

SUBPOENA RESPONSE



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There are three ways to react to a subpoena: comply, challenge, or ignore. If there is a reasonable basis for refusal to comply, or if the validity of the subpoena or request is uncertain, then the company should take affirmative action to object and, in its counsel's discretion, ask the court to modify or quash the subpoena or request. Businesses should not simply ignore the subpoena or request because of some defect or error. The result of failing to object will often be that any potential error or defect is waived by the recipient, and compliance (and perhaps sanctions) will be required.

Generally speaking, ignoring a subpoena is not a viable option; at least not initially. Document subpoenas, as opposed to subpoenas issued to compel testimony, are the most common subpoenas issued to businesses not involved as first parties in litigation proceedings. Courts can hold individuals and businesses in contempt for failure to comply with a document subpoena, and such failure could lead ultimately to monetary sanctions. Upon receipt of a document subpoena, the first step should be to carefully review the subpoena with counsel to determine who is requesting information, what information is being requested, for what purpose, when the information must be provided, what jurisdiction the information will be utilized in, and what obligations to others you may have in responding to the request. After receipt and analysis of the subpoena, Jimerson Birr works with its clients to object to, move to quash, or seek protection from the subpoena, preserve evidence sought by the subpoena, or otherwise produce information the company is legally required to produce. Our attorneys provide instruction and help to ensure that all employees who may have documents and information responsive to the subpoena are put on notice to preserve such items, and to take measures necessary to ensure that responsive documents and information are not destroyed.

There are many reasons why subpoenas can be objected to and information withheld, including but not limited to: (i) the subpoena seeks irrelevant documents; (ii) the subpoena does not allow a sufficient time to comply with it; (iii) the subpoena requests disclosure of privileged or confidential information; (iv) the subpoena requests are vague and/or ambiguous; (v) the subpoena subjects you to undue burden or expense; or (vi) the subpoena was not served properly. Our lawyers evaluate all legal rights and obligations, and provide counsel as to whether there are any viable legal objections to producing the documents requested. It is critically important to identify legal deficiencies in form or substantive information requested before releasing corporate information that can be legally withheld. Jimerson Birr attorneys have handled thousands of subpoenas for information and are well-versed at imposing screening mechanisms that prevent inadvertent disclosure of private or confidential information that puts our clients at risk. Under no circumstance should a company respond to a subpoena without assistance of counsel if any of the following are involved: confidential or privileged information, a high volume of documents, testimony from a senior executive or board member, and/or the subpoena is subject to objection. Jimerson Birr attorneys are adept at assessing the validity and scope of a subpoena, help evaluate a company's position, weigh the options to respond, and recommend an appropriate course of action in light of the existing law and procedural requirements.

If the subpoena is valid and there are no grounds for challenging, we work with our clients and opposing counsel to ensure full compliance and response with the production of documents requested. Because of the strong penalties associated with incomplete or non-compliance (such as contempt of court, fines, criminal penalties, or imprisonment) and the various protectionary issues required of any business in subpoena response, all businesses should consult with an experienced attorney when undertaking the process of gathering responsive documents and preparing a response.

For larger companies who frequently receive third-party subpoenas, Jimerson Birr provides made-to-order solutions focused on creating operational efficiencies and managing exposure to risks. Our team is able to provide value-add counsel in analyzing competing statutory or contractual production withholding obligations, streamlining subpoena production compliance measures, integrated reporting, preservation of requested information, information security, data privacy obligations, regulatory risk management, and document review management. Jimerson Birr has experience in oversight of subpoena response to all levels of inquiry, including requests involving millions of responsive documents requiring multi-layered project management for reviewing and producing responsive, non-confidential, and non-privileged information, as well as preparing witnesses for live testimony. By engaging Jimerson Birr to oversee the institutional subpoena response process, thriving businesses can focus on critical business operations that generate corporate growth.

We provide a complete range of subpoena response legal services, regularly offering counsel in areas such as:

- › Reviewing the subpoena to identify the categories of information requested for production and all details associated with an internally and externally compliant response
- › Issuing a litigation hold that instructs all personnel to locate, identify, and preserve all documents (in hard-copy or electronic form) that are potentially responsive to the subpoena, as well as suspending the routine destruction of documents for the categories of information requested

- > Determining the record custodians, the approximate quantity of responsive documents, identifying whether any documents are subject to confidentiality restrictions or prohibited from disclosure by law, and ensuring that custodians preserve and maintain the integrity of all responsive materials
- > Streamlining the collection and analysis of responsive information, as well as the coordination and production of it, and constructing a formal, defensible review process to ensure that all potential sources of electronic data have been identified and searched
- > Protecting and defending confidential and privileged materials
- > Reviewing the notice requirements of company insurance policies to determine whether the receipt of a subpoena is a triggering event for coverage
- > Evaluating the company's responsive positions and options, such as (a) engaging in an informal but meaningful dialogue with the party seeking production to resolve concerns about it, (b) formally objecting to it on a variety of grounds, (c) complying with it, (d) filing a motion to quash/modify it, or (e) filing a motion for protective order seeking to limit the scope of information requested
- > Calculate the anticipated cost of compliance and advocating for appropriate cost-shifting

Jimerson Birr is a premier law firm with a market-leading subpoena response practice that is tailored to the nuances of the industries we serve. Our teams have a global perspective and strong Florida roots. Our clients look to us to bring a distinctively high degree of quality, passion and creativity to resolve subpoena response challenges effectively and cost efficiently.

We're honored to work with some of the world's most accomplished organizations and the leaders who drive them. We know that on any given day our clients are confronting competition, corporate advancement, risk management, process and product innovation, resource allocation, efficiency stewardship and talent oversight problems; some days all the above. When our clients place subpoena response matters with us, they enlist sets of broad shoulders that carry their burdens for them so that they no longer feel their weight. This deep business partnership will give us both an opportunity to be at our best.

We draw on the strength of our character and talents to deliver the best of our firm to every client through true collaboration. On those occasions where our client is concerned it may have erred or is accused of being in the wrong, we help them become right. We don't confuse effort with results, and we focus on the immutable, allied goals at all times. Partnership with Jimerson Birr on subpoena response matters means that you are not looking in any direction but ahead.

Attorneys



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