

OK at Work:

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Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, my colleague Russell Berger both Attorneys at Offit Kurman. And today we are talking about subpoenas. So I think most people have probably heard of a subpoena and, people will receive them. A person, a company, a request for documents in a case, or to be deposed.

A way to think about it is in a case or a matter that someone's seeking information from you or from your company, depending on how it's addressed. And it can be a little intimidating. These look like very official legal documents when they come to you.

And they can sometimes be signed on, by a judge or a court, depending on what type of subpoena it is or what forum the matter is in, so it can look pretty intimidating. It can get served on you by a process server sometimes and could be a little scary. But what are some things that people should be thinking about.

Russell Berger: I would say generally speaking, it's better to get served with a subpoena than with a lawsuit. So you can take a little bit [00:01:00] of a deep breath if you get a subpoena, although it can still be very burdensome and voluminous. Because as you said, it's a court order compelling you to show up either to testify or to produce documents or both.

And it's something that, you shouldn't ignore and you're gonna have to deal with. The first approach to it is well, what do I have? What documents exist? Let me wrap my arms around what they're asking for and what I have. And then you can figure out, do I have to produce all this? Or this is so much stuff. This can't be what they're really asking for. Maybe there's a way I can negotiate this down to a smaller production. You just work through the process of trying to make it as manageable as possible if need be. And, you review it for things like privilege and, sometimes confidential material can be produced under a confidentiality order.

There's different things you want to do to protect yourself as you work through a production process. But, the fact of the matter is, you have to work through the process. You can't say, ah, I don't have to deal with that. I'm not getting sued. I don't care. But it's the point of the subpoena is you have to care.[00:02:00]

Sarah Sawyer: Depending on the type of matter, you can definitely speak to an attorney get advice on all of those things, what that risk might be. I think you made a really great point Russell in the start, that it's better to get served with a subpoena than a lawsuit.

Well, sometimes the subpoena is the precursor to the lawsuit. Especially if you think you might somehow be wrapped up in the type of case because I know sometimes it's not a surprise to get a subpoena. The case may already be on the person or company's radar, and they might be seeking information to then be also thinking about adding additional claims.

So that's not always the case. Sometimes you really are just a witness and it's pretty straightforward. Thinking about it in a criminal or personal injury context. Maybe you saw something happen. And so that's a really straightforward one. You saw the accident happen outside your house and they want to ask you about what happened.

Well, that's a pretty, straightforward and easy one in most instances. Whereas, producing documents. Maybe you're a company that's adjacent to the lawsuit and so you know that there's some risks there, then it can start to get, a lot more complicated in those types of situations.

Russell Berger: Yeah, that's a great point as it pertains [00:03:00] to, potentially having to testify as well. Because you get subpoenaed to testify in a deposition or to testify at trial. But when you testify, you're testifying under oath and whatever you say, that's now locked in. That's your testimony.

So you want to think through, obviously you want to be honest. And, you don't want to purger yourself when testifying, but you want to be thoughtful of, oh, what kind of questions are they going to ask me? What should I be on the lookout for? And, make sure you're prepared for your own sake when you go into those situations.

Sarah Sawyer: Yeah, because precision and language is important in those instances. Of course, you want to tell the truth, you want to get them the information that they seek, but obviously most people aren't used to having to essentially testify under oath or give these very formal statements and it can get a little wonky.

You can say some things that maybe just don't come off in the way that you would think or if you're being too conversational. There's a lot to it. But, moral of the story, gotta pay attention to it. Got to think through it. For sure.

Russell Berger: Absolutely.

Sarah Sawyer: Thanks Russell.

We'll see you next time.

Russell Berger: Thanks, Sarah.

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