

Don't Let a Subpoena Take You by Surprise

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Many professionals, especially those in the accounting field, have received a subpoena to produce documents and/or appear for a deposition in a lawsuit. It is critical the professional takes steps to comply with the subpoena or lodge a timely and appropriate objection.

Missouri Supreme Court Rules 57.09 and 58.02 permit a party to a lawsuit to issue subpoenas to non-party professionals. The large majority of subpoenas seek production of documents. The rules require the party issuing the subpoena to take reasonable steps to avoid imposing undue burden or expense on a non-party professional, but this does not always occur. The professional, especially accountants, should evaluate whether the subpoena seeks privileged or proprietary information. If so, the professional should object to producing the documents. The subpoena could seek information protected by the accountant-client privilege. In Missouri, an accountant needs a client's approval to produce documents subject to this privilege.

Any objection lodged must be made within ten days of service of the subpoena. Once an objection is made, the party seeking the information is not permitted to obtain a copy of the documents without a court order. In addition to filing objections, the professional should evaluate whether a Protective Order should be sought to protect confidentiality of the information.

If a professional fails to timely object to a subpoena, the requesting party may move for a court order to compel production. In extreme circumstances, a party could also seek to have a non-party professional held in contempt of court.

A professional may need to retain counsel if objections are lodged, because the objections must be filed with the court. It is wise to consult with counsel to evaluate the desirability—or for accountants, the necessity—of filing objections and negotiating the scope of production.