entirely depends on your involvement with the criminal case. If the court agrees to release you, then you will be free to return to your normal daily activities.

GRAND JURY SUBPOENAS

The grand jury is a key component of

both the federal and Texas criminal justice systems and possesses unique investigatory and subpoena powers for the purpose of determining whether a crime has been committed. Similar to a trial court, the grand jury may also issue subpoenas for witness testimony and a subpoena *duces tecum* for documents.

NONCOMPLIANCE

If you refuse to comply with a subpoena issued by a Texas court, the judge has the discretion to fine you in an amount not to exceed \$500 in a felony case and \$100 in a misdemeanor case. However, at the request of either party, the court is also *required* to issue an "attachment" for a noncomplying witness.

An attachment is essentially an arrest warrant directing any peace officer to take a witness into custody and bring them before the court in order to provide their testimony. The court then has the discretion to hold you in custody until the trial has concluded, regardless of whether you have completed your testimony. Likewise in federal court, a judge also has the authority to hold you in criminal contempt for noncompliance with a subpoena, which may include detention of up to six months.

CONTESTING A SUBPOENA

There are numerous grounds in which a witness may contest a subpoena, including:

Improper Service — The law requires that a witness must be properly "served" with the court's subpoena. The requirements for service vary depending on whether the subpoena is issued by a state or federal court.

Scope of Request Is Too Broad or Too Vague — If the subpoena requests documents, information, or material that would be overly burdensome or difficult to gather, then a witness may be entitled to relief from the court. If the witness

does not have possession or access to any of the requested materials, then it is not necessary to raise an objection to the court. The witness only needs to inform the requesting party in writing that they do not have the materials requested.

Privileged or Confidential Material

— If the subpoena requires a witness to turn over confidential documents or give testimony regarding privileged or confidential matters such as trade secrets or proprietary information, then the witness should raise the issue with the court as early as possible.

Self-Incrimination — In a criminal case, a witness may be concerned that an honest and complete response to a question during their testimony would subject themselves to criminal liability. In such a situation, individuals have a Fifth Amendment constitutional right to not answer any such questions.

No matter the circumstances, a criminal subpoena should not be taken lightly and should *never* be ignored. Read the instructions carefully and be sure to contact the attorney issuing the subpoena as early as possible. Open dialogue with the party (or parties) involved is the best method for a witness to ensure minimal disruptions with work commitments, business trips, or family vacations.

Most important, be sure to always thoroughly discuss any concerns with an attorney. ❖

This article is excerpted from Answering the Call: Responding to a Texas Criminal Subpoena, prepared as a public service by the Texas Young Lawyers Association and distributed by the State Bar of Texas. To obtain a copy of the complete pamphlet, contact: Public Information Department, State Bar of Texas, P.O. Box 12487, Austin 78711-2487; call (800) 204-2222, ext. 1800; or visit texasbar.com.